MASTER AGREEMENT

THIS AGREEMENT is made by and between the Commonwealth of Pennsylvania, acting through the Department of General Services, hereinafter called the COMMONWEALTH,

and

The Pennsylvania State University, hereinafter called the UNIVERSITY;

W I T N E S S E T H:

WHEREAS, the UNIVERSITY, in furtherance of its academic mission, provides resources in faculty, practical and academic research, and education; and,

WHEREAS, the UNIVERSITY has made these resources available to various agencies of the COMMONWEALTH; and,

WHEREAS, offering such assistance to agencies of the COMMONWEALTH benefits the UNIVERSITY’s academic mission by enabling faculty members to apply the results of their research and by affording students practical experience in their field of study; and,

WHEREAS, the COMMONWEALTH is a public procurement unit pursuant to Section 1901 of the Commonwealth Procurement Code, 62 P.S. §1901; and,

WHEREAS, the UNIVERSITY, with respect to the services to be performed pursuant to this Master Agreement is acting in furtherance of its educational mission in performing them; and,

WHEREAS, pursuant to Section 1906(b) of the Commonwealth Procurement Code, 62 P.S. §1906(b), the UNIVERSITY, as a public procurement unit, may provide the COMMONWEALTH, a public procurement unit, with the types of services described above, provided that the COMMONWEALTH compensates the UNIVERSITY for the expenses of the services in accordance with an agreement between the parties; and
WHEREAS, the parties desire to enter into an agreement for the provision of the services by the UNIVERSITY in exchange for payment by the COMMONWEALTH to compensate the UNIVERSITY for the expenses of the services in accordance with Section 1906(b) of the Commonwealth Procurement Code, 62 P.S. §1906(b).

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises set forth below, the parties agree, with the intention of being legally bound, as follows:

1. The foregoing recitals are incorporated by reference as a material part of this Agreement.

2. UNIVERSITY shall, in accordance with the terms and conditions of this Agreement, supply and deliver resources and services, as more fully defined in agency purchase orders issued pursuant to this Agreement, to Commonwealth executive agencies.

3. Commonwealth executive agencies shall procure their requirements for UNIVERSITY resources and services in accordance with the terms and conditions of this Agreement.

4. COMMONWEALTH and UNIVERSITY agree to be bound to the Special Terms and Conditions attached hereto as Exhibit A and made part of this Agreement.

5. UNIVERSITY agrees to comply with the following standard Commonwealth contract provisions, which are attached as Exhibit “B” and made part of this Agreement: Nondiscrimination/Sexual Harassment Clause, Contractor Integrity Provisions, Contractor Responsibility Provisions, Provisions Concerning the Americans with Disabilities Act, and Offset Provision. As used in these provisions, the term “Contractor” refers to the UNIVERSITY.
6. UNIVERSITY agrees to comply with the Pennsylvania Department of Transportation ("PENNDOT") supplemental contract provisions, which are attached as Exhibit "C" and made a part of this Agreement, when providing services to PENNDOT.

7. UNIVERSITY agrees to comply with the Department of Human Services ("DHS") supplemental contract provisions, which are attached as Exhibit "D" and made a part of this Agreement, when providing services to DHS.

8. This Agreement will not be effective until all necessary Commonwealth officials as required by law have executed it.

9. Upon execution, this document, together with all exhibits and attachments annexed to it, constitutes the entire agreement between the parties and completely expresses their intent. All prior or contemporaneous agreements are hereby merged into this document. No amendment or modification of this Agreement shall be valid unless it is in writing and duly executed and approved by the parties.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties hereto have executed this Master Agreement as of the dates written below. Execution by the Commonwealth will be as described in Paragraph 3 of Exhibit A.

ATTEST:

Name: Heather B. Wilson
Title: Assistant Secretary
DATE 5/12/2021

THE PENNSYLVANIA STATE UNIVERSITY

BY

Name: Susan J. Wiedemer
Title: Assistant Treasurer
DATE 5/12/2021

COMMONWEALTH OF PENNSYLVANIA

APPROVED AS TO LEGALITY AND FORM

To be obtained electronically
Office of Chief Counsel Date

To be obtained electronically
Office of General Counsel Date

To be obtained electronically
Office of Attorney General Date

DEPARTMENT OF GENERAL SERVICES

To be obtained electronically
Deputy Secretary for Procurement Date

APPROVED FOR FISCAL RESPONSIBILITY, BUDGETARY APPROPRIATENESS AND AVAILABILITY OF FUNDS:

To be obtained electronically
Comptroller DATE

4
Your SAP Vendor Number with us: 141597

Supplier Name/Address:
Pennsylvania State University
Pennsylvania State University
Continuing Education, 777 West Harrisburg Pike
Middletown PA 17057-4898 US

Supplier Phone Number: 717-948-6704
Supplier Fax Number: 717-948-6582

Contract Name:
8600 Penn State Master Agreement

Purchasing Agent
Name: Warnick Kelly
Phone: 717-214-3434
Fax: 717-214-9505

Please Deliver To:
To be determined at the time of the Purchase Order unless specified below.

Payment Terms
NET 30

Solicitation No.: Issuance Date:
Supplier Bid or Proposal No. (if applicable): Solicitation Submission Date:

This contract is comprised of: The above referenced Solicitation, the Supplier's Bid or Proposal, and any documents attached to this Contract or incorporated by reference.

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<th>Item</th>
<th>Material/Service Desc</th>
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Information:

Supplier's Signature ____________________________ Title ____________________________
Printed Name ____________________________ Date ____________________________
General Requirements for all Items:

This Agreement will govern the provision of resources and services by the UNIVERSITY, in the furtherance of its educational mission, to the COMMONWEALTH. Training provided under the Master Agreement is limited to training provided by University personnel and held at University facilities. Agencies may procure the services for lodging and meals from the University only if they will be provided at University facilities, including University sponsored hotels. The contract is not to be utilized for conference planning.

All Purchase Orders must be processed through SRM hard referencing this contract and utilizing the line items established.
Penn State University Master Agreement are to be defined by individual agencies. Cost and Scope to be individually quoted on an as needed basis. Terms and Conditions will apply to all POs issued from this contract.

Issuing Officer:
Kelly Warnick, Commodity Specialist
Department of General Services
Harrisburg, Pa
Phone: 717.214.3434
Fax: 717.214.9505
Email: kwarnick@pa.gov

University Contact Person:
Timothy M. Stodart
Associate Director
Office of Sponsored Programs
The Pennsylvania State University
Phone: 814-865-1027
Email: tms21@psu.edu

No further information for this Contract
Attachment 1

The Pennsylvania State University
Contract number: 4400023298

Agency Request - Work Plan
( Agency to complete and provide to University)

If University Principal Investigator is known, please incorporate their contact info below:

Principal Investigator:
   Email:
   Phone:

Otherwise complete and forward this form to:

osp@psu.edu

A. Agency and Project Name:

B. Objective:

This project is to:

Is this a continuation of services? □ YES    □ NO

If yes, previous Purchase Order Number: ________________

C. Method of Invoicing: (Agency must check one of the methods).

1. □ Cost Reimbursement: The UNIVERSITY shall send its standard automated cost reimbursable invoice itemized by major budget category (Personnel, Operational, Professional Services, Subcontracting, Capital Equipment, Travel, and Administrative Fees) to which the invoice refers to the address referenced on the Purchase Order monthly.

For COMMONWEALTH-funded Projects:

□ Agency requires UNIVERSITY standard invoice only (no additional documentation required).

□ Agency requires custom invoicing and/or additional supporting documentation be submitted with each invoice. UNIVERSITY to budget for this effort. UNIVERSITY may assess an additional nominal charge to cover the cost of non-standard invoicing requirements. The special invoicing requirements and the associated charge will be definitized as part of the Attachment 2 finalization process.
2. Deliverable Based: The UNIVERSITY shall submit to the Commonwealth Agency the monthly progress report(s) and a written certification that the task deliverable is completed and ready for acceptance.

D. Term of Project:

From: ________________
To: ________________

E. Project Site: (Please list location where work will be performed)

F. Statement of Work: (Include here or as separate attachment)

G. Confidential Information: (If Agency confidential information will be part of this scope of work, please provide details here. If no Agency confidential information is involved, mark ‘N/A’)

H. Copyright Ownership: Ownership of materials developed as part of the scope of work for Project Tasks. Agency must check one of the provisions based on the source of funding identified in Section I below (Commonwealth or Federal Pass Through):

1. Commonwealth Funding - Work Made for Hire/University Non-Exclusive License; or
2. Federal Pass-Through Funding - Purchase Orders Vesting Title in the University and Granting a Non-Exclusive License to the Commonwealth

I. Reporting: (Standard reporting is monthly. Only list additional or different reporting requirements that are required for the project)

1.

2.

3.

Reports shall be submitted to:
Agency Contact:
Email:
Phone:

J. Federal Pass Through Information:

If funding for this project stems from a Federal Agency, the source of these funds must be disclosed notifying University of the respective percentages of state funds and federal funds that will be utilized for payment for this service. The following information is required or the University may not provide a quote.

Prime Award Number: ________________________________
Federal Agency: ________________________________
Sub-Agency: ________________________________

Examples: Federal Agency: USDA – NIFA or USDA – ARS
Sub-Agency: USDI–National Park Service or USDI – U.S. Geological Survey

Allowable indirect cost percentage for Federal Agency/Sub-Agency above:
Catalog of Federal Domestic Assistance (CFDA) number (if applicable):

Percentage of federal funding: ________%
CFDA/ALN number applicable to federal funding: ________
Percentage of state funding: ________%

If at any time, the funding sources or percentages are changed it is the responsibility of the Agency to notify the University. If Federal funds are increased, the University has the right to revise the indirect costs at that time or anytime that the percentage of Federal Funds has increased. The Agency will be responsible for payment of additional costs associated with the change in funding source or change in funding percentages.

Signature attesting to Funds appropriated for Project:

__________________________________________  __________
Agency Head or Designee  Date

(The Agency has the option to competitively solicit the procurement with other suppliers if the University’s proposed budget is not considered reasonable).
Attachment 2

The Pennsylvania State University
Contract Number: 4400023298

UNIVERSITY Response - Project Template
(To be completed by UNIVERSITY and returned to requesting Commonwealth Agency)

☐ Original Response

☐ Revised Response (Revision dated MM/DD/YY)

A. Scope of Work: - Statement of work. Specify the research project period of performance, etc. from Exhibit A, Special Terms and Conditions, Section 3.C.2. – Scope of Work Requirements.

B. Method of Invoicing: (indicate agency’s designation)

1. ☐ Cost Reimbursement: The UNIVERSITY shall send its standard automated cost reimbursable invoice itemized by major budget category (Personnel, Operational, Professional Services, Subcontracting, Capital Equipment, Travel, and Administrative Fees) to which the invoice refers to the address referenced on the Purchase Order monthly.

2. ☐ Deliverable Based (Fixed-Price): The UNIVERSITY shall submit to the Commonwealth Agency the monthly progress report(s) and a written certification that the task deliverable is completed and ready for acceptance.

C. Cost or Price Information: (as selected by Agency in Attachment 1)

If Cost Reimbursement, the total estimated cost of this project is $_______.

If Deliverables-Based (Fixed-Price), the total price is $_______.

1. If Cost Reimbursement Method of Invoicing was Selected by the Agency: (Attach detailed and summary budgets in Excel format)

The contract line items and budget line items shall be provided in the following:

a. Personnel: ______________

b. Operational (Includes Expendable Equipment and Supplies): ______________

c. Professional Services: ______________

d. Subcontracting: ______________
e. Travel: __________

f. Administrative Fees (Sometimes referred as Overhead, Indirect Cost, or F&A):


g. Capital Equipment: __________

The University shall provide cost to purchase and the cost to rent the required capital good or capital equipment for the time period of the project. Agency will review and determine the method to acquire the required good or equipment. The decision of rental or purchase shall be at the sole discretion of the Agency. All capital equipment remains Commonwealth property and will become surplus supplies at the end of the Project pursuant to Chapter 15 of the Procurement Code unless indicated below by the Agency.

Capital Equipment:  ☐ Purchase  ☐ Rent

**If purchase, disposition of Capital and Non-Capital Equipment acquired under resultant PO designated as follows:**

☐ Commonwealth will retain ownership – University to submit Report of Personal Property form (Attachment 3) at conclusion of purchase order period.

☐ Commonwealth retains ownership but will allow University to use it for use on other Commonwealth projects (grants, contracts, purchase orders, etc.) that the University is contracted with the Agency for. If the equipment is being used on another Agency project, the Agency shall give notice to University that it intends to retain ownership at the end of the project. If and when the Equipment is no longer being used on an Agency project, University will submit Attachment 3 to Agency.

If Agency decides mid-project that other Agency-funded projects could benefit from use of the Equipment, Agency will send notification to University Contact in Exhibit A, Article IV. to document permission for continued use of the Equipment.

**D. Copyright Ownership: (Indicate agency’s designation as per Attachment 1)**

☐ Commonwealth Funding. Work Made for Hire/University Non-Exclusive License

☐ Federal Pass-Through Funding. Purchase Orders Vesting Title in the University and Granting a Non-Exclusive License to the Commonwealth
2. If Deliverable Based Method of Invoicing was Selected by the Agency: (Attach detailed budget in Excel format) The deliverables shall be provided in the following:

   a. Deliverable 1 - [Description]: _____________________ $  
   b. Deliverable 2 - [Description]: _____________________ $  
   c. Deliverable 3 - [Description]: _____________________ $  
   d. Deliverable 4 - [Description]: _____________________ $  

E. Management Plan and Staffing:

“Key Personnel” are defined as individuals who contribute to the scientific development or execution of a project in a substantive way. The program director/principal investigator (PD/PI) is always considered Key Personnel. The PD/PI may designate other Key Personnel if applicable and necessary for the Scope of Work. Key Personnel who have not yet been named shall be identified when they join the project. When new Key Personnel are named, the Principal Investigator will notify the Commonwealth Agency in writing prior to charging their time to the project.

Key Personnel:

Proposal validity. The University’s proposal is valid for 90 days from date of University signature below. University reserves the right to submit a revised scope of work and budget in the event a purchase order is issued beyond this 90 day period.

Approvals (Agency will notify PSU when Attachment is approved as final, and PSU will attach final signatures)

1. The Pennsylvania State University Principal Investigator:

   Name and Title    Date

2. The Pennsylvania State University Authorized Official:

   Title    Date

3. Commonwealth Agency’s Authorized Approver:

   Date

   Name    Title

   Signature
ATTACHMENT 3

Report of Personal Property Acquired by The Pennsylvania State University

For purchase orders issued under Commonwealth of Pennsylvania (COP) Master Agreement No. 4400023298 (report required when Commonwealth Agency will retain ownership of Personal Property as indicated in Attachment 2)

Purchase Order No. ______________

OSP No. ____________  Budget/Fund No. _____________

Issuing COPA Agency: ________________

COPA Agency contact (Purchasing Agent listed on PO): ________________

DGS contact: Kelly Warnick
717-214-3434
kwarnick@pa.gov

Article 4 of Exhibit A to the COPA Master Agreement, defines Personal Property as follows:

1. Expendable property: Goods or equipment that is more than $500.00 per item but less than $5,000.00 per item that is necessary for conducting the specific service within the Scope of Work excluding cell phones and related equipment. The COMMONWEALTH will not purchase cell phones or related equipment for the UNIVERSITY. Expendable property includes, but is not limited to, such items as global positioning systems (GPS), computers, microscopes, tractors, and all terrain vehicles (ATV). Expendable property does not include such items as office supplies, safety gear, ATV parts, laboratory supplies, etc.

The following expendable property was purchased under the purchase order referenced above (Commonwealth-owned property):

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
<th>Use/Purpose</th>
<th>Location</th>
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Report of expendable property issued by (name, email, phone): _______________________

Date: __________

Rev 4.28.21
2. Capital goods and capital equipment: Goods or equipment that exceeds $5,000.00 per item.

The following capital goods and equipment were purchased under the purchase order referenced above (Commonwealth-owned property):

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
<th>Use/Purpose</th>
<th>Location</th>
</tr>
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<td>3.</td>
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</tbody>
</table>

Report of capital goods or equipment issued by (name, email, phone):____________________

Date:___________

Per Article V.B.5. of Exhibit A, UNIVERSITY is required to provide the issuing COPA Agency and DGS an itemized listing of all expendable property and capital goods and equipment (as defined above) purchased under COPA master agreement purchase orders when the COP Agency has indicated its intent to retain ownership in Attachment 2. This list is to be provided via email to the issuing COPA Agency and DGS (contact info above) within 60 days of the completion date of the purchase order and will include a copy of the invoice for each such item.

Note for UNIVERSITY Property Inventory (responsible for submitting property reports on behalf of UNIVERSITY): When this report is emailed to the COPA Agency/DGS, under the ‘Options’ tab in MS Office, select ‘Request a Read Receipt’. The sender will then receive confirmation that the email/report has been viewed by the COPA Agency/DGS. (Note: Other email systems may have a different mechanism for requesting read receipts.)

Per Article V.B.5.A.a. Disposition of Property, the COPA Agency will, within 60 days of receipt of this report, arrange for pick up or delivery (at COP expense) of any or all items listed above (Commonwealth-owned property).

Per Article V.B.5.A.a, if the COPA Agency does not contact UNIVERSITY within 60 days of receipt of this report to arrange delivery or pick-up of any listed above (Commonwealth-owned property), such property will become the property of the UNIVERSITY.
Health Insurance Portability and Accountability Act (HIPAA) Compliance

WHEREAS, the [name of program and/or Department] (Covered Entity) and the Contractor (Business Associate), intend to protect the privacy and provide for the security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, Public Law 111-5, and the HIPAA/HITECH regulations at 45 CFR Parts 160, 162 and 164.

WHEREAS, Business Associate may receive PHI in any format including electronic form, from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI must be handled, disclosed or used only in accordance with this Attachment 5, the Underlying Agreement, and the standards established by the HIPAA Rules.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions. The following terms used in this Attachment 5 shall have the same meaning as those terms in the HIPAA/HITECH Regulations: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific Definitions:

a. “Business Associate” shall have the same meaning as the term “business associate” at 45 CFR § 160.103.

b. “Covered Entity” shall have the same meaning as the term “covered entity” at 45 CFR § 160.103.


d. “Underlying Agreement” shall mean Contract/Purchase Order # ____________.

2. Changes in Law. Business Associate agrees that it will comply with any changes in the HIPAA Rules by the compliance date established by any such changes and will provide the Covered Entity with written certification of such compliance.

3. Stated Purposes for Which Business Associate May Use or Disclose PHI. Except as otherwise limited in this Attachment 5, Business Associate shall be permitted to use or disclose PHI provided by or obtained by or obtained on behalf of Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity which are specified in Appendix A to this Attachment 5, provided that such use or disclosure would not violate the HIPPA Rules if done by Covered Entity. Business Associate agrees to make
uses, disclosures and requests for PHI consistent with Covered Entity’s minimum policies and procedures.

4. **Additional Purposes for Which Business Associate May Use or Disclose Information.** Business Associate shall not use or disclose PHI provided by, or created or obtained on behalf of Covered Entity for any other purposes except as required by law. Business Associate shall not use PHI to de-identify the information in accordance with 45 CFR § 164.514(a)-(c) without the Covered Entity’s express written authorization(s). Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

5. **Business Associate Obligations:**

   a. **Limits on Use and Further Disclosure Established by Appendix and Law.** Business Associate hereby agrees that the PHI provided by, or created or obtained on behalf of Covered Entity shall not be further used or disclosed other than as permitted or required by this Attachment 5 or as required by law.

   b. **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Attachment 5 that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity as required by Subpart C of 45 CFR Part 164. Appropriate safeguards shall include but are not limited to implementing:

      i. administrative safeguards required by 45 CFR § 164.308;
      ii. physical safeguards as required by 45 CFR § 164.310;
      iii. technical safeguards as required by 45 CFR § 164.312; and
      iv. policies and procedures and document requirements as required by 45 CFR § 164.316.

   c. **Training and Guidance.** Business Associate shall provide annual training to relevant contractors, Subcontractors, employees, agents and representatives on how to prevent the improper use or disclosure of PHI. Business Associate shall also comply with annual guidance on the most effective and appropriate technical safeguards issued by the Secretary of Health and Human Services.

   d. **Reports of Improper Use or Disclosure or Breach.** Business Associate hereby agrees that it shall notify the Covered Entity’s Project Officer and the Covered Entity’s Legal Office within **two (2) days** of discovery of any use or disclosure of PHI not provided for or allowed by this Attachment 5, including breaches of unsecured PHI as required by 45 CFR § 164.410. Such notification shall be written and shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the improper use or disclosure or Breach. Business Associate shall furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 CFR § 164.404(c) at the time of Business Associate’s notification to Covered Entity or promptly thereafter as such information becomes available. An improper use or
disclosure or Breach shall be treated as discovered by the Business Associate on the first day on which it is known to the Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate to have occurred.

Business Associate Agrees that if any of its employees, agents, contractors, Subcontractors, and representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information, Business Associate shall ensure that such employees, agents, contractors, Subcontractors, and business representatives shall receive training on Business Associate’s procedure for compliance with the HIPAA Rules. Business Associate Agrees that if any of its employees, agents, contractors, Subcontractors, and representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information in a manner not provided for in this Attachment 5, Business Associate shall ensure that such employees, agents, contractors, Subcontractors, and business representatives are sanctioned or prevented from accessing any PHI Business Associate receives from, or creates or receives on behalf of Covered Entity. Use or disclosure of PHI in a manner contrary to the terms of this Attachment 5 shall constitute a material breach of the Underlying Agreement.

e. **Contractors, Subcontractors, Agents and Representatives.** In accordance with 45 CFR § 164.502(e)(1)(ii) and § 164.308(b)(2), if applicable, ensure that any contractors, Subcontractors, agents and representatives that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. The existence of any contractors, Subcontractors, agents and representatives shall not change the obligations of Business Associate to the Covered Entity under this Attachment 5.

f. **Reports of Security Incidents.** Business Associate hereby agrees that it shall notify, in writing, the Department’s Project Officer within two (2) days of discovery of any Security Incident at the time of Business Associate’s notification to Covered Entity or promptly thereafter as such information becomes available.

g. **Right of Access to PHI.** Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual’s PHI within 10 business days of receiving a written request from the Covered Entity or an authorized individual in accordance with the HIPAA Rules. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its contractors, Subcontractors, agents and representatives access to PHI, Business Associate shall notify Covered Entity of same within five (5) business days. Business Associate shall further conform with and meet all of the requirements of 45 CFR § 164.524.

h. **Amendment and Incorporation of Amendments.** Within five (5) business days of receiving a request from Covered Entity or from the individual for an amendment
of PHI maintained in a designated record set, Business Associate shall make the
PHI available to the Covered Entity and incorporate the amendment to enable
Covered Entity to comply with 45 CFR 164.526. If any individual requests an
amendment from Business Associate or its contractors, Subcontractors, agents and
representatives, Business Associate shall notify Covered Entity of same within five
(5) business days.

i. **Provide Accounting of Disclosures.** Business Associate agrees to maintain a
record of all disclosures of PHI in accordance with 45 CFR § 164.528. Such records
shall include, for each disclosure, the date of the disclosure, the name and address
of the recipient of the PHI, a description of the PHI disclosed, the name of the
individual who is the subject of the PHI disclosed, the purpose of the disclosure,
and shall include disclosures made on or after the date which is six (6) years prior
to the request. Business Associate shall make such record available to the
individual or the Covered Entity within 10 business days of a request for an
accounting of disclosures and in accordance with 45 CFR §164.528.

j. **Access to Books and Records.** Business Associate hereby agrees to make its
internal practices, books, and records relating to the use or disclosure of PHI
received from, or created or received by Business Associate on behalf of the
Covered Entity, available to the Covered Entity and the Secretary of Health and
Human Services or designee for purposes of determining compliance with the
HIPAA Rules.

k. **Return or Destruction of PHI.** At termination of this Attachment 5, Business
Associate hereby agrees to return or destroy all PHI provided by or obtained on
behalf of Covered Entity. Business Associate agrees not to retain any copies of the
PHI after termination of this Attachment 5. If return or destruction of the PHI is
not feasible, Business Associate agrees to extend the protections of this Attachment
5 to limit any further use or disclosure until such time as the PHI may be returned
or destroyed. If Business Associate elects to destroy the PHI, it shall certify to
Covered Entity that the PHI has been destroyed.

l. **Maintenance of PHI.** Notwithstanding section 4(k) of this Appendix, Business
Associate and its contractors, Subcontractors, agents and representatives shall
retain all PHI throughout the term of the Underlying Agreement and shall continue
to maintain the information required under section 4(h) of this Appendix for a
period of six (6) years after termination of the Underlying Agreement, unless
Covered Entity and Business Associate agree otherwise.

m. **Mitigation Procedures.** Business Associate agrees to establish and to provide to
Covered Entity upon request, procedures for mitigating, to the maximum extent
practicable, any harmful effect from the use or disclosure of PHI in a manner
contrary to this Attachment 5 or the HIPAA Rules. Business Associate further
agrees to mitigate any harmful effect that is known to Business Associate of a use
or disclosure of PHI by Business Associate in violation of this Appendix or the
Privacy Rule.
n. **Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any contractor, Subcontractor, employee, agent and representative who violates this Exhibit or the HIPAA Rules.

o. **Application of Civil and Criminal Penalties.** All Civil and Criminal Penalties under the HIPAA Rules shall apply to Business Associate’s violation of any provision contained in the HIPAA Rules.

p. **Breach Notification.** Business Associate shall comply with the Breach notification requirements of 45 CFR 164. In the event of a Breach requiring indemnification in accordance with Section 5(u), below, Covered Entity may elect to directly comply with Breach notification requirements or require Business Associate to comply with all Breach notifications requirements of 45 CFR § 164 on behalf of Covered Entity. If Covered Entity requires Business Associate to comply with Breach notification requirements, Business Associate shall provide Covered Entity with a detailed weekly, written report, starting one week following discovery of the Breach. The report shall include, at a minimum, Business Associate’s progress regarding Breach notification and mitigation of the Breach. If Covered Entity elects to directly meet the requirements of 45 CFR § 164, Business Associate shall be financially responsible to Covered Entity for all resulting costs and fees incurred by Covered Entity, including, but not limited to, labor, materials, or supplies. Covered Entity may at its sole option: 1) offset amounts otherwise due and payable to Business Associate under the Underlying Agreement; or 2) seek reimbursement of or direct payment to a third party of Covered Entity’s costs and fees incurred under this paragraph. Business Associate shall make payment to Covered Entity (or a third party as applicable) within 30 days from the date of Covered Entity’s written notice to Business Associate.

q. **Grounds for Breach.** Any non-compliance by Business Associate with this Attachment 5 or the HIPAA Rules will automatically be considered to be a breach of the Underlying Agreement.

r. **Termination by Commonwealth.** Business Associate authorizes termination of this Attachment 5 or Underlying Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion that the Business Associate has violated a material term of this Attachment 5.

s. **Failure to Perform Obligations.** In the event Business Associate including its contractors, Subcontractors, agents and representatives fails, to perform its obligations under this Appendix, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Attachment 5 and applicable law.

t. **Privacy Practices.** The Covered Entity will provide and Business Associate shall immediately begin using and/or distributing to clients any applicable form, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date of this
Attachment 5, or as otherwise designated by the Program or Covered Entity. The Covered Entity retains the right to change the applicable privacy practices, documents and forms. The Business Associate shall implement changes as soon as practicable, but not later than 45 days from the date of notice of the change.

u. **Indemnification.** Business Associate shall indemnify, defend and hold harmless Covered Entity from and all claims and actions, whether in law or equity, resulting from Business Associate’s Breach or other violation of the HIPAA Rules (this includes but is not limited to Breach and violations by Business Associate’s contractors, Subcontractors, employees, agents and representatives). Additionally, Business Associate shall reimburse Covered Entity for any civil monetary penalties imposed on Covered Entity as a result of a Breach or violation cognizable under this Section 5(u).

6. **Obligations of Covered Entity:**

a. **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR § 164.520 (Attachment 1 to this Business Associate Appendix), as well as changes to such notice.

b. **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware, if such changes affect Business Associate’s permitted or required uses and disclosures.

c. **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect Business Associate’s use or disclosure of PHI.

7. **Survival:**

The requirements, rights and obligations created by this Attachment 5 shall survive the termination of the Underlying Agreement.
Appendix A to Attachment 5, Commonwealth Business Associate Agreement

Permitted Purposes for the Creation, Receipt, Maintenance, Transmission, Use and/or Disclosure of Protected Health Information

1. **Purpose of Disclosure of PHI to Business Associate:** To allow ____________ to meet the requirements of the Underlying Agreement.

2. **Information to be disclosed to Business Associate:** ____________________________.

3. **Use shall Effectuate Purpose of Underlying Agreement:** _______ may use and disclose PHI to the extent contemplated by the Underlying Agreement, and as permitted by law with Commonwealth approval.
These SPECIAL TERMS AND CONDITIONS shall be a part of the Master Agreement between the Commonwealth of Pennsylvania, acting through the Department of General Services (“COMMONWEALTH”), and The Pennsylvania State University (“UNIVERSITY”).

I. AGREEMENT SCOPE/OVERVIEW. This Agreement will govern the provision of resources and services by the UNIVERSITY, in the furtherance of its educational mission, to the COMMONWEALTH. The contract is not to be utilized for conference planning. In addition, the contract is not to be utilized for training, except for training provided by University personnel and/or approved subcontractors and held at facilities/venues that are University owned, University sponsored, Agency provided, or Agency procured. Agencies may procure the services for lodging and meals from the university only if they will be provided at University facilities, including University sponsored hotels.

II. TERM OF AGREEMENT. The term of this Agreement will commence on the Effective Date (as defined herein) and will have an initial term of five (5) years. The Effective Date shall be fixed after the Agreement has been fully executed by the UNIVERSITY and all signatures required by Commonwealth contracting procedures have been obtained.

III. INDEPENDENT CONTRACTOR. The UNIVERSITY shall perform its services under this Agreement as an independent contractor.

IV. UNIVERSITY CONTACT PERSON.

University/College Contact: Timothy Stodart
Title: Associate Director, Office of Sponsored Programs
Address: 110 Technology Center Building
City, PA Zip Code: University Park, PA 16802-7000
Phone Number: 814-865-1027
Email: tms21@psu.edu

Alternate University/College Contact: Sarah Kronenwetter
Title: Associate Director, Office of Sponsored Programs
Address: 110 Technology Center Building
City, PA Zip Code: University Park, PA 16802-7000
Phone Number: 814-863-4311
Email: smf199@psu.edu

V. PROCESSES TO PROCURE SERVICES UNDER THIS AGREEMENT.

A. Project Tasks. Commonwealth Agencies shall initiate all Project Tasks, and the UNIVERSITY shall conduct all Project Tasks, through Purchase Orders. All terms and conditions of this Agreement shall apply to Purchase Orders. The UNIVERSITY shall provide the Commonwealth Agency with all research, products, activities and services as specified in the Scope of Work and in accordance with the terms and conditions of this Agreement and its exhibits and attachments.
B. Scope of Work Requirements. The UNIVERSITY shall, in accordance with the terms and conditions of this Agreement, supply and deliver resources and services, as more fully defined in scopes of work set forth in Purchase Orders issued pursuant to this Agreement.

1. Initiation of Services (Attachment 1 – Agency Request – Work Plan). The Commonwealth Agency shall initiate a request for services by submitting the scope of work to be provided using the form set forth in “Attachment 1, Agency Request – Work Plan” attached to and made a part of this Agreement; and

2. Preparation of Scope of Work (Attachment 2 – University Response). Following the Commonwealth Agency’s discussion of the required Project Task with the UNIVERSITY, the UNIVERSITY shall prepare a draft Scope of Work and cost for the Project Task for review by the Commonwealth Agency using the form set forth in “Attachment 2, UNIVERSITY Response – Project Template” attached to and made a part of this Agreement. The Scope of Work shall specify the research project and services and their period of performance; and it shall incorporate required progress reports, project management aids, meetings and other requirements as specified by the Commonwealth Agency and mutually agreed upon with the UNIVERSITY. The Scope of Work shall include a project timeline, showing major activities and the estimated time allocated to these activities. The timeframe of the Scope of Work shall incorporate adequate review times as specified by the Commonwealth Agency. The Scope of Work shall identify the Principal Investigator(s) selected by the UNIVERSITY who will perform the work. For each Scope of Work, the Parties will negotiate an estimated percentage of total effort which the Principal Investigator(s) is to provide along with other University Personnel. Students or other personnel shall be listed by rate per hour or percentage of effort, as applicable.

a. Cost Information. The UNIVERSITY shall propose detailed cost information in accordance with the following:

   1. Federal Funding. If a percentage of the project is federally funded, the UNIVERSITY shall follow the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200 as part of its proposed budget for the federally funded portion; and

   2. State Funding. If a percentage of the project is state funded, the UNIVERSITY shall follow the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200 as part of its proposed budget and the terms and conditions of this Contract; therefore, the Commonwealth will not pay indirect cost rates on the percentage of state funding.

b. Budget Submission. The UNIVERSITY will include a proposed budget submission with its draft Scope of Work in “Attachment 2, UNIVERSITY Response – Project Template”. The proposed budget submission will include:

   1. Cost Reimbursement Method. For the Cost Reimbursement Method of payment, a summary budget broken into the seven (7) categories to be used to issue the Purchase Order:
Exhibit A
SPECIAL TERMS AND CONDITIONS

a. **Personnel** (includes tuition when requested by the UNIVERSITY and approved by the Commonwealth Agency or DGS when appropriate);

b. **Operational** (includes all other direct costs not included and expendable equipment, as defined in Section VI. A. (1) and (2) of these terms and conditions);

c. **Professional Services**;

d. **Subcontracting**;

e. **Capital Equipment**;

f. **Travel**; and

g. **Administrative Fees** (for the Federally funded portion of the projects). Administrative Fees may also sometimes be referred to as Overhead, Indirect Costs, or F&A.

A **detailed** cost quote which the Commonwealth Agency will use for the review and evaluation of the project. Equipment detail for equipment rental/purchase prices for review shall be provided.

2. **Deliverable Based Method.** For the Deliverable Based Method of payment, a **summary** budget showing the price of each individual deliverable task to be used to issue the Purchase Order.

c. Following review of the Attachment 2 and cost by the Commonwealth Agency’s Program Manager, if any revisions to the Scope of Work and/or budget are requested by the Commonwealth Agency, DGS, or the federal government entity (if required) the Commonwealth Agency will return the “**Attachment 2, UNIVERSITY Response – Project Template**” with notes to the University authorizing the University to prepare the final scope of work and final budget submission;

d. Once the University has made the revisions and the Commonwealth Agency has approved the revisions. The University will submit to the Agency a completed and signed Attachment 2 along with the final Scope of Work and the final budget submission including the final equipment list;

3. The Agency will create a Purchase Order attaching **Attachment 2-- UNIVERSITY Response – Project Template** final Scope of Work, final equipment list, and the final budget submission. The Commonwealth Agency shall not authorize the performance of any work before issuance of a Purchase Order. The Purchase Order must contain the date of commencement of the work. All work must be completed within the time period specified in the Purchase Order and any changes thereto and in accordance with this Agreement; and
4. **Additional Procedures for Project Tasks that total $100,000 or more.** As part of the overall monitoring of the Agreement, DGS will review all Project Tasks that total $100,000 or more. If revisions are made to the original scope after approval, and the total value then exceeds $100,000, it must first be reviewed by DGS. This review will be conducted to ensure that the Project Task is covered under the Scope of Work and in accordance with the Agreement, and that budgets provided are within the line items of the Agreement and that satisfactory detail of the budget is provided.

The DGS approval process is as follows:

1. Commonwealth Agency will provide: Attachments 1 and 2; the final Scope of Work, the final equipment list and the final budget submission to DGS. The Commonwealth Agency will email all documents to the assigned DGS Commodity Specialist for review. If all relative information is provided and appropriate, DGS will attempt to review within **five (5) business days**. If information is missing or a budget needs to be revised, the DGS Commodity Specialist will contact the appropriate Commonwealth Agency representative or UNIVERSITY representative to obtain the required items to conduct the review; and an updated/final Scope of Work, final equipment list, and final budget submission will be sent along with Attachment 2.

2. If approved, DGS will return the approval to the Commonwealth Agency to be attached to the Purchase Order.

The summary budget accepted with Attachment 2, will be used by the Commonwealth Agency to issue the Purchase Order to the UNIVERSITY. If the UNIVERSITY wishes to shift funds from one cost category to another, the UNIVERSITY must obtain the prior approval of the Commonwealth Agency who will then issue a change order to accomplish the re-budgeting.

5. **Report of Personal Property (Attachment 3 – Report of Personal Property).** If in Attachment 2 the COPA Agency has indicated the Commonwealth will retain ownership of Capital and Non-Capital Equipment, upon cancellation or completion of any purchase order where expendable property, capital goods or capital equipment were acquired by UNIVERSITY, the UNIVERSITY shall provide within 60 days after the completion date a report to the Agency and to DGS consisting of a project summary and an itemized listing of all equipment that was purchased for the project and available for disposition using the form set forth in "Attachment 3 – Report of Personal Property". A copy of the invoice for each item shall be attached to the report.

A. **Disposition of Property.**

The Commonwealth Agency will provide disposition instructions at approval of Attachment 2. If permission to use for other COPA project is conferred to the UNIVERSITY, Attachment 3 will not be required at conclusion of the purchase order.
If the Commonwealth takes ownership if indicated in Attachment 2, UNIVERSITY will submit Attachment 3 at conclusion of the purchase order as follows:

a. Within 60 days of the Agency’s receipt of the final report from the UNIVERSITY, the Agency will arrange for the pickup or delivery (at Commonwealth expense) of COMMONWEALTH owned property; and

In the event the Agency does not contact the UNIVERSITY about arranging delivery or pick-up of any COMMONWEALTH owned property, such property will become the property of the UNIVERSITY 60 days after receipt of the final report.

a. Within 60 days of the Agency’s receipt of the final report from the UNIVERSITY, the Agency will arrange for the pickup or delivery (at Commonwealth expense) of COMMONWEALTH owned property; and

In the event the Agency does not contact the UNIVERSITY about arranging delivery or pick-up of any COMMONWEALTH owned property, such property will become the property of the UNIVERSITY 60 days after receipt of the final report.

C. Purchase Orders. Commonwealth agencies may issue Purchase Orders against the Agreement. These orders constitute the UNIVERSITY’s authority to make delivery. All Purchase Orders received by the UNIVERSITY up to and including the expiration date of the Agreement are acceptable and must be performed in accordance with the Contract. Any Purchase Order issued prior to the expiration of the Agreement shall continue in full force and effect until the end date of that Purchase Order, including any extension thereof. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Agreement.

Purchase Orders may be electronically signed by the Agency. The electronically printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the UNIVERSITY to proceed.

Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of Purchase Order may be accomplished through various methods including, but not limited to, XML, electronic mail, or through the Commonwealth's portal. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the UNIVERSITY. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Orders received by the UNIVERSITY after 4:00 p.m. will be considered received the following business day.

The Commonwealth and the UNIVERSITY specifically agree as follows:

1. No handwritten signature by the Commonwealth shall be required in order for the Agreement or Purchase Order to be legally enforceable;
2. The parties agree that no writing shall be required in order to make the order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of genuine Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement were not in writing or signed by the parties. A purchase order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents; and

3. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

The process described above for the issuance of purchase orders also shall apply to any modifications made thereto.

D. Payment. The Commonwealth Agency will select one of the following methods of payment to be used for the Scope of Work:

1. Cost Reimbursement Method. The UNIVERSITY shall send its standard automated cost reimbursable invoice itemized by major budget category to which the invoice refers to the address referenced on the Purchase Order on a monthly basis. The Purchase Order number must be included on all invoices. In addition, the UNIVERSITY shall prepare and submit a corresponding monthly progress report (unless different reporting requirements are provided in Attachment 1) prepared by the UNIVERSITY’S Principal Investigator. Any subcontractor utilized by the UNIVERSITY in the performance of any Purchase Order will be reimbursed in a timely manner. The final invoice for any Purchase Order shall be submitted within sixty (60) days after the completion date.

The UNIVERSITY shall delineate in each Scope of Work and the COMMONWEALTH shall be required to approve the cost for tuition reimbursement by the COMMONWEALTH for UNIVERSITY students performing tasks under the Purchase Order in furtherance of the UNIVERSITY’S academic mission and this Agreement. Tuition reimbursement will be treated as part of an individual's salary and fringe benefit package for students. Only where it is a training grant is the UNIVERSITY required to break out tuition costs as a separate cost in the budget. The COMMONWEALTH will not be charged overhead on tuition reimbursement. The UNIVERSITY calculates its fringe benefit rates, including the rate for graduate students, in accordance with Uniform Guidance Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200.
Monthly invoices will be required for payment of all project expenses. The type of invoice required by Agency will be determined in Attachment 1. All charges on a submitted invoice must be directly related to work performed on tasks identified above. UNIVERSITY will retain supporting cost justification for all invoices (including projects that the Agency selected standard invoicing in Attachment 1) and will, upon request, provide a copy to the Commonwealth Agency if it requires justification due to a discrepancy between the invoice and the project budget or if there is an inquiry regarding invoicing and payment from the Office of the Budget or the Pennsylvania Treasury. If the Agency requires supporting details (receipts, invoices, etc.) to be submitted which each invoice, the Agency will indicate this on Attachment 1 to allow UNIVERSITY to budget for this additional effort. No invoices should be submitted for monthly expenditures of less than $200. The University should submit the final invoice no later than sixty (60) days after notification of receipt and acceptance of the performance of all services by the COMMONWEALTH.

During the existence of this Agreement, COMMONWEALTH shall reimburse the UNIVERSITY the actual costs for work completed under Purchase Orders issued on a Cost Reimbursement basis, up to the maximum or not to exceed amount specified in the Purchase Order and any amendments. For Purchase Orders issued on a Deliverables Based Method, University shall be paid the fixed-price amount of the Purchase Order.

2. Deliverable Based Method. The UNIVERSITY shall submit to the Commonwealth Agency the monthly progress report(s) (unless a different reporting requirement is provided in Attachment 1) and a written certification that the task deliverable is completed and ready for acceptance. The Commonwealth Agency will provide to the UNIVERSITY written acceptance of the deliverable upon approval of the progress report(s). After receipt of notification of acceptance of the deliverable, the University shall submit an invoice for payment.

Notwithstanding the payment method used, the UNIVERSITY shall be compensated only for work performed in accordance with each Purchase Order’s scope of work and conducted after the issuance of a Purchase Order. The UNIVERSITY shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Purchase Order and then only in accordance with current Commonwealth Travel policy. The Commonwealth’s travel policies are incorporated by reference as if physically attached to this Agreement. These policies may be reviewed at the following web site: www.oa.state.pa.us.

E. Progress Reports. The COMMONWEALTH may request additional progress reports from the Principal Investigator(s), under separate cover from the monthly invoice as noted in Attachment 1.

F. Change Orders.

1. The COMMONWEALTH reserves the right to make changes at any time during the term of the Agreement or any renewals or extensions thereof: a) to notify the UNIVERSITY that the Commonwealth is exercising any Agreement renewal or extension option; and b) to modify the time of performance that does not alter the scope of the Agreement to
extend the completion date beyond the Expiration Date of the Agreement or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the UNIVERSITY in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such changes or modifications will not invalidate the Agreement. The UNIVERSITY agrees to provide the service in accordance with the change order. Any dispute by the UNIVERSITY in regard to the performance required by any notification of change shall be handled through the Contract Controversies Provision;

2. The parties may mutually agree to changes within the Scope of Work of a Purchase Order. Any change in the amount to be paid under a Purchase Order as a result of a change in the Scope of Work must be mutually agreed upon by the parties, and in the event the revised cost is $100,000 or more, the DGS Contracting Officer must also review and approve the change to the Scope of Work. Any revised cost as a result of a change to the Scope of Work will be incorporated into the Purchase Order via a Change Order; and

3. Changes outside of the scope of this Agreement shall be accomplished through the Commonwealth’s normal procurement procedures and may result in an amended Agreement or a new Agreement. No payment will be made for services outside of the scope of the Agreement for which no amendment has been executed prior to the provision of the services.

VI. PERSONAL PROPERTY – EQUIPMENT.

A. Definitions.

1. Expendable property. Goods or equipment that is more than $500.00 per item but less than $5,000.00 per item that is necessary for conducting the specific service within the Scope of Work excluding cell phones and related equipment. The COMMONWEALTH will not purchase cell phones or related equipment for the UNIVERSITY. Expendable property includes, but is not limited to, such items as global positioning systems (GPS), computers, microscopes, tractors, and all terrain vehicles (ATV). Expendable property does not include such items as office supplies, safety gear, ATV parts, laboratory supplies, etc.; and

2. Capital Goods and Capital Equipment. Goods or equipment that exceeds $5,000.00 per item.

B. Ownership.

1. Expendable Property. The COMMONWEALTH will determine disposition of expendable property at the end of the PO when Attachment 2 is approved and returned to the UNIVERSITY. In the event that any additional property is purchased after a Purchase Order is received by the UNIVERSITY, the UNIVERSITY will submit a Change to the Scope of Work listing the additional property and a Revised Budget. The
COMMONWEALTH will determine disposition of such additional property upon receipt of the Revised Budget and communicate this determination to the UNIVERSITY.

2. **Capital Goods and Capital Equipment.** The COMMONWEALTH will determine disposition of Capital Goods and Capital Equipment when Attachment 2 is approved and returned to the UNIVERSITY. Upon cancellation or completion of a project, the Agency shall take possession of such property when COMMONWEALTH ownership is selected in Attachment 2 and COMMONWEALTH arranges pick-up or delivery per Attachment.

3. Agencies shall use fixed asset funds for purchase under this category.

C. **Accounting for Personal Property.** Personal property required by the UNIVERSITY in its performance of this Agreement that is not already owned by the UNIVERSITY must be acquired in the following manner:

1. **Expendable Property.** Expendable items shall be included in the Project Budget as presented to the COMMONWEALTH; and

2. **Capital Goods and Capital Equipment.** Capital goods and capital equipment of a non-expendable nature which shall be required for use by the UNIVERSITY which the UNIVERSITY does not already possess shall be acquired alternatively either by rental or by purchase. When the UNIVERSITY provides its proposed budget, a price shall be provided on the cost to purchase AND the cost to rent the required capital good or capital equipment for the time period of the project. The Agency will review and determine the method to acquire the required good or equipment. The decision of rental or purchase shall be at the sole discretion of the Agency. A final budget shall be provided to the Agency based on the Agency decision to rent or purchase. If the decision is that the necessary non-expendable property be procured on a rental basis, then the rental cost of such property shall be included in the final budget. If said property is to be purchased, it shall be included in the final budget and, with the approval of the Agency, shall be purchased by the UNIVERSITY in the manner directed by the Agency. The final budget shall be included in the final Scope of Work and shall be attached to the Purchase Order. Title to all such property shall be as determined by the COPA Agency in Attachment 2.

VII. **PROFESSIONAL SERVICES.** Professional Services are defined as consulting, marketing analysis, banking services, medical/physician services, auditing, and software development/design by an individual representing the service provider and the UNIVERSITY cannot provide this type of services. Professional services shall be listed as a direct cost on the budget. The Agency must first approve any Professional Service provider(s). No more than 49% of the total dollar value of the Purchase Order can be performed by the professional service without DGS approval.

VIII. **SUBCONTRACTS.** The Agency must first approve any subcontract. If the Purchase Order’s Scope of Work and budget has provisions for a specific subcontractor, this constitutes the approval of the awarding Commonwealth executive agency for that subcontract. If the original Purchase Order does not contain reference to a specific subcontractor, then a modification to the Purchase Order is required before initiating the subcontract. Only work in furtherance of the UNIVERSITY’S academic mission may be subcontracted. If the UNIVERSITY subcontracts services either through competitive bid pricing or sole source justification, it should be included with the budget. All subcontractors being used shall be provided in the final budget. No more than 49% of the total dollar value of the Purchase Order...
can be subcontracted without DGS approval. The UNIVERSITY is prohibited from subcontracting more than 68% of the total dollar value of the Purchase Order.

All subcontracts must include the following provisions of this Agreement in their terms and conditions: Paragraph 11, Ownership Rights; Paragraph 12, Publications; Paragraph 13, Audit and Records Requirements; Paragraph 16, Interests of Members of the Commonwealth and Others; Paragraph 20, Review Rights; Exhibit B; and Exhibit C, as applicable. Additionally, all subcontracts must contain a provision that the UNIVERSITY may terminate the subcontract if the COMMONWEALTH terminates this Agreement for any reason.

IX. OWNERSHIP RIGHTS. All proprietary materials and methodologies brought by the UNIVERSITY to the projects and work assignments under this Agreement and all documents, sketches, drawings, designs, works, papers, files, reports, computer programs, data, computer documentation and other tangible materials authored and prepared by UNIVERSITY as the work product covered in the scope of work shall be treated in accordance with the following principles:

A. PREEXISTING MATERIALS BROUGHT BY THE UNIVERSITY TO PROJECT TASKS. The COMMONWEALTH shall have no ownership rights to UNIVERSITY’S proprietary materials, data, software, methodologies or other intellectual property that the UNIVERSITY brings to the Projects and work assignments or has previously developed with or obtained from third parties, except insofar as these rights are granted to the COMMONWEALTH below. ("UNIVERSITY PROPERTY").

B. COPYRIGHT OWNERSHIP – OWNERSHIP OF MATERIALS DEVELOPED AS PART OF THE SCOPE OF WORK FOR PROJECT TASKS. Since this is a Purchase Order generated Agreement, the Parties shall earmark each purchase order in accordance with one of the following provisions as selected by the Commonwealth Agency in Attachment 1:

1. Work Made for Hire/UNIVERSITY Non-Exclusive License (Commonwealth-funded Projects).

   a. Prior to commencement of the work under an individual purchase order, the Parties shall determine whether a purchase order shall be considered a work for hire. All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, data, computer documentation and other tangible materials authored and prepared by the UNIVERSITY as the Work Product covered in the scope of work for the individual Purchase Orders for the Project Tasks (collectively the "Works") including Works developed by subcontractors are the sole and exclusive property of the COMMONWEALTH and shall be considered works made for hire within the meaning of the federal Copyright Act of 1976, as amended, set forth in Title 17 of the United States Code. In the event that such Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, the UNIVERSITY agrees to assign and, upon their authorship or creation, expressly and automatically assigns all copyright interests, proprietary rights, and other right, title and interest in and to such Works to the COMMONWEALTH. COMMONWEALTH shall have all rights accorded a holder of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Works 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 in foreign countries, the right to prepare derivative works based upon the Works, and the right to display the Works. Upon completion or termination of this Agreement, all working papers, files and other documentation shall immediately be delivered by the UNIVERSITY to the COMMONWEALTH. UNIVERSITY warrants that the Works are original and to the best of its knowledge do not infringe the rights of any other work; and

b. Notwithstanding the foregoing, UNIVERSITY and any subcontractors shall retain a royalty free, non-exclusive license to use for research purposes, reproduce, disseminate, publish, prepare derivative works, sublicense (including research sponsors), and to publish the Works for theses, dissertations or journal articles, provided that such usage by University is not designed for commercial and pecuniary gain and is subject to the limitations of Section 12 (“Publications”) of this Agreement. University agrees to grant COMMONWEALTH a royalty-free, irrevocable, non-exclusive license to use any derivative works created by the UNIVERSITY and/or its subcontractors based upon the Works created under the scope of a purchase order for internal governmental purposes. All copies of reproductions and publications made pursuant to this license shall bear proprietary notices. This license is conditioned on the licensee’s compliance with the provisions of the intellectual property laws of the United States. COMMONWEALTH reserves all rights not expressly set forth in this Paragraph.

2. Purchase Orders Vesting Title in the UNIVERSITY and Granting a Non-Exclusive License to COMMONWEALTH (Federal Flow-Through Funded Projects). For those Purchase Orders not intended to create works made for hire, the right, title, and interest in any original work of authorship of Intellectual Property (the "Works") developed as part of the scope of work for the Purchase Order shall vest in the UNIVERSITY. The UNIVERSITY shall be accorded all rights provided to the owner of copyright under the federal Copyright Act.

The UNIVERSITY agrees to grant a royalty-free, perpetual, irrevocable, non-exclusive license to COMMONWEALTH to reproduce, disseminate, publish, display, and prepare derivative works based upon the Works including the right to sublicense the Works. If the UNIVERSITY transfers ownership of all or any portion of the Project to another entity, it shall ensure that its successors in interest afford COMMONWEALTH the same license as set forth in this Paragraph. This Paragraph shall survive the term of this Agreement.

C. PATENT OWNERSHIP. The UNIVERSITY and its subcontractors shall retain ownership to patentable items, patents, processes, inventions of discoveries (collectively the "Patentable Items") made by the UNIVERSITY during the performance of this Agreement. Notwithstanding the foregoing, the COMMONWEALTH is granted a non-exclusive, non-transferable, royalty free license to use or practice the Patentable Items. COMMONWEALTH may disclose to third parties any such Patentable Items made by the UNIVERSITY or any of its subcontractors under the scope of work for the Project and work assignments that have been previously publicly
disclosed. COMMONWEALTH understands that any third party disclosure will not confer any license under such Patentable Items.

D. FEDERAL GOVERNMENT INTERESTS. It is understood that certain funding under this Agreement may be provided by the Federal government. Accordingly, the rights to Works or Patentable Items of UNIVERSITY or its subcontractors hereunder will be further subject to government rights as set forth in 37 CFR Section 401, 42 CFR Section 433.112, 45 CFR Section 95.617, and other applicable statutes. Notwithstanding the foregoing, the COMMONWEALTH retains the right to share information relating to Works or Patentable Items developed under the scope of work for a wholly state-funded contract with the federal government in accordance with the terms of this Agreement in general and this paragraph relating to ownership rights in particular.

X. INSURANCE:

A. The UNIVERSITY shall accept full responsibility for the payment of premiums for Workers’ Compensation, Unemployment Compensation, Social Security, and all income deductions required by law for its employees who are performing services under this Agreement.

B. The UNIVERSITY is required to have in place during the term of the Agreement and any renewals or extensions thereof, and must require of its subcontractors, the following types of insurance or self-insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:

1. **Worker's Compensation Coverage** for all of the UNIVERSITY’S employees engaged in work at the site of the project as required by law; and

2. **Public Commercial General Liability and Property Damage Insurance** to protect the Commonwealth and the UNIVERSITY from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property including the loss of use resulting from any property damage, which may arise from the activities performed under the Agreement or the failure to perform under the Agreement, by the UNIVERSITY. The minimum amounts of coverage shall be $250,000 per person and $1,000,000 per occurrence for bodily injury, including death, and $250,000 per person and $1,000,000 per occurrence for property damage. Such policies shall be occurrence rather than claims-made policies and shall not contain any endorsements or any other form designated to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.

Prior to commencement of the work under the Agreement and at each insurance renewal date during the term of the Agreement, the UNIVERSITY shall provide the Commonwealth with current certificates of insurance. These certificates or policies shall name the Commonwealth as an additional insured on the Commercial General Liability insurance policy and shall contain a provision that the coverage’s afforded under the policy will not be cancelled or reduced until at least thirty (30) days written notice has been given to the Commonwealth.
EXHIBIT A
SPECIAL TERMS AND CONDITIONS

The Commonwealth shall be under no obligation to obtain such certificates from the UNIVERSITY. Failure by the Commonwealth to obtain the certificates shall not be deemed a waiver of the UNIVERSITY’S obligation to obtain and furnish certificates. The Commonwealth shall have the right to inspect the original insurance policies, by arranging an on-site visit to the UNIVERSITY’s Risk Management Office.

XI. NOTICES. Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally, or by electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:

A. If to the UNIVERSITY:

The UNIVERSITY’S Office of Sponsored Programs:

Name of Individual: John W. Hanold
Title: Associate Vice President for Research and Director, Office of Sponsored Programs
University/College Address: The Pennsylvania State University, 110 Technology Center Building
City, PA Zip Code: University Park, PA 16802-7000
Telephone Number: 814-865-1372
Email: osp@psu.edu

B. If to the Commonwealth:

1. For notices or inquiries relating to the Agreement to the Commonwealth Contracting Officer:

   Bureau of Procurement-Department of General Services
   Attn: Kelly Warnick, Commodity Specialist
   555 Walnut Street, Forum Place, 6th Floor
   Harrisburg, PA 17105

2. For notices related to Purchase Orders, including disputes and claims for payment to the address of the Commonwealth Agency as set forth in the Agency issued Purchase Order.

XII. ASSIGNABILITY. The UNIVERSITY shall not assign any interest in this Agreement.

XIII. BACKGROUND CHECKS. The “UNIVERSITY” must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf. The background check must be conducted prior to initial access and on an annual basis thereafter.
A. Before the Commonwealth will permit access to the UNIVERSITY, the UNIVERSITY must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a UNIVERSITY employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the UNIVERSITY 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 unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the UNIVERSITY to comply with the terms of this Section on more than one occasion or UNIVERSITY’S failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the UNIVERSITY being deemed in default of its Contract.

B. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.

C. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors’ entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 (Amended) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by the UNIVERSITY for UNIVERSITY personnel photo identification or access badges.

XIV. CONFIDENTIALITY.

A. The UNIVERSITY agrees to protect the confidentiality of the COMMONWEALTH’S information. The COMMONWEALTH agrees to protect the confidentiality of UNIVERSITY’S confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as “confidential” in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Agreement. Each copy of such confidential information shall be marked by the party making the copy with all notices appearing in the original. Upon termination or cancellation of this Agreement or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party’s possession, (other than one copy of copyrighted works, which may be maintained for archival purposes only). Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Agreement, and at the discretion of the non-breaching party, result in termination for default.

The obligations stated in this Section do not apply to information:

1. Already known to the recipient at the time of disclosure (insofar as that information is not otherwise protected by law or regulation, despite such prior knowledge);
2. Independently generated by the recipient and not derived from the information supplied by the disclosing party;

3. Known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;

4. Disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or

5. Required to be disclosed by the recipient by law, regulation, court order, or other legal process. For information that is not otherwise protected by law, this Paragraph shall survive, for a period of five (5) years the expiration or termination of this Agreement and shall continue to bind both Parties, their employees, successors and assigns. For information that is otherwise protected by law, this Paragraph shall survive, indefinitely, the expiration or termination of this Agreement and shall continue to bind both Parties, their employees, successors and assigns.

B. The UNIVERSITY shall not publish or otherwise disclose, except to the Commonwealth and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any particular person or establishment can be identified, except with the consent of such person or establishment. The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Agreement for any purpose not connected with the parties' Agreement responsibilities except with the written consent of such recipient, recipient's attorney, or recipient's parent or guardian pursuant to applicable state and federal law and regulations.

C. UNIVERSITY will comply with all federal or state laws related to the use of information that constitutes protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA).

1. To the extent that PHI is provided by the COMMONWEALTH, the Agency, if it is a Covered Entity as defined in HIPAA, will attach to its Purchase Order the Business Associates Agreement, substantially in the form set forth in Attachment 4. It is understood that Attachment 4 is only applicable if PHI is provided to the UNIVERSITY and

2. To the extent that PHI is provided in a limited data set, the Agency, if it is a covered entity as defined in HIPAA, will attach to its Purchase Order a Data Use Agreement. It is understood that a Data Use Agreement is only applicable if PHI is provided in a limited data set to the UNIVERSITY.

XV. PUBLICATIONS. All publications and their dissemination are subject to and governed by the provisions of Section IX, Ownership Rights. Therefore, both parties must adhere to and abide by the terms of their ownership rights or license rights in all instances involving publication. Where publication is authorized under Section IX, both written and oral releases are considered to be within the context of publication. However, the following general provisions apply to any publications not
specified as confidential information by COMMONWEALTH. Confidential information is defined in Section XIV of this Agreement; confidential information also includes any information identified by the COMMONWEALTH as COMMONWEALTH’S confidential information in the Purchase Order. The UNIVERSITY reserves the right not to participate in any Purchase Order initiated by COMMONWEALTH that contains confidential information.

A. Neither party shall publish or otherwise disclose, or permit to be published or disclosed, the project/service results contemplated in this Agreement, or any particulars of thereof, during the period of this Agreement, including supplements, without providing in writing to the other party and, as applicable, to the federal agency providing funding, the opportunity, with a minimum of two (2) weeks’ notice, to review and comment for the purpose of identifying any proprietary or confidential information disclosed thereby. Abstracts may be used for notification of intent to present a publication based on the Project Tasks.

Publications, or any parts thereof, released by either party shall give credit to the other party and, as applicable, to the federal agency providing funding, unless, upon failure of agreement on any publication of this Project, either of the parties or the federal agency providing funding, as applicable, requests that its credit acknowledgment be omitted.

B. All publications by the UNIVERSITY resulting from work funded under this Agreement shall contain a statement in the credit sheet that gives credit to the Commonwealth of Pennsylvania and, to the extent applicable, to the federal agency providing funding.

In addition to the credit specified above at the beginning of this Subparagraph XV(B), all reports must also contain the following disclaimers:

“The contents of this report reflect the views of the author(s) who is (are) responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the [Insert Name of Federal Agency Providing Funding] or the Commonwealth of Pennsylvania at the time of publication. This report does not constitute a standard, specification or regulation.”

C. Subject to the provisions of Subparagraph XV(A) above, publication by the UNIVERSITY shall be within the province of the UNIVERSITY’S policy. However, if the UNIVERSITY does elect to publish, the nonconcurrency, if any, of COMMONWEALTH shall be set forth, if requested by COMMONWEALTH.

D. This disclaimer identified in Subparagraph XV(B) applies to and must be included in any and all subcontracts.

XVI. AUDIT AND RECORDS REQUIREMENTS.

A. In the event that the Commonwealth executive agency deems it necessary to require a specific audit, all costs incurred in the performance of this Agreement will be subject to audit by the awarding Commonwealth executive agency. If federal funds are involved the appropriate federal agency will be permitted to audit in accordance with 2 CFR Part 200, Subpart F. The UNIVERSITY shall be responsible for payment of any and all audit exceptions which are identified during the audit by the Commonwealth executive agency. The Commonwealth executive agency that conducts or contracts for a purchase order specific audit shall arrange for funding the full cost of such a purchase order specific audit.
B. The Commonwealth and the UNIVERSITY agree that audit requirements shall be covered by the Single Audit Act. The UNIVERSITY agrees to comply with the requirements of the Single Audit Act of 1984, as amended, 31 U.S.C. § 7501 et seq., and 2 CFR Part 200, Subpart F. The UNIVERSITY shall provide the COMMONWEALTH with a copy of its annual audit report, which shall include any exceptions noted on the audit. The UNIVERSITY will correct all audit exceptions within six months following such audit, and shall advise the COMMONWEALTH, in writing, as soon as all exceptions have been corrected, and that the UNIVERSITY is in compliance with 2 CFR Part 200, Subpart F.

C. The UNIVERSITY shall maintain and make available accounting records and other verifiable evidence pertaining to the costs it incurs under this Agreement. The UNIVERSITY shall also require, in any subcontracts entered into for the Agreement, its subcontractors to maintain and make available accounting records and other verifiable evidence pertaining to the costs that they incur under this Agreement.

D. Except for documents delivered to the COMMONWEALTH, the UNIVERSITY shall preserve and make available the records for a period of four (4) years or as required by the COMMONWEALTH from the date of final payment under this Agreement, and for such period, if any, as specified by Paragraphs (1) and (2) below. The University may preserve all records on electronic media in lieu of hardcopy form. Records will be made available for inspection by the COMMONWEALTH, its authorized representatives, the Auditor General, and federal auditors at all reasonable times at the office of the UNIVERSITY or any subcontractor; and copies thereof shall be furnished, as requested.

1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of (4) four years or as required by the COMMONWEALTH from the date of any resulting final settlement; and

2. Records which relate to costs under this Agreement as to which exception has been taken by the auditors, shall be retained by the UNIVERSITY until such exceptions have reached final disposition.

E. The provisions of this paragraph shall be applicable to and included in each subcontract hereunder.

XVII. TERMINATION OF AGREEMENT.

A. This Agreement or any Purchase Order may be terminated by the COMMONWEALTH for non-performance, inadequate performance, non-appropriation of funds, unavailability of funds, or breach of any material terms and conditions by giving written notice to the UNIVERSITY of such termination and specifying the effective date thereof.

B. If this Agreement or any Purchase order is breached, the COMMONWEALTH will allow the UNIVERSITY a forty five (45) day period from the date the UNIVERSITY receives written notice of the breach to correct its breach of the Agreement or Purchase Order. If the UNIVERSITY does not correct its breach of the Agreement or Purchase Order as specified, the COMMONWEALTH may terminate the Agreement or Purchase Order in whole or in part upon at least five day’s notice.
C. This Agreement or any Purchase Order may be cancelled without cause by either party upon thirty (30) days’ advance written notice.

D. In the event of termination by the COMMONWEALTH for lack of funds or in the event of termination without cause by either Party, the COMMONWEALTH will reimburse UNIVERSITY for work completed in accordance with the terms and conditions of the Agreement or Purchase Order and for noncancelable commitments.

XVIII. AGREEMENT SUBJECT TO LAWS AND REGULATIONS. This Agreement is subject to the provisions of all applicable federal, Commonwealth of Pennsylvania, and local laws and regulations and all amendments made thereto. The UNIVERSITY shall comply with all federal and state laws and local ordinances applicable to its work.

XIX. INTERESTS OF MEMBERS OF THE COMMONWEALTH AND OTHERS:

A. No officer, member, or employee of the Commonwealth or member of its General Assembly who exercises any functions or responsibilities under this Agreement shall participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested; nor shall any such officer, member, or employee of the Commonwealth or member of its General Assembly have any interest, direct or indirect, in this Agreement or the proceeds thereof.

B. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

XX. INTEREST OF CONTRACTOR. The UNIVERSITY hereby assures the COMMONWEALTH that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The UNIVERSITY further assures that in the performance of this Agreement, it will not knowingly employ any person having such interest. The UNIVERSITY further certifies to the best of its knowledge and belief that no member of the board of the UNIVERSITY or any of its officers or directors has such an adverse interest.

XXI. SUSPENSION OR DEBARMENT. The UNIVERSITY certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.

If the UNIVERSITY enters into any subcontracts under this Agreement with subcontractors who are currently suspended or debarred by the Commonwealth or federal government during the term of this Agreement or any renewals thereof, the COMMONWEALTH shall have the right to require the UNIVERSITY to terminate such subcontracts.

The UNIVERSITY represents that no taxes are owed by it to the Department of Revenue and/or the Department of Labor and Industry.

XXII. LIABILITY OBLIGATION OF THE UNIVERSITY. The UNIVERSITY agrees to pay for any loss, liability or expense, which arises out of or relates to the UNIVERSITY’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the UNIVERSITY is established by a court of law or where settlement has been agreed to by the UNIVERSITY. This
XXIII. **WARRANTY.** UNIVERSITY makes no warranties, express or implied, as to any matter whatsoever, including, without limitation, warranties with respect to the conduct, completion, success or particular results of the sponsored research, or the condition, ownership, merchantability, or fitness for a particular purpose of the sponsored research or any UNIVERSITY intellectual property or research results or that use of the UNIVERSITY intellectual property or research results will not infringe any patent, copyright, trademark or other intellectual property right of a third party. UNIVERSITY shall not be liable for any direct, indirect, consequential, punitive or other damages suffered by Commonwealth or any other person resulting from the sponsored research or the use of any UNIVERSITY intellectual property, any research results or any products resulting therefrom.

XXIV. **REVIEW RIGHTS.** The COMMONWEALTH and the federal agency providing funding, as applicable, have the right to review and inspect all project activities at any time.

XXV. **CONTRACT CONTROVERSIES.**

A. In the event of a controversy or claim arising from the Agreement or from a Purchase Order, as the case may be, the UNIVERSITY must, within six months after the cause of action accrues, file a written claim for determination: 1) with the Commonwealth Contracting Officer for claims pertaining to the Agreement; or 2) with the Commonwealth Agency that issued the Purchase Order for claims pertaining to a Purchase Order. The claim shall state all grounds upon which the UNIVERSITY asserts a controversy exists. If the UNIVERSITY fails to file a claim or files an untimely claim, the UNIVERSITY is deemed to have waived its right to assert a claim in any forum.

B. The Commonwealth Contracting Officer or Commonwealth agency, as the case may be, shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Commonwealth Contracting Officer or Commonwealth agency, as the case may be, and the UNIVERSITY. The Commonwealth Contracting Officer or Commonwealth agency, as the case may be, shall send his/her written determination to the UNIVERSITY. If the Commonwealth Contracting Officer or Commonwealth agency, as the case may be, fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Commonwealth Contracting Officer’s or Commonwealth agency’s, as the case may be, determination shall be the final order of the purchasing agency.

C. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the UNIVERSITY may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the UNIVERSITY shall proceed diligently with the performance of the Agreement in a manner consistent with the determination of the Commonwealth Contracting Officer or Commonwealth agency, as the case may be, and the Commonwealth shall compensate the UNIVERSITY pursuant to the terms of the Agreement.
XXVI. ANTI-LOBBYING REQUIREMENT. Public Law 101-121, Section 319, U.S. Code Section 1352, prohibits the recipient or any lower tier subrecipients of a federal contract, grant, loan or cooperative agreement from expending federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, the making of any federal grant or loan or the entering into of any cooperative agreement. The UNIVERSITY agrees to comply with the Certification of Restrictions on Lobbying attached as Attachment 5 and made part of this Agreement, which an authorized official of the UNIVERSITY has executed.

XXVII. ENHANCED MINIMUM WAGE PROVISIONS. UNIVERSITY agrees to pay no less than $12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee’s hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.

Adjustment. Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by $0.50 until July 1, 2024, when the minimum wage reaches $15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.

Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:

1. exempt from the minimum wage under the Minimum Wage Act of 1968;
2. covered by a collective bargaining agreement;
3. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
4. required to be paid a higher wage under any state or local policy or ordinance.

1. Notice. UNIVERSITY shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.

2. Records. UNIVERSITY must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.

3. Sanctions. Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.

4. Subcontractors. Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.
XXVIII. INTEGRATION. Upon execution, this Agreement, together with all exhibits and attachments annexed to it, constitutes the entire agreement between the parties and completely expresses their intent. No amendment or modification of this Agreement shall be valid unless it is in writing and duly executed and approved by authorized representatives of the parties.
EXHIBIT B
ADDITIONAL TERMS AND CONDITIONS

Nondiscrimination/Sexual Harassment Clause (2018)
The UNIVERSITY agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the UNIVERSITY, each subcontractor, or any person acting on behalf of the UNIVERSITY or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the UNIVERSITY nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

3. Neither the UNIVERSITY nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.

4. Neither the UNIVERSITY nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts’ enforcement, and shall comply with any provision of law establishing organizations as employees’ exclusive representatives.

5. The UNIVERSITY and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.

6. The UNIVERSITY and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

7. The UNIVERSITY and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws,
regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers’ subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The UNIVERSITY shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

9. The UNIVERSITY’S and each subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

10. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

"Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner;

"Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing,
EXHIBIT B
ADDITIONAL TERMS AND CONDITIONS

by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract;

"Contractor" means the individual or entity, that has entered into this contract with the Commonwealth;

"Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor;

"Financial Interest" means either:
   (1) Ownership of more than a five percent interest in any business; or
   (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management;

"Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply; and

"Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

   a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

   b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

   c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the Contractor's submission of the contract signed by Contractor.

e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
2. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

3. had any business license or professional license suspended or revoked;

4. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

5. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

f. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

g. When contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer
or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that is has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.
CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
EXHIBIT B
ADDITIONAL TERMS AND CONDITIONS

6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at http://www.dgs.state.pa.us/ or contacting the:

   Department of General Services
   Office of Chief Counsel
   603 North Office Building
   Harrisburg, PA 17125
   Telephone No: (717) 783-6472
   FAX No: (717) 787-9138

AMERICANS WITH DISABILITIES ACT

1. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors; and

2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor’s failure to comply with the provisions of subparagraph a above.

OFFSET PROVISION

The Contractor agrees that the Commonwealth of Pennsylvania (Commonwealth) may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
EXHIBIT B
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS

For Purchase Orders issued by the Pennsylvania Department of Transportation (PennDOT) the terms and conditions contained herein shall apply.

1. REQUIRED DBE ASSURANCE:

The UNIVERSITY/COLLEGE shall not discriminate on the basis of race, color, national origin, or sex in the performance of this IGA. The UNIVERSITY/COLLEGE shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the UNIVERSITY/COLLEGE to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Commonwealth deems appropriate, which may include, but is not limited to:

1. Withholding progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.

If the UNIVERSITY/COLLEGE is providing services or supplies for the Commonwealth pursuant to this Agreement, it must include this assurance in each subcontract that it signs with a subcontractor. If the UNIVERSITY/COLLEGE is a grantee or other recipient of funds from the Commonwealth, it must include their assurance in each Agreement into which it enters to carry out the project or activities being funded by this Agreement.

2. UTILIZATION OF HISTORICALLY BLACK COLLEGES AND UNIVERSITIES:

One of the stated goals of the Agreement to be addressed through Project Tasks is designing and conducting programs and activities to attract employees at the COMMONWEALTH and students, faculty and staff at universities who reflect the growing diversity of the United States workforce. Accordingly, in furtherance of that particular goal and the other goals of the Agreement, the UNIVERSITY is encouraged to utilize Historically Black Colleges and Universities in Pennsylvania in the performance of Project Tasks.

3. REQUIRED PROVISION:

The UNIVERSITY will comply with the Federal Nondiscrimination and Equal Employment Opportunity Clauses, dated January 1976, and any amendments thereto, which is hereby incorporated by reference as though set forth in full in this Agreement.

REV. 03.29.17
EXHIBIT D
DEPARTMENT OF HUMAN SERVICES SUPPLEMENTAL
CONTRACT TERMS AND CONDITIONS

To the extent applicable to the performance of the Scope of Work in Purchase Orders issued by the Department of Human Services (DHS) the UNIVERSITY will comply with the terms and conditions contained herein. The term “contractor” in this document refers to the “UNIVERSITY”.

1. PROGRAM SERVICES

Definitions of service, eligibility of recipients of service and other limitations in this contract are subject to modification by amendments to Federal, State and Local laws, regulations and program requirements without further notice to the Contractor hereunder.

2. CHILD PROTECTIVE SERVICE LAWS

In the event that the contract calls for services to minors, the contractor shall comply with the provisions of the Child Protective Services Law (Act of November 26, 1975, P.L. 438, No. 124; 23 P.S. SS 6301-6384, as amended by Act of July 1, 1985, P.L. 124, No. 33) and all regulations promulgated thereunder (55 Pa. Code, chapter 3490).

3. PRO-CHILDREN ACT OF 1994

The Contractor agrees to comply with the requirements of the Pro-Children Act of 1994; Public Law 103-277, Part C-Environment Tobacco Smoke (also known as the Pro-Children Act of 1994) requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health care services, day care and education to children under the age of 18, if the services are funded by Federal programs whether directly or through State and Local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for impatient drug and alcohol treatment.

4. MEDICARE/MEDICAID REIMBURSEMENT

A. To the extent that services are furnished by contractors, subcontractors, or organizations related to the contractor/subcontractor and such services may in whole or in part be claimed by the Commonwealth for Medicare/Medicaid reimbursements, contractor/subcontractor agrees to comply with 42 C.F.R., Part 420, including:

1. Preservation of books, documents and records until the expiration of four (4) years after the services are furnished under the contract.

REV 01.02.18
EXHIBIT D
DEPARTMENT OF HUMAN SERVICES SUPPLEMENTAL
CONTRACT TERMS AND CONDITIONS

2. Full and free access to (i) the Commonwealth, (ii) the U.S. Comptroller General, (iii) the U.S. Department of Health and Human Services, and their authorized representatives.

B. Your signature on the proposal certifies under penalty of law that you have not been suspended/terminated from the Medicare/Medicaid Program and will notify the contracting DHS Facility or DHS Program Office immediately should a suspension/termination occur during the contract period.

5. CONTRACTOR RESPONSIBILITY TO EMPLOY WELFARE CLIENTS
(Applicable to contracts $25,000 or more)

A. The contractor, within 10 days of receiving the notice to proceed, must contact the Department of Public Welfare’s Contractor Partnership Program (CPP) to present, for review and approval, the contractor’s plan for recruiting and hiring recipients currently receiving cash assistance. If the contract was not procured via Request for Proposal (RFP); such plan must be submitted on Form PA-778. The plan must identify a specified number (not percentage) of hires to be made under this contract. If no employment opportunities arise as a result of this contract, the contractor must identify other employment opportunities available within the organization that are not a result of this contract. The entire completed plan (Form PA-778) must be submitted to the Bureau of Employment and Training Programs (BETP): Attention CPP Division. (Note: Do not keep the pink copy of Form PA-778). The approved plan will become a part of the contract.

B. The contractor’s CPP approved recruiting and hiring plan shall be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to the CPP Division which will make a recommendation to the Contracting Officer regarding course of action. If a contract is assigned to another contractor, the new contractor must maintain the CPP recruiting and hiring plan of the original contract.

C. The contractor, within 10 days of receiving the notice to proceed, must register in the Commonwealth Workforce Development System (CWDS). In order to register the selected contractor must provide business, location and contact details by creating an Employer Business Folder for review and approval, within CWDS at HTTPS://WWW.CWDS.State.PA.US. Upon CPP review and approval of Form PA-778 and the Employer Business Folder in CWDS, the Contractor will receive written notice (via the pink Contractor’s copy of Form PA-778) that the plan has been approved.

D. Hiring under the approved plan will be monitored and verified by Quarterly Employment Reports (Form PA-1540); submitted by the contractor to the Central
Office of Employment and Training – CPP Division. A copy of the submitted Form PA-1540 must also be submitted (by the contractor) to the DPW Contract Monitor (i.e. Contract Officer). The reports must be submitted on the DPW Form PA1540. The form may not be revised, altered, or re-created.

E. If the contractor is non-compliant, CPP Division will contact the Contract Monitor to request corrective action. The Department may cancel this contract upon thirty (30) days written notice in the event of the contractor’s failure to implement or abide by the approved plan.

6. TUBERCULOSIS CONTROL

For all services provided in a state mental facility or a state mental retardation center, the contractor will comply with the Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Settings, 2005, issued by the Centers for Disease Control and Prevention (CDC), as these guidelines may be updated. The guidelines are available at http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5417a1.htm?s_cid=rr5417a1_e.

The Department will provide any required testing free of charge from the state MH/MR facility. If the contract service provider has written proof of testing within the last six months, the MH/MR facility will accept this documentation in lieu of administration of a repeat test. In the event that a health care worker employed by the contractor is unwilling to submit to the test, the contractor must complete the risk assessment questionnaire. If a contractor or its health care worker refuses to comply with the guidelines issued by the CDC, the facility may terminate its contract.

7. ACT 13 APPLICATION TO CONTRACTOR

Contractor shall be required to submit with their bid information obtained within the preceding one-year period for any personnel who will have or may have direct contact with residents from the facility or unsupervised access to their personal living quarters in accordance with the following:

A. Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information) a report of criminal history information from the Pennsylvania State Police or a statement from the State Police that their central repository contains no such information relating to that person. The criminal history record information shall be limited to that which is disseminated pursuant to 18 Pa.C.S. 9121(b)(2) (relating to general regulations).

B. Where the applicant is not, and for the two years immediately preceding the date of application has not been a resident of this Commonwealth, the Department shall require the applicant to submit with the application a report of Federal criminal history record information pursuant to the Federal Bureau of Investigation's under Department of State,
Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109). For the purpose of this paragraph, the applicant shall submit a full set of fingerprints to the State Police, which shall forward them to the Federal Bureau of Investigation for a national criminal history check. The information obtained from the criminal record check shall be used by the Department to determine the applicant's eligibility. The Department shall insure confidentially of the information.

C. The Pennsylvania State Police may charge the applicant a fee of not more than $10 to conduct the criminal record check required under subsection 1. The State Police may charge a fee of not more than the established charge by the Federal Bureau of Investigation for the criminal history record check required under subsection 2.

The Contractor shall apply for clearance using the State Police Background Check (SP4164) at their own expense. The forms are available from any State Police Substation. When the State Police Criminal History Background Report is received, it must be forwarded to the Department. State Police Criminal History Background Reports not received within sixty (60) days may result in cancellation of the contract.

8. AUDIT CLAUSE

This contract is subject to audit in accordance with the applicable Audit Clause included in the Scope of Work and incorporated into the Purchase Order.