



MASSACHUSETTS COLLEGE OF LIBERAL ARTS

REQUEST FOR PROPOSALS
For
Investment Management Services

Issued by:

Massachusetts College of Liberal Arts
The Office of the Vice President, Administration & Finance

RFP 2023-001

August 11, 2022

Proposals due on September 16, 2022, by 2:00 PM (EST)

William Norcross
Purchase Manager – Administration & Finance
375 Church Street
North Adams, MA 01247

OVERVIEW

Since our inception as the Normal School in North Adams in 1894, Massachusetts College of Liberal Arts (MCLA) has provided educational access and exceptional learning opportunities to generations of students and alumni.

In addition to our 127-year commitment to public education, we have fortified our commitment to equitable academic excellence. For nine of the last 11 years, MCLA has been named a Top Ten College by U.S. News and World Report. MCLA also appears on the organization's list of top National Public Liberal Arts Colleges and has risen to #21 as a Top Performer on Social Mobility and first among all Massachusetts schools, which measures how well schools graduate students who receive Federal Pell Grants.

MCLA has a total enrollment of just over 1,400 students with nearly 340 graduate and post-baccalaureate students. MCLA offers 23 undergraduate majors, three graduate degrees, and four-degree completion programs.

At MCLA, we are here for all – and focused on each – of our students. Classes are taught by educators who care deeply about teaching and about seeing their students thrive on every level of their lives. In nearly every way possible, the experience at MCLA is designed to elevate our students as individuals, as leaders, and as communicators, fully empowered to make their impressions on the world.

MISSION STATEMENT

As an advisory council to the Board of Trustees of Massachusetts College of Liberal Arts, the Investment Advisory Council shall provide advice to the Board's Fiscal Affairs Committee regarding the management of the College's investments. The Council's responsibilities shall include, but not necessarily be limited to, the approval of fund investment guidelines, objectives and spending policies, and the review of the selection of investment advisers and consultants and the review of the performance of investments.

INTRODUCTION

Massachusetts General Laws Chapter 15A provides that Massachusetts College of Liberal Arts Board of Trustees (BOT) has the authority to establish and maintain trust funds. A concurrent responsibility of the management of the funds is the thoughtful investment of trust fund monies. The Investment Policy (Attachment A) is intended to guide the Trustees and the College Administration in the investment of designated cash balances held in College trust accounts.

The objective is to establish and maintain an investment portfolio for the College's cash flow requirements and principal growth of certain fund balances.

It is anticipated that an initial investment of approximately \$10 million will be placed with the selected investment management firm. The College is separate from Massachusetts College of Liberal Arts Foundation.

The primary objectives of the College's Investment Policy are to provide safety of principal, liquidity for operating needs, return on investment, and diversification of risk. The College will seek a conservative portfolio structure relying on a blend of index and managed funds, though the exact investment strategy and mix will be determined once an advisor is selected and in consultation with the Investment Advisory Council.

The administration of the College's funds must comply with Massachusetts General Law Chapter 73, Section 14 which states "The Trustees shall administer property held in accordance with special trusts, and also administer grants or devises of land and gifts or bequests of personal property made to the Commonwealth for the use of a state university, and execute said trusts, investing the proceeds thereof in notes or bonds secured by sufficient mortgages or other securities."

The selected bidder will be required to assume responsibility for all services offered in this proposal. Further, the College will consider the selected bidder to be the sole point of contact regarding all contractual matters.

SCOPE

Only institutions currently managing a minimum of \$20 million in assets will be considered acceptable to make a proposal. Those assets must include public, private, and non-profit funds. We are looking for combined advising and management for our portfolio.

The investment policy and procedure should follow the "Prudent Person Principle" for investing. Alternative forms of investment (such as private equity, for example) although not prohibited by the Investment Policy, are not likely to be approved as an element of our investment strategy.

The College expects to see reporting daily (upon request), monthly (upon request), and quarterly. For reporting, institutions should be website capable for daily information. Formal written reports can be provided at the period requested by the College. It is also expected the Investment Advisory Council will meet with MCLA's Board of Trustees periodically, likely twice a year, perhaps quarterly if desired. The Investment Management firm will meet periodically with the Investment Advisory Council to present information on performance of the investments.

There are no specific return targets initially, but it is expected targets will be established. Institutions shall provide history of returns per investment approach recommended.

MINIMUM QUALIFICATIONS

Proposal Response

Please provide the following information and refer to the appropriate section in your submission:

Complete the Excel spreadsheet entitled “Investment RFP Statistical and Financial Template” included in Appendix A using the following instructions.

Insert answers in un-shaded blocks only (shaded blocks are restricted).

The following columns are labeled as follows. If your answer is:

- (1) Check box – Insert “X”
- (2) Yes (Y) or No (N) – insert Y or N
- (3) Dollar amount – insert dollar amount in millions
- (4) Number – insert number up to one decimal e.g., XX.X
- (5) Percentage – insert percentage up to one decimal e.g., XX.X%
- (6) Comments – if more space is needed, use additional sheet noting the section responding and label Appendix A Addendum

Please provide your investment performance record for the past ten calendar years **[label Appendix B]** showing annual and compound returns on a time-weighted basis for each investment strategy proposed; gross and net of fees. If possible, differentiate between income and appreciation. Provide the benchmark that should be used for comparison and its performance record for the past ten calendar years. Include a brief description of the investment objectives for each investment strategy proposed. Include the record of those accounts, or composites, that reflect your management approach to a portfolio of our size and purpose.

Attach a fee schedule (Pricing Proposal) **[label Appendix C]** which includes fee examples for a fund of our size and purpose. Please also identify any fees associated with mutual funds that may be included in our portfolio. Finally, please identify all fees, including but not limited to, “pass-through” fees that should be considered in any fee review.

What is your philosophy and practice regarding ongoing communication and reporting to the management and governance bodies of the College? Please submit samples of all statements to be provided to the College **[label Appendix D]**.

Provide audited financial statements for the past three completed fiscal years and a statement indicating whether the company has been profitable for the three prior fiscal years (and parent company, if applicable) **[label Appendix E]**.

Include the following information in your Technical Proposal:

A brief history of the firm since its inception: founding date, size, purpose, funds under management, alliances, and professional memberships/affiliations. Is the firm engaged in any business other than asset management?

Describe the management team that would be assigned to this portfolio and how it would function. Please provide brief background profiles on the key individuals.

What steps has your firm taken to address the issues raised by the Sarbanes Oxley Act of 2002?

Describe your firm's experience with higher education institutions that have similar characteristics and needs to that of Massachusetts College of Liberal Arts. What percent of your clients are higher education institutions and what percent of the funds your firm has under management are higher education institutions? What is the aggregate value and percentage of higher education assets under management?

Explain your firm's investment decision-making process. Specifically identify any matrix or economic models utilized in buy/sell decisions.

Indicate how benchmarks will be determined. Will customized benchmarks be developed or will you use industry standards?

How do you measure and control risk? How do you measure performance?

Does your firm utilize index funds as a management tool? Are there any fee savings for their use?

Describe any insurance coverage maintained by your company in the event of loss due to employees' malfeasance or fraud.

Exceptions: please provide a detailed description of any exceptions to the requirements of this RFP.

Appendix

- A. Investment RFP Statistical and Financial Template
- B. History of Investment Performance
- C. Fee schedule (Pricing Proposal)
- D. Sample reports
- E. Audited financial statements for past three completed fiscal years
- F. ADV Filings – Form I, II
- G. Other firm information (optional)
- H. Required Forms

Expression of Interest

If your company is considering submitting a proposal in response to this RFP, please email William.Norcross@mcla.edu of your intent to participate. Please include in your email:

Your Name
Title
Company Name
Telephone Number
Email Address
Fax Number

Submission of your interest is not a prerequisite for submitting a proposal, but it is necessary to ensure future communication regarding this RFP.

SELECTION PROCESS

A Selection Committee will meet to review the proposals submitted in response to this Request for Proposals. Each proposal submitted must be signed by an official of the institution who is authorized to bind the offer. The solicitation for proposals does not commit Massachusetts College of Liberal Arts to award a contract to pay any cost incurred in the preparation of the proposal. The College reserves the right to select any proposal it deems in its best interest. Further, the College may accept or reject any or all proposals received and waive any formalities in the evaluation process.

Criteria to be used in the evaluation process include, but are not limited to, the following:

- a. The greatest value with respect to the bidder's response and its material content and responsiveness to the requirements of this RFP.
- b. The quality of the services offered.
- c. The general reputation of the firm.
- d. The qualifications of the personnel assigned to work on the project.
- e. The demonstrated understanding of the respondent of conducting the work as required by the scope of the service.
- f. The bidder's functionality, performance, flexibility, and ability to meet the goals of Massachusetts College of Liberal Arts.

A rating system of highly advantageous, advantageous, not advantageous, and unacceptable will be utilized in reviewing TECHNICAL PROPOSALS. PRICING PROPOSALS will be opened after the review and rating of the TECHNICAL PROPOSALS is completed. The College will select the company offering the best value to the College, not necessarily the lowest price.

The College, at its discretion, may request responding vendors to make oral presentations. The College will schedule the time and location if presentation is deemed necessary.

CONTRACT

The contract term shall be for three years with the possibility of two annual renewals at the discretion of the College for a maximum of five years. The implementation date shall be as soon as practical. The College may negotiate such additions, deletions, or changes as may be necessitated by law or changed circumstances. The successful respondent is encouraged to present new or enhanced products and services for consideration by the College during the life of the Agreement.

The College reserves the right, in its sole discretion, to terminate the contract that results from this RFP with thirty (30) days written notice to the successful company should the Agreement no longer be deemed beneficial to the College.

State law prohibits the College from agreeing to indemnification of the contracted party. Additionally, it is mandatory that the Commonwealth of Massachusetts laws apply to the performance of the contract and that jurisdiction and venue be in Boston, Massachusetts for State and Federal courts.

PROCESS SCHEDULE

Issuance of Request for Proposal	August 11, 2022
Submission of Questions	August 19, 2022
Responses to Questions	August 26, 2022
Submission of Written Proposals	September 16, 2022, at 2:00pm
Oral Presentations (if necessary)	September 22, 2022
Final Selection	September 2022
Finalize Contract	October 2022
Implementation	On or about mid-October, 2022

SUBMISSION OF PROPOSALS

Completed proposals, both Technical Proposal and Pricing Proposal, must be received by 2:00 PM EST, September 16, 2022 to:

William Norcross
Purchasing Manager
Massachusetts College of Liberal Arts
Administration and Finance
375 Church Street
North Adams, MA 01247

Any responses received after this time shall be considered non-responsive. You will submit two separate proposals, one (1) Technical Proposal and a separate Pricing Proposal. These proposals must be **clearly** identified as such on the outside of the envelope containing each document. Failure to follow these instructions could result in a proposal deemed non-responsive.

Technical Proposal

Please provide **one** original paper response and 4 copies to facilitate our evaluation process as well as an electronic copy on one flash drive (separate from the Pricing Proposal).

Pricing Proposal

Please provide **one** original paper response and 4 copies to facilitate our evaluation process as well as an electronic copy on one flash drive (separate from the Technical Proposal).

All communication regarding this Request for Proposal shall be directed to William Norcross, Purchasing Manager – Administration and Finance. He can be reached at William.Norcross@mcla.edu. Failure to follow this instruction shall result in immediate disqualification of the interested party.

Questions and inquiries should be emailed to William.Norcross@mcla.edu and must be submitted by August 19, 2022, no later than 2:00pm. The subject line should be **Investment Management Services RFP 2023-001**. Any oral communication shall be considered unofficial and non-binding on the College. Written responses will be copied to all respondents submitting an expression of interest.

As a public institution we are subject to all State and Federal regulations regarding the release of public records and information.

Required Proposal Information and Format

Technical Proposal

1. Brief transmittal letter
2. Statement of Qualifications
3. Description of Services and Miscellaneous Information
4. Technical Proposal must be thirty-five (35) pages or less

Pricing Proposal

1. Cost of each service
2. Statement of Ongoing Fees
3. Other Pricing Information

ATTACHMENT A.

Massachusetts College of Liberal Arts: Investment Policy

INVESTMENT POLICY

GENERAL INVESTMENT PHILOSOPHY

Chapter 15A of Massachusetts General Laws provides the Massachusetts College of Liberal Arts Board of Trustees (Board) the authority to establish and manage trust funds. This Investment Policy is intended to guide the Trustees and College Administration in the investment of fund balances held in various College accounts.

In recognition of its fiduciary responsibility, the Board has adopted the investment management guidelines listed below. These guidelines relate to fund balances held in various College accounts that are not appropriated by the Commonwealth of Massachusetts. The Board has appointed an Investment Advisory Council (the Council) to supervise the management of funds. As an advisory council to the Board, the Investment Advisory Council shall provide advice to the Fiscal Affairs Committee regarding the management of the College's investments. The Council's responsibilities shall include, but not necessarily be limited to, recommending the approval of fund investment guidelines, objectives and spending policies, and the review of the selection of investment advisers and consultants and the review of the performance of investments.

Based on a majority vote, the Council shall recommend to the Board appropriate investment decisions for their action to achieve the objectives within the guidelines outlined in Section I.

I. INVESTMENT GUIDELINES

The Council and any advisors it engages shall follow these guidelines to manage the various funds to preserve and enhance, in real dollar terms, the principal capital and, at the same time, to create and realize a source of income for the operating and capital needs of the College.

- a. Preservation of Capital and Safety of Principal – Investment of Massachusetts College of Liberal Arts funds shall be undertaken in a conservative manner that seeks to ensure the preservation of capital and safety of principal.

- b. Minimizing Price Volatility – This investment policy prohibits significant investments in securities with the potential for wide price volatility, such as options, futures, derivatives, short purchases and sales, and the leveraging of the funds.
- c. Liquidity – Sufficient funds must be available to meet the College’s projected cash flow needs throughout the year with particular attention to seasonal variations.

Return on Investment

- a. Income – Investment income is an integral part of the College’s annual budget and long-term viability. The investment portfolio of Massachusetts College of Liberal Arts shall be designed to attain the optimum rate of return under various economic conditions and during periodic economic cycles. The Council shall oversee the investment portfolio of the College on a quarterly basis and subsequently report its findings to the Board at its next meeting. The reports to the Trustees shall be conducted at least semi-annually.
- b. Asset Appreciation – While there may be occasional periods of price instability or deflation, it is recognized that the economy has a bias toward consumer price inflation. Therefore, asset appreciation is a significant goal to ensure that the future value of the investment portfolio is equal to or exceeds its present purchasing value. This objective is INTENDED to ensure that the College does not experience asset value depreciation because of inflationary price changes.
- c. Asset Allocation – The responsibility for establishing periodic asset allocation that is consistent with the objectives of the overall Investment Policy is under the purview of the Council. The Council shall review the allocations at least annually. The investment mix selected should reflect the risk level periodically determined to be appropriate for the College investment portfolio. It is recognized that asset allocation may be more important than individual investment selections.

II. DELEGATION OF AUTHORITY

Management responsibility for the investment program is hereby delegated to the Council who shall manage the investment program, including the possible appointment of a professional fund manager, consistent with the Board’s approved Investment Policy. No College official may execute or cause any investment transaction except as allowed or provided under the terms of this Investment Policy and specific investment procedures that may be periodically established by the Council. The College’s investments shall be secured through third party custody and safe keeping procedures. Bearer instruments shall be held only through third party institutions (i.e., a custodian or trustee).

III. ETHICS AND CONFLICT OF INTEREST

The Trustees, officers, and employees of Massachusetts College of Liberal Arts involved in the investment process are prohibited from personal business activities that could impair their ability to make impartial investment decisions. The perception of a conflict of interest must be avoided.

All ethics rules and laws of the Commonwealth of Massachusetts are hereby incorporated by reference into this policy.

IV. REPORTING

The Council shall provide quarterly reports to the Fiscal Affairs Committee and semi-annual reports to the Board.

V. INVESTMENTS

With stability, liquidity, capital growth, and total return as essential objectives in this Investment Policy, available funds will be invested in deposits of federally insured financial institutions or direct and fully guaranteed U.S. government securities and/or its agencies, the Common Fund (Money Market Fund or Intermediate Fund), as the Massachusetts Municipal Depository Trust (MMDT) of the Commonwealth of Massachusetts, and funds offered by banking or financial institutions licensed to perform investment services in Massachusetts.

- a. Operating Needs – Sufficient liquid funds must be available during the year to meet the College’s projected liquidity and cash flow needs. To meet the projected short-term liquidity and cash flow need, the College will maintain sufficient funds in its local operating bank accounts.
- b. Investments – Investment Advisory Council may make investments for longer intermediate terms as it seems necessary and prudent under the circumstances, consistent with projected cash flow requirements.

VI. REVIEW

These guidelines shall be reviewed annually by the Council.

VII. INVESTMENT OBJECTIVE

The investment objective is to receive a total rate of return (“growth plus income”) for the reserve fund which shall compare favorably with various appropriate benchmarks for measuring performance, as selected by the Council. If the Council and the Board have voted to use only mutual funds as investment vehicles, the same principles herein shall apply. Being a fiduciary account, the investment portfolio should be a diversified one, and should include securities of good quality, such as those a prudent investor would buy for their own portfolio. The investment account(s) shall be discretionary, (i.e.) the responsibility for appropriate allocation of assets to achieve reasonable growth and income within the following guidelines rests entirely on the

Council and advisor(s) and shall be based on the relative attractiveness of each asset in light of the investment/economic outlook at the time.

A. PERMITTED INVESTMENTS

1. Cash or equivalents, and money market funds of sound quality
2. Equity investments in proven and well-managed companies
3. Government bonds, certificates of deposit and investment grade corporate bonds with ratings of BBB or higher at the time of purchase
4. Mutual funds, exchange traded funds, and closed-end funds. These may include funds that invest worldwide as well as those that invest only within the United States, and also include "inverse" funds that are designed to move in the opposite direction of a market index
5. Investments are to be made from a long-term perspective with moderate annual turnover

B. INVESTMENT AND ACTIONS NOT PERMITTED

1. Concentration in any one company or industry, whether with bonds or stocks
2. Investment in "hedge funds"
3. Market timing or program trading
4. Persistent short term or "day" trading
5. Margin buying and short selling
6. Investment in securities that cannot reasonably be expected to be available for liquidation within three business days ("illiquid securities")

C. ASSET ALLOCATION

The Council and/or advisor(s) has discretion to determine the allocation between equities, fixed income, and cash or equivalents within the following guidelines:

1. Equities (including individual stocks, funds, and other investments that primarily invest in common stocks) shall have a target allocation of 75% with an allowable range of 65% to 80%
2. Fixed income (including bonds, certificates of deposit longer than six months, and funds that primarily invest in fixed income securities) shall have a target allocation of 25% with an allowable range of 20% to 45%, with up to 10% of the total allocation being in lower-quality bonds or non-dollar securities, both of which must be held within funds
3. Cash or equivalents (including money market mutual funds and short-term fixed-rate investments with a maturity of less than 90 days) shall not have a specific target allocation, although it is expected that there will always be at least a small residual cash balance in the investment allocations, and the investment manager and/or broker may raise cash holdings if it is believed that market conditions are especially poor, with an allowable range of 0% to 25%

VIII. PERFORMANCE MONITORING

The comprehensive quarterly report of the fund's activity, by individual fund, shall reflect the balance at the start of the reporting period, deposits to and/or withdrawals from, interest income, dividend income, capital gains distributions, foreign taxes, investment fees, realized and unrealized gains/losses incurred during the reporting period and the balance as of the end of the reporting period. Beginning, ending, and changes in the Unit Value shall also be reported. This report shall be reviewed by the Council. The Council and Advisor(s) will also provide comparison data to benchmarks of similar composition for the quarter, year-to-date, as well as from inception of the portfolio.

IX. PRIVATE EQUITY AND VENTURE CAPITAL

Investments in these categories can be made in certain circumstances, but only under the direction of the Board. These investments must be critically scrutinized as to their merits, the know-how and experience of the principals in the business, the business plan, other financial sources, and the potential for success.

X. SHORT-TERM/CASH MANAGEMENT

A. RESPONSIBILITY

The Massachusetts College of Liberal Arts Investment Advisory Council will be responsible for the investment of current funds and may delegate management of these short-term cash investments to college staff.



MASSACHUSETTS COLLEGE OF LIBERAL ARTS

Re: BID OPENING POSTPONEMENT

If the College is closed due to inclement weather (or any unforeseen occurrence) on the date of a bid opening, the bid opening will be postponed to the next business day that the College is open. The bid will open at the corresponding time of the initial bid opening.

Any questions or concerns should be addressed to: William Norcross, Purchasing Manager – Administration and Finance at William.Norcross@mcla.edu.

Thank you.

MASSACHUSETTS COLLEGE OF LIBERAL ARTS

The following forms must be completed, signed, and submitted with a completed bid proposal.

1. W-9 Request for Taxpayer Identification Number and Certification
2. Northern Ireland Notice and Certification
3. Statement of State Tax Compliance
4. Certification of Non-Collusion

The Commonwealth Terms and Conditions is provided as a reference document and does not need to be signed or submitted with the bid response.

NORTHERN IRELAND NOTICE AND CERTIFICATION

State agencies, state authorities, the House of Representatives, or the state Senate may not procure goods from any person employing ten or more employees in an office or other facility located in Northern Ireland who fails to complete the certification below as required by M.G.L. c.7 section 22C.

_____ The bidder does not employ ten or more employees in an office or other facility in Northern Ireland.

_____ The bidder employs ten or more employees in an office or other facility located in Northern Ireland and certifies that:

- 1) The bidder does not discriminate in employment, compensation, or the terms, conditions, and privileges of employment on account of religious or political belief; and
- 2) The bidder promotes religious tolerance within the workplace and the eradication of any manifestations of religious and other illegal discrimination; and
- 3) The bidder is not engaged in the manufacture, distribution, or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or deployment in an activity in Northern Ireland.

Signed under the pains and penalties of perjury on this _____ day of _____, _____.

Bidder Name

X

Signature of Authorized Representative Signing on
Behalf of Bidder

Print Name of Authorized Representative of Bidder

Print Title of Authorized Representative of Bidder

CERTIFICATION OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

(Signature of individual submitting bid or proposal)

(Name of business)



COMMONWEALTH TERMS AND CONDITIONS

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 the Standard Contract Form these Commonwealth Terms and Conditions will be incorporated by reference. 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, the effective start date of performance under a Contract shall be the later of the date the Contract was executed by an authorized signatory of the Contractor, the date the Contract was executed by an authorized signatory of the Department, the date specified in the Contract, or the date of any approvals required by law or regulation.

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 Payment Mechanism. All Contractors will be paid using the Comptroller's payment system unless a different payment mechanism is required. The Contractor shall timely submit invoices 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 completion 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, or in the event of an unforeseen

public 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 submitted in writing 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 Contractor 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 six (6) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under [Executive Order 195](#), during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

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 Contractor pursuant to a Contract in accordance with [M.G.L. c. 106, § 9-318](#). 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,



COMMONWEALTH TERMS AND CONDITIONS

handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and 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 of 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 no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, 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 parties 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 certifies 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 signing the Standard Contract Form.