COMMUNE: AND CONDITIO:

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts (“State”) Departments and Contractors. Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void. Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any Contract for a Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

1. Contract Effective Start Date. Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

2. Payments And Compensation. The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. c. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

3. Contractor Payroll Mechanism. All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System shall be used only for “Individual Contractors” who have been determined to be “Contract Employees” as a result of the Department’s implementation of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

4. Contract Termination Or Suspension. A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract. This includes, but is not limited to, the occurrence of an unforeseeable emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor’s control.

5. Written Notice. Any notice shall be deemed delivered and received when mailed in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

6. Confidentiality. The Contractor shall comply with M.G.L. C. 66A if the Contract becomes a “holder” of “personal data”. The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor’s possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department’s public records, documents, files, software, equipment or systems.

7. Record-Keeping And Retention, Inspection Of Records. The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day of the final payment under a Contract. The Contractor shall also retain sufficient records to enable the Department to verify the accuracy of the data submitted by the Contractor. The Contractor shall permit the Department to conduct inspections of its facility, operations, files and records to verify the data submitted by the Contractor.

8. Assignment. The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Department pursuant to a Contract in accordance with M.G.L. C. 106, §39-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

9. Subcontracting By Contractor. Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

10. Affirmative Action, Non-Discrimination In Hiring And Employment. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights first day of the final payment under a Contract. The Contractor shall not provide services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

11. Indemnification. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor’s performance under a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at all times be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State or the Contractor shall have an
opportunity to participate in the defense of such claim
and any negotiated settlement agreement or judgment.
The State shall not be liable for any costs incurred
by the Contractor arising under this paragraph. Any
indemnification of the Contractor shall be subject to
appropriation and applicable law.

12. Waivers. Forbearance or indulgence in any form or manner by a
party shall not be construed as a waiver, nor in any way limit the legal or equitable
remedies available to that party. No waiver by either party of any default or
breach shall constitute a waiver of any subsequent default or breach.

13. Risk Of Loss. The Contractor shall bear the risk of loss for any Contractor
materials used for a Contract and for all deliverables, Department personal or
other data which is in the possession of the Contractor or used by the
Contractor in the performance of a Contract until possession, ownership and
full legal title to the deliverables are transferred to and accepted by the
Department.

14. Forum, Choice of Law And Mediation. Any actions arising out of a
Contract shall be governed by the laws of Massachusetts, and shall be brought
and maintained in a State or federal court in Massachusetts which shall have
exclusive jurisdiction thereof. The Department, with the approval of the
Attorney General’s Office, and the Contractor may agree to voluntary
mediation through the Massachusetts Office of Dispute Resolution (MODR) of
any Contract dispute and will share the costs of such mediation. No legal or
equitable rights of the parties shall be limited by this Section.

15. Contract Boilerplate Interpretation, Severability, Conflicts With Law,
Integration. Any amendment or attachment to any Contract which contains
conflicting language or has the effect of a deleting, replacing or modifying any
printed language of these Commonwealth Terms and Conditions, as officially
published by ANF, CTR and OSD, shall be interpreted as superseded by the
official printed language. If any provision of a Contract is found to be
superseded by state or federal law or regulation, in whole or in part, then both
departments shall be relieved of all obligations under that provision only to the
extent necessary to comply with the superseding law, provided however, that
the remaining provisions of the Contract, or portions thereof, shall be enforced
to the fullest extent permitted by law. All amendments must be executed by
the parties in accordance with Section 1 of these Commonwealth Terms and
Conditions and filed with the original record copy of a Contract as prescribed
by CTR. The printed language of the Standard Contract Form, as officially
published by ANF, CTR and OSD, which incorporates by reference these
Commonwealth Terms and Conditions, shall supersede any conflicting verbal
or written agreements relating to the performance of a Contract, or attached
thereto, including contract forms, purchase orders or invoices of the
Contractor. The order of priority of documents to interpret a Contract shall be
as follows: the printed language of the Commonwealth Terms and Conditions,
the Standard Contract Form, the Department's Request for Response (RFR)
solicitation document and the Contractor’s Response to the RFR solicitation,
excluding any language stricken by a Department as unacceptable and
including any negotiated terms and conditions allowable pursuant to law or
regulation.

IN WITNESS WHEREOF, The Contractor certify under the pains and
penalties of perjury that it shall comply with these Commonwealth Terms
and Conditions for any applicable Contract executed with the
Commonwealth as certified by their authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY:

Print Name: ________________________________

Title: ________________________________

Date: ________________________________

(Check One): _______ Organization _______ Individual

Full Legal Organization or Individual Name:

Doing Business As: Name (If Different):

Tax Identification Number: _______ _______ _______ _______ _______

Address: ________________________________

Telephone: ________________________________ FAX: ________________________________

INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS

A “Request for Verification of Taxation Reporting Information” form (Massachusetts Substitute W-9 Format), that contains the Contractor’s
correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously
filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and
return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted
with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and
properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: Payee and Payments Unit,
Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108 in order to record the filing of this form on the MMARS
Vendor File. Contractors are required to execute and file this form only once.