



COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES

This Commonwealth Terms and Conditions for Human and Social Services form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division/Division of Purchased Services (OSD), for use by Commonwealth of Massachusetts ("State") Departments and Contractor organizations that contract to provide Human and Social Services to Commonwealth clients. **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 for Human and Social Services by the Contractor and filing as prescribed by CTR, these Commonwealth Terms and Conditions for Human and Social Services will be incorporated by reference into any Contract for Human and Social Services executed by the Contractor and any Department, in the absence of a superseding law or regulation requiring a different Contract form. Its provisions are in addition to the requirements contained in 808 CMR 1.00 and any Human and Social Services Contract(s), as well as any applicable requirements contained in 808 CMR 2.00 or 801 CMR 21.00. This Commonwealth Terms and Conditions for Human and Social Services is effective upon signature by the Contractor or July 1, 1997, whichever is later, and supersedes the Master Agreement and General Conditions approved by ANF on May 1, 1995.

1. Contract Effective Start Date. Notwithstanding verbal or other representations by the parties, unless otherwise permitted in 801 CMR 21.00, the effective start date of 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 Secretariat authorization pursuant to M.G.L. c. 29, §29B.

2. Payments And Compensation. The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with 801 CMR 21.00, 808 CMR 1.00 and 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. In no event shall payments under any Contract exceed the rate or maximum obligation of the Contract or be directed to off-set costs which are not reimbursable under Commonwealth contracts under any provision of law, including M.G.L. c. 7, §56 and 808 CMR 1.00. Upon determination by the Department that the Contractor has not provided services to the extent billed, has billed for services to any client who the Contractor knew or should have known was ineligible for services according to the terms of the Contract, has received duplicate or otherwise excess payments, has used Contract payments for non-reimbursable expenses or otherwise failed to perform in accordance with the terms of the Contract or 808 CMR 1.04, the Department may, upon reasonable notice and opportunity for correction, delay, disallow, set-off or recoup payments.

3. Contractor Payment Mechanism. The Contractor will be paid using the Payment Voucher System unless a different payment mechanism is agreed upon in the Contract. 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.

4. Contract Termination Or Suspension.

a. Procedures. 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 any of the events or conditions set forth below. During the notice period for termination, the parties may agree to adjust the termination conditions, including the effective date contained within the notice of termination. Grounds and procedures for termination are: i) Immediate Termination: Absence of Funding or Emergency. A Contract shall terminate immediately upon receipt of written notice of termination under the following conditions: the absence of appropriation, allotment, availability or authorization to the Department to discharge its obligations under the Contract in the fiscal

year; a party's default, breach or any intervening casualty which poses an immediate threat to the life, health or safety of a client; the indictment of the Contractor or one of its principals or officers for an offense or offenses related to the provision of services; fraudulent activities on the part of the Contractor in its dealings with the Commonwealth; or the filing for bankruptcy by a Contractor. ii) Early Termination: Breach or Default, Reduction of Funding or Change in Law. A Contract may be terminated by providing notice of termination effective not less than forty-five (45) calendar days after date of notice under the following conditions: either party may terminate if the other party fails to fulfill its obligations under a Contract, including partial or complete non-performance of any provision; there is a reduction of funds appropriated for Contracts; or if any statute or regulation which governs performance is changed, differently interpreted by a court or other competent authority, newly enacted, adopted or promulgated so as to increase the burdens on either party in complying with the terms of the Contract significantly beyond those existing at the time of execution. For termination for breach or default, the party must specify the alleged default or breach in writing, allowing a reasonable time, but not less than thirty (30) calendar days, for correction. For termination due to reduction in funding, the Department may alternatively provide a conditional notice of termination with a proposed amendment to a Contract. iii) Termination without Cause. Either party may terminate the Contract without cause upon provision of written notice to the other at least sixty (60) calendar days before its effective date. Whether or not cause to terminate exists under any other provision, a party may elect to terminate without cause.

b. Obligations Upon Termination. Upon termination, the Contractor shall have the following obligations: i) Transfer of Clients. The Contractor shall use its best efforts to provide for the health and safety of clients being served under the Contract for a reasonable period of time, while the Department arranges for their transfer, and shall cooperate fully with the Department's efforts to transfer clients. ii) Client Records. Client records maintained pursuant to the Contract shall remain the property of the Contractor, subject to the provisions of Sections 6, 7 and 11d. However, where the Department has continuing responsibility to provide for the clients funded by the Contract, the Contractor must, upon request, provide to the Department or the new Contractor a copy of the client records of services as authorized by the Department. The reasonable cost of such transfer will be borne by the Department. iii) Reports and Other Documents. All documents, data, studies, and reports related to performance of the Contract shall be submitted to the Department by the Contractor, unless the Department directs otherwise. iv) Furnishings and Equipment. The termination of the Contract does not affect the Contractor's responsibilities with respect to equipment and other property under 808 CMR 1.00. v) Payment. The Contractor shall be paid for all authorized services performed up to the date of termination, subject to the provisions of Section 2. In addition, if the Department is required to remove clients from a facility operated by the Contractor and fails to remove said clients, unless otherwise agreed by the parties and subject to the conditions set forth in Section 2, the Contractor will be paid at the rate contained in its terminated Contract for continuing to provide services after the date of termination and until such clients are removed. vi) Subsequent Audit. If a Contract is terminated without inspection, review or audit, the Commonwealth retains the right to conduct an inspection, review, or audit and to disallow reimbursement or recover funds if any finding warrants such action.

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.

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 required by 808 CMR 1.00 and 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 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 Contractor shall maintain adequate written policies and procedures for accounting, management and personnel activities, including but not limited to



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conflict of interest and nepotism policies. 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 records at a reasonable expense.

8. Assignment. No liability, responsibility, obligation, duty or interest under a Contract may be assigned, delegated, assumed or transferred, in whole or in part, without the prior written approval of the Department. However, the Contractor or a court appointed receiver 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 or court appointed receiver 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 for Human and Social Services and a Contract. When the Department furnishes federal funds to the Contractor, which are being passed down to a subcontractor, the subcontract must contain a provision that the subcontractor will comply with applicable federal single audit, cost principles and administrative requirement standards. 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, Employment and Service Delivery. 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. The Contractor shall not discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for services, or 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, status as a Vietnam Era Veteran, sexual orientation or for exercising any rights or benefits 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 and agrees to comply with any affirmative action programs required by Executive Order 227, or any successor provisions.

11. Human and Social Services Contracting Provisions

a. Board of Directors Standards. If a non-profit organization, the Contractor shall comply with the principles in the Massachusetts Attorney General's "Guide for Board Members of Charitable Organizations" and with the standards for boards contained in the American Institute of Certified Public Accountants (AICPA)'s statements on auditing standards, as may be amended from time to time. Further, the Contractor specifically agrees that: i) members of the Contractor's management and immediate family (as defined in the AICPA's Financial Accounting Standards Board Statement number 57) will not comprise more than 30% of the voting members of the Contractor's board or any of the board's committees or subcommittees; and, ii) the Contractor's Board of Directors will approve the selection of the Contractor's audit firm, will annually review its executive director's or other more senior manager's performance and set that person's compensation by formal vote, and will meet as frequently as necessary to fulfill the Contractor's obligations under this section. Where the board meets less than two times during its fiscal year, the Contractor shall submit a description of its board structure and the dates of each board and subcommittee meeting with its Uniform Financial Statements and Independent Auditor's Report (UFR).

b. Client Care and Use of Funds. The Contractor shall comply with all applicable provisions of law relative to the care of clients and the investigation and reporting of suspected client abuse or neglect. The Contractor shall provide the Department with copies of all legally mandated reports of client abuse or neglect where the alleged abuse or neglect was a direct or indirect

consequence of the services rendered under a Contract and shall comply with all additional reporting requirements relative to client abuse and neglect contained in a Contract. The Contractor shall be subject to any standards cited in a Contract for the disqualification of candidates for positions where the candidates have criminal records, for establishing proof of criminal record information of candidates prior to hire and for addressing criminal activities subsequent to hire. The Contractor shall also comply with all laws and regulations and contractual provisions relative to the use of client funds, property or other resources.

c. Annual Financial Reporting Requirements. The Contractor and any subcontractor must comply with all applicable annual financial reporting requirements set forth in 808 CMR 1.00 and the instructions to the UFR. Any nonprofit Contractor receiving in excess of the threshold of federal funds through the Commonwealth, as set forth in Office of Management and Budget (OMB) Circular A-133 or successor provision, must comply with the Circular as well.

d. Publications. The Contractor shall not disseminate, reproduce, display or publish any report, map, information, data or other materials or documents expressly required or produced in whole or in part pursuant to a Contract, nor shall any such materials or documents be the subject of an application for patent or copyright by or on behalf of the Contractor, without the prior written consent of the Department. If the Contractor prepares, publishes or distributes any publication describing any services or programs the cost of which are funded at least in part by a Contract, then any such publication shall, unless the Department directs otherwise, contain a prominently displayed statement to that effect.

e. Additional Provisions Applicable to Contractors Receiving Federal Funds.

If the Contractor receives federal funds from the Commonwealth through a Contract, then, in accordance with OMB Circular A-110 or successor provision, it further agrees to the following: i) Equal Employment Opportunity: All contracts entered into by the Contractor shall contain a provision requiring compliance with federal Executive Order 11246, as amended by Executive Order 11375, and as supplemented by regulations at 41 CFR part 60; ii) Contract Work Hours and Safety Act: If the Contractor employs mechanics or laborers to fulfill its contractual obligations, it will comply with sections 102 and 107 of 40 USC 327-333, as supplemented by 29 CFR part 5; iii) Clean Air Act and the Federal Water Pollution Control Act: If the Contractor receives more than \$100,000 in federal funds the Contractor agrees to comply with any applicable standards, order, or regulations issued pursuant to 42 USC 7401 et seq. and 33 USC 1251 et seq.; and iv) Byrd Anti-Lobbying Amendment: If a Contractor receives \$100,000 or more of federal funds through a Contract, by signing that Contract it certifies it has not and will not use federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. A Contractor shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

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 supplies, equipment or other materials used for a Contract and for all deliverables, records, documents, files, data, studies and reports which are in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession and, where applicable, ownership and full legal title, to the deliverables, records, documents, files, data, studies and reports are transferred to and accepted by the Department.

14. Forum and Choice of Law. 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.

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 deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions for Human and Social Services, 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



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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 formal amendments must be executed by the parties 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 for Human and Social Services, 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 for Human and Social Services, 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 Human and Social Services for any applicable Contract executed with the Commonwealth as certified by its authorized signatory below:

INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES

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 FOR HUMAN AND SOCIAL SERVICES.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES 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 FOR HUMAN AND SOCIAL SERVICES (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.