

**UNIVERSITY OF MASSACHUSETTS
CONTRACT FOR SERVICES
TERMS AND CONDITIONS**

(Contract No.) _____
(Bid No.) _____

This agreement is made and entered into on _____ (mm/dd/yyyy) and is effective for the dates set forth in Section 3 below by and between the University of Massachusetts _____, an agency of the Commonwealth of Massachusetts ("University") and _____, ("Contractor").
(Contractor's legal name and address)

Contractor and University may be referred to individually a "Party" and collectively the "Parties".

This agreement (the "Contract") is composed of the following documents, listed in the order of precedence: (1) this **Contract for Services Terms and Conditions**; (2) any **Contract Amendments**, as identified in Section 2, below; and (3) any attached **Statement of Work** including any attachments to the Statement of Work, as identified in Section 1 below. The Contract for Services Terms and Conditions, and any agreed upon changes thereto included in any Contract Amendments, shall take precedence over any additional or conflicting terms and conditions as may be included in any other document attached to this Contract.

1. **Statement of Work.** The Contractor agrees to perform the following services described in the Attachment[s] attached to this Contract. Any Attachment attached to this Contract is made a part hereof and must be specifically labeled (e.g. "Attachment A, Statement of Work, consisting of 'n' pages"). Only the Statement of Work specifically referenced in this Contract and signed by the Parties' authorized representatives shall apply.
2. **Contract Attachments and/or Amendments:** The following Statement of Work, attachments, and/or amendments to the Contract have been executed by duly authorized representatives of the Parties and are attached to this Contract and made a part hereof:

_____.
All amendments and/or attachments referenced in this section must be specifically labeled in alphabetical order (e.g. "Attachment X, Amendment No. 1, consisting of 'n' pages"), commencing with the letter immediately following any contract attachments referenced above.

3. **Term:** From: _____ (mm/dd/yyyy) To: _____ (mm/dd/yyyy).
(Start Date) (Completion Date)

4. **Responsible University Official:** The University Official exercising managerial and budgetary control for this Contract shall be:

(Name and Title)

5. Payment:

- A. The University shall compensate the Contractor for the services and deliverables as set forth in the Attachment(s).
- B. In no event shall the Contractor be reimbursed for time other than that actually spent providing the described service(s) and deliverables.
- C. Reimbursement for Travel and Other Contractor Expenses:
 - ☐ All travel and meals are part of this Contract. No reimbursement will be made.
 - ☐ Contractor will be reimbursed for pre-approved travel in an amount not to exceed \$ _____.
Copies of receipts must be submitted. Any expense claimed by the Contractor for which there is no supporting documentation will be disallowed.
 - ☐ Contractor will be reimbursed for Other Expenses in an amount not to exceed \$ _____.
Other Expenses shall be limited to: _____.
Copies of receipts must be submitted. Any expense claimed by the Contractor for which there is no supporting documentation shall be disallowed.
- D. The total of all payments made against this Contract or the term provided shall not exceed \$ _____.
- E. Unless otherwise provided herein, the University's payment terms are net forty-five (45) days from the date of receipt of Contractor's invoice, with late penalty interest assessable at rates established by the Commonwealth after 45 days in

accordance with Mass. Gen. Laws c. 29 § 29C and with Commonwealth regulation 815 C.M.R. 4.00.

6. **Insurance.** The Contractor shall purchase and maintain at its sole cost and expense throughout the term of the Contract adequate insurance coverage necessary for the performance of the work under the Contract. Such insurance must include but not be limited to the following types and amounts of coverage, as indicated below:

A. **Forms of Coverage:**

Required ✓	Forms of Coverage
	Commercial General Liability Insurance including products and completed operations liability, and contractual liability coverage specifically covering the Contract, written on an occurrence form, with combined limits for bodily injury, personal injury, and property damage of at least two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in the aggregate.
	Workers' Compensation Insurance , including Employers Liability Insurance, in compliance with applicable federal and state laws.
	Automobile Liability Insurance covering owned, non-owned, and hired vehicles with combined limits for bodily injury and property damage of at least one million dollars (\$1,000,000) per accident.
	Professional Liability Insurance on an occurrence or claims made basis, covering claims made during the policy period and reported within four (4) years of the date of occurrence. Limits of liability must not be less than \$1,000,000.
	Cyber Liability Insurance , with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in accordance with the Contract and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
	OTHER: _____.
	NO INSURANCE REQUIRED

- B. **Acceptable Insurance Carriers.** All insurance maintained by the Contractor pursuant to the Contract shall be written by insurance companies licensed to do business in the Commonwealth of Massachusetts. If the Contractor determines that any such insurance needs to be placed with surplus lines carriers not licensed by the Commonwealth of Massachusetts, written permission from the University is required. All insurance companies to be used by the Contractor must have a Best's Rating of not less than A- and be reasonably acceptable to the University.
- C. **University as Beneficiary and Additional Insured.** All insurance maintained by the Contractor must include a waiver of subrogation and shall provide that insurance for the benefit of the University shall be primary and the University's own insurance shall be non-contributing. The Contractor shall provide the University written evidence of insurance from the insurer within ten (10) business days prior to the execution of the Contract and annually when the policy is renewed. The Contractor's General Liability Insurance and Automobile Liability Insurance, to the extent these coverage types are required under the Contract, shall include or be endorsed to include the Commonwealth, the University, its Trustees, Officers, servants, and employees as an additional insured. Additional insured status must be evidenced on the certificate of insurance.
- D. **Notice of Coverage Changes.** The Contractor agrees that within ten (10) days after Contractor's receipt from the applicable insurers of notice of cancellation or non-renewal of the insurance policies referenced above, or material change to such policies decreasing the coverage to an amount that does not meet the Contract's minimum insurance requirements, said Contractor or its designee will send a copy of such notice to the University in the manner specified by the section entitled *Notice* in the Contract. Such notice is not a right or obligation within the policies, it does not alter or amend any coverage, it will not extend any policy cancellation date and it will not negate any cancellation of the policy. Failure to provide a copy of such notice to the University shall impose no obligation or liability of any kind upon the insurer or its agents or representatives.
- E. **Subcontractors.** The Contractor shall be responsible for the performance of its subcontractors as if the Contractor were performing the services or providing the deliverables itself. The Contractor shall cause its subcontractors to meet all applicable obligations under this Contract, including, without limitation, the same insurance obligations that are required of the Contractor and set forth herein.

- F. **Compliance.** The Contractor's and/or the Contractor's subcontractor's failure to provide or to continue in full force and effect the insurance required herein shall be a material breach of the Contract and may, at the sole determination of the University, result in termination of the Contract for cause.
7. **Certification.** Contractor certifies under the pains and penalties of perjury that Contractor has filed all state tax returns, paid all taxes and complied with all applicable laws relating to taxes; and has complied with all applicable laws relating to contributions and payment in lieu of contributions to the Employment Security System, and any applicable laws relating to workers compensation and payment of wages. Pursuant to federal law, Contractor shall verify the immigration status of all workers assigned to the Contract without engaging in unlawful discrimination; and Contractor shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker.
8. **Contractor's Qualifications and Performance.** In accordance with the terms and conditions of this Contract, the Contractor represents and warrants that: (1) it is qualified to perform the services set forth herein and has obtained all requisite licenses and permits to perform the services; (2) there is no current or pending litigation against Contractor related to, or which would affect Contractor's ability to perform the services or provide the deliverables; and (3) Contractor has no knowledge of any current or pending dispute in which litigation against Contractor relating to the performance of services or provision of deliverables is imminent. In addition, the Contractor represents and warrants that the services provided hereunder shall conform to the professional standards of care and practice customarily expected of firms engaged in performing comparable work; that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them; and that the recommendations, guidance, and performance of such personnel shall reflect such standards of professional knowledge and judgment.
9. **Conflict of Interest.** Contractor acknowledges that it may be subject to the Massachusetts Conflict of Interest statute, Mass. Gen. Laws c. 268A, and to that extent, Contractor agrees to comply with all requirements of the statute in the performance of this Contract.
10. **Independent Contractor Status.** The Contractor is an independent contractor and not an employee or agent of the University. No act or direction of the University shall be deemed to create an employer/employee or joint employer relationship. The University shall not be obligated under any contract, subcontract, or other commitment made by the Contractor.
11. **Termination:**
- A. **Termination Without Cause.** The Contract may be terminated without cause by the University by giving written notice to the Contractor at least thirty (30) calendar days prior to the effective date of termination stated in the notice, and the University shall have no liability to the Contractor except for payment of fees for services already rendered.
- B. **Termination for Cause.** If either party breaches any material term or condition stated herein or fails to perform or fulfill any material obligation required by this Contract, the non-breaching party may terminate this Contract by giving written notice to the breaching party at least seven (7) calendar days before the effective date of termination stated in the notice. Any notice of termination provided pursuant to this section shall state the circumstances of the alleged breach and may state a period during which the alleged breach may be cured, which cure shall be subject to approval by the non-breaching party. In the event of a breach the breaching party may be subject to any and all applicable contract rights and remedies available to the non-breaching party. Applicable statutory or regulatory penalties may also be imposed.
12. **Obligations in Event of Termination:**
- A. Upon termination or expiration of this Contract for any reason, all finished or unfinished documents, data, studies, and reports prepared by Contractor, or provided to Contractor pursuant to this Contract, shall be promptly delivered to the University unless the University otherwise directs Contractor to destroy certain data according to accepted industry practices.
- B. Upon termination of this Contract without cause, the University shall promptly pay the Contractor for all services performed to the effective date of termination, subject to offset of sums due the Contractor against sums owed by the Contractor to the University, and provided Contractor is not in default of this Contract and Contractor submits to the University a properly completed invoice, with supporting documentation covering such services, no later than thirty (30) calendar days after the effective date of termination.
13. **Recordkeeping, Audit, and Inspection of Records.** The Contractor shall maintain books, records and other compilations of data pertaining to the requirements of the Contract to the extent and in such detail as shall properly substantiate claims for payment under the Contract. All such records shall be kept for a period of six (6) years or for such longer period as is specified herein. All retention periods start on the first day after final payment under this Contract. If any litigation, claim, negotiation,

audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. The Governor, the Secretary of Administration and Finance, the State Comptroller, the State Auditor, the Attorney General, the Federal grantor agency (if any), the University, or any of their duly authorized representatives or designees shall have the right at reasonable times and upon reasonable notice, to examine and copy, at reasonable expense, the books, records, and other compilations of data of the Contractor which pertain to the provisions and requirements of this Contract. Such access shall include on-site audits, review, and copying of records.

14. **Political Activity Prohibited.** The Contractor may not use any Contract funds and none of the services to be provided by the Contractor may be used for any partisan political activity or to further the election or defeat of any candidate for public office.

15. **Ownership of Work Product.**

- A. Covered Works. Covered Works means all deliverables and works created by the Contractor for or at the request of the University, pursuant to Section 1 of the Contract and any relevant Contract Amendments noted in Section 2, including without limitation any and all software and related documentation, reports, results, products, programs, routines, drawings, studies, specifications, photographs, graphics, artwork, computations, data, inventions, discoveries, improvements, concepts, creative works, designs, techniques and know-how, works of authorship, trade secrets, patents, trademarks, copyrights, and any other intellectual property.
- B. Assignment. Contractor hereby assigns to the University all right, title and interest to the Covered Works in the United States, its territorial possessions and all foreign countries. Contractor authorizes University to apply for and receive any intellectual property registration and/or protection appropriate for the Covered Works in its own name, in the United States, its territorial possessions, and all foreign countries. It is understood that nothing in this Contract or in any relevant Contract Amendments will be construed to convey rights in any intellectual property owned by either Party or by a third party which is not a Covered Work. To the extent that Contractor owned intellectual property rights which are required for the University to exploit the Covered Works, Contractor hereby grants to the University a fully-paid up, non-exclusive, perpetual, worldwide license to Contractor owned intellectual property rights to the extent necessary for the University to exploit the Covered Works.
- C. Perfection of Rights. During the term of this Contract and at any time following expiration or termination for any reason of this Contract, upon the request and at the reasonable expense of the University and for no additional compensation, the Contractor and its employees, agents, subcontractors and affiliates will take such action as the University may request to more fully perfect, evidence, protect, record, defend, transfer, or confirm the University's ownership, right, title and interest in the Covered Works, including executing all rightful oaths, assignments, powers of attorney and other papers, testify in any legal or quasi legal proceedings concerning the Covered Works; communicate to the University all facts known to the undersigned relating to Covered Works and the history thereof; and generally do everything possible which the University shall consider desirable for aiding in securing, maintaining and enforcing any legal instruments, such as, but not limited to, trademark registrations, copyright registrations, and patent applications, for vesting title to the Covered Works in the University.
- D. Publication. The Contractor, or any of its employees, agents, subcontractors or affiliates, shall not publish any Covered Work without prior written permission of the University. The Contractor, or any of its employees, agents, subcontractors or affiliates, shall not make public or publish any material or publication based on a Covered Work or dealing with any aspect of performance under the Contract, or of the results and accomplishments attained in such performance ("Published Work") without the prior written permission of the University. If such permission is granted, the University shall have a royalty-free, non-exclusive, irrevocable license to reproduce, publish or otherwise use and to authorize others to use the Published Work(s).

16. **Confidentiality/Privacy/Security:**

- A. Contractor shall comply with all applicable state and federal laws and regulations relating to confidentiality, privacy, and security. In the performance of this Contract, the Contractor may acquire or have access to "personal information" (as defined in Mass. Gen. Laws c. 93H); or "personal data" and become a "holder" of such personal data (as defined in Mass. Gen. Laws c. 66A). Such "personal information," "personally identifiable information contained in education records," and "personal data" shall be deemed to be "Personal Information." Contractor shall implement administrative, physical and technical safeguards to reasonably and appropriately restrict access and ensure the security, confidentiality, integrity and availability of all Personal Information owned, controlled, stored, or maintained by University and disclosed, provided to or accessed by Contractor in the performance of services irrespective of the medium in which it is held. The Contractor agrees that it shall inform each of its employees, servants or agents, having involvement with Personal Information of the laws and regulations relating to confidentiality, privacy, and security.

- B. The University of Massachusetts may be subject to the European Union's General Data Privacy Regulation [Regulation (EU) 2016/679] (the "GDPR") when the University is deemed a "controller" or "processor" of "personal data" from an individual "data subject" located in the European Union, as those terms are defined in the GDPR. The Contractor acknowledges and agrees that if it is acting as a "controller" or "processor" of "personal data" for the University under this Contract that all applicable requirements of the GDPR are incorporated by reference as material terms of this Contract. The Contractor represents and warrants that (1) it is aware of and understands its compliance obligations as a "controller" or "processor" under GDPR; (2) it has adopted a GDPR compliance policy/program; (3) it will process "personal data" only in accordance with the University's instructions; and (4) with regard to its obligations under this Contract, it shall comply with all applicable requirements of the GDPR to the same extent as required for the University. Additionally, the Contractor shall indemnify and hold the University, its trustees, officers, and employees harmless from and against any claims, demands, suits, damages, penalties, fines, or costs arising from any violation of GDPR by the Contractor.
17. **Public Records Law.** The Contractor acknowledges that the University is an agency of the Commonwealth of Massachusetts and subject to the Massachusetts Public Records law (MGL c.66 §10).
18. **Assignment and Delegation.** The Contractor shall not assign or in any way transfer any interest in this Contract without the prior written consent of the University, nor shall the Contractor subcontract any service without the prior written approval of the University. Any purported assignment of rights or delegation of performance in violation of this Section is VOID. This Contract shall be binding on Contractor's successors and permitted assigns.
19. **Nondiscrimination in Employment.** The Contractor shall not discriminate against any qualified employee or applicant for employment based upon a legally protected class including; but, not limited to race, color, national origin, ancestry, age, sex, religion, disability, gender identity or expression, genetic information, or sexual orientation or a person who is a member of, applies to perform, or has an obligation to perform service in a uniformed military service of the United States, including the National Guard on the basis of that membership, application or obligation. The Contractor agrees to comply with all applicable Federal and State employment statutes, rules, and regulations.
20. **Compliance with Laws:** Contractor agrees to comply with all applicable Massachusetts and federal laws, regulations and ordinances in the performance of its obligations under this Contract.
21. **Severability.** If any provision of this Contract is declared or found to be illegal, unenforceable, or void, then both Parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.
22. **Choice of Law.** This Contract is entered into in the Commonwealth of Massachusetts, and the laws of the Commonwealth, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this Contract and all of the transactions it contemplates, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
23. **Forum Selection.** The Parties agree to bring any action arising out of or relating to this Contract or the relationship between the Parties in the state courts of the Commonwealth of Massachusetts which shall have exclusive jurisdiction thereof. The Contractor expressly consents to the jurisdiction of the state courts of the Commonwealth of Massachusetts in any action arising out of or relating to this Contract, or the relationship between the Parties, waiving any claim or defense that such forum is not convenient or proper. This paragraph shall not be construed to limit any other legal rights of the Parties.
24. **Force Majeure.** Neither party shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to: acts of nature or of a public enemy, fire, war, terrorism, flood, earthquake, civil disturbance, strikes, epidemics, pandemics, quarantine restrictions, freight embargos, or unusually severe weather.
25. **Risk of Loss:** The Contractor shall bear the risk of loss of any Contractor materials used for a Contract and for all deliverables and work in process.
26. **Indemnification of University.** The Contractor shall defend, indemnify, and hold harmless the Commonwealth, the University, its Trustees, Officers, servants, and employees from and against any and all third party claims, liability, losses, damages, costs, or expenses (including reasonable attorneys' and experts' fees) arising out of or resulting from the performance of the services performed by the Contractor, its agents, servants, employees, or subcontractors under this Contract, including but not limited to the intentional, negligent, or reckless acts or omissions of the Contractor, its employees, servants, agents, or subcontractors. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Commonwealth and/or the University that would otherwise exist. The University shall give the Contractor prompt and timely notice of any claims, threatened or made, or any law suit instituted against it which could result in a claim for indemnification hereunder. The extent of this Contract of indemnification shall not be limited by any obligation

or any term or condition of any insurance policy. The obligations set forth above shall survive the expiration or termination of this Contract.

27. **Tax Exempt Status:** The University is exempt from federal excise, state, and local taxes; therefore, sales to the University are exempt from Massachusetts sales and use taxes. If the University should become subject to any such taxes during the term of this Contract, the University shall reimburse the Contractor for any such taxes paid by the Contractor. Any other taxes imposed on the Contractor on account of this Contract shall be borne solely by the Contractor.
28. **Waivers:** All conditions, covenants, duties, and obligations contained in this Contract can be waived only by written agreement. 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.
29. **Amendments:** This Contract may be amended only by written agreement of the Parties, executed by the Parties' authorized representatives and in compliance with all other regulations and requirements of law.
30. **Entire Agreement:** The Parties understand and agree that this Contract and its attachments and/or amendments (if any) constitute the entire understanding between the Parties and supersede all other verbal and written agreements and negotiations by the Parties relating to the services under this Contract.
31. **Accessibility Compliance.** Contractor warrants and represents that its products and services provided under this Contract are currently in compliance with, and during the Term of this Contract shall remain in compliance with, all applicable Massachusetts and Federal laws and regulations, including; but not limited to Web Content Accessibility Guidelines (WCAG), conformance levels A and AA (also known as ISO standard, ISO/IEC 40500:2012). Contractor agrees to promptly respond to, resolve, and remediate any request by the University regarding the noncompliance of its products or services in a timely manner at no cost to the University. Contractor further agrees to indemnify, defend, and hold harmless the University from and against any and all claims arising out of its failure to comply with the requirements of this section. Failure to comply with the requirements of this Section constitutes a material breach of this Contract and may be grounds for Termination for Cause, as set forth herein.
32. **PCI Compliance.** If, in the course of its engagement by University, Contractor has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, Contractor shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") and if applicable, Payment Application Data Security Standard (PA DSS) requirements, including remaining aware at all times of changes to these standards and promptly implementing all procedures and practices as may be necessary to remain in compliance with these standards, including promptly notifying the University of its non-compliance, in each case, at Contractor's sole cost and expense. Both parties are responsible for the security of the cardholder data that is in such party's control or possession, as mandated by PCI Security Standards Council (PCI SSC) in the performance of their individual and mutual responsibilities under this Agreement.
33. **Counterparts.** This Contract and any Statement of Work, or other attachment that requires signature of the parties, to this Contract may be manually executed or executed using an electronic or digital signature in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when the counterparts have been executed by each of the Parties and delivered to the other Parties.

Employees of the University shall not be held personally or contractually liable by or to the Contractor under any term or provision of this Contract or because of any breach thereof. This Contract is not binding until signed by an authorized University official.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their respective duly authorized officers as of the date first above written.

UNIVERSITY OF MASSACHUSETTS_____

CONTRACTOR:

Sig: _____
Signature of individual exercising Budgetary Control

Sig: _____

Name Printed: _____

Name Printed: _____

Title: _____

Title: _____

Sig: _____

Name Printed: _____

Title: _____

Sig: _____

Name Printed: _____

Title: _____