

WIDA Consortium Memorandum of Understanding

This memorandum of understanding (MOU) is between the Massachusetts Department of Elementary and Secondary Education ("MASSACHUSETTS") and the Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison's Wisconsin Center for Education Research (WCER).

WCER is the organizational home of the WIDA Consortium ("WIDA"), a multi-state coalition of state educational agencies (SEAs) that acts in collaboration to research, design and implement a standards-based educational system that promotes equitable educational opportunities for English learners in pre-kindergarten through grade twelve. The WIDA English Language Development Standards form the base of this system. The WIDA English Language Development Standards include the four recognized domains of speaking, listening, reading, and writing, and are based on the academic language content of PreK-12 students. SEAs join the WIDA Consortium to obtain the WIDA Consortium Core Package for use by SEAs and local educational agencies (LEAs) within each of their states (see Schedule D, WIDA Consortium Board for definition of "Core Package").

Title I and Title III of the Federal Elementary and Secondary Education Act (currently enacted as The Every Student Succeeds Act of 2015 or "ESSA") establish Federally-supported education programs and activities related to English language instruction, acquisition and achievement; require local educational agencies and institutions to evaluate and report the biennial progress made by English learners; and require SEAs to develop accountability models for English learners that relate to these children's development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.

WCER offers an annual academic assessment of English proficiency as part of the Core Package, on behalf of WIDA, under the brand name ACCESS for ELLs. ACCESS for ELLs is designed to assess the progress of students in attaining English proficiency, including students' level of comprehension in the four recognized domains of speaking, listening, reading, and writing. ACCESS for ELLs is aligned with the WIDA English Language Development Standards.

MASSACHUSETTS has adopted ACCESS for ELLs for its plan to meet MASSACHUSETTS and Massachusetts' LEAs' Title I and III requirements.

MASSACHUSETTS wishes to become a WIDA Consortium member in order to access the Core Package, including the annual administration of ACCESS for ELLs and related services of WCER and WIDA, as holder of the intellectual property rights to the Core Package and having obtained a vendor to provide the operational administration of ACCESS for ELLs, wishes to provide MASSACHUSETTS with the intellectual property licenses, assessment administration and related services of the Core Package.

The Parties therefore agree as follows:

TERM

The terms set forth within this MOU are hereby in effect from the effective date of this MOU through June 30, 2020, with two optional renewal years upon mutual agreement of the parties.

MASSACHUSETTS WIDA CONSORTIUM MEMBERSHIP

MASSACHUSETTS shall be a WIDA Consortium Member as a result of approving/adopting (and purchasing) the ACCESS for ELLs assessment for purposes consistent with this MOU. Consequently, MASSACHUSETTS is entitled to one seat on the WIDA Consortium Board and to participate in WIDA Consortium Board activities. The operation and expectations of the WIDA Consortium Board is set forth in Schedule D-WIDA Consortium Board.

LEA PROCUREMENT OF RELATED SERVICES

Where applicable, any LEA subject to MASSACHUSETTS oversight shall be entitled to the same rights and benefits granted to MASSACHUSETTS in this MOU. WCER will offer any LEA in Massachusetts services related to the use and implementation of the Core Package ("WIDA Services") under the same or similar terms of this MOU. Because of the expense and time associated with negotiating a contract with every LEA for the provision of WIDA Services is cost prohibitive, WCER will only negotiate contracts with LEAs in very limited circumstances. WCER or its subcontractors shall, however, accept any purchase order from an LEA in Massachusetts under the condition that the LEA is joining the terms of procurement stated in this MOU. LEA and WCER may change the scope of work, program terms and payment terms as mutually agreed. LEA, by joining the terms of procurement in this MOU shall expressly agree that the terms of this MOU shall supersede any conflicting terms that LEA may attach or incorporate to any contract or purchase order that it issues in relation to the provision of WIDA Services. The terms of this MOU shall take precedence in any purchase order/contract document hierarchy between the parties. Any new terms provided by LEA not addressed in this MOU shall not be accepted by WCER, unless and until affirmed by written initials and date of authorized WCER representative. An LEA may add the following statement to its purchase order/contract to join the terms of procurement in this MOU by reference: "WCER shall provide WIDA Services in accordance with the terms negotiated by the Massachusetts Department of Elementary and Secondary Education in its WIDA Consortium Memorandum of Understanding."

STATEMENT AND PERFORMANCE OF WORK, INVOICE AND PAYMENT

For satisfactory performance of the services described in the attached Schedule A-Statement and Performance of Work, MASSACHUSETTS shall pay WCER the compensation provided for in Schedule B-Invoice and Payment.

MASSACHUSETTS acknowledges that the performance of work requires accurate submissions of data files by LEAs and/or MASSACHUSETTS. If an LEA and/or MASSACHUSETTS submits a data file or student information containing errors or omissions that require additional work/cost in order to proceed with the administration of an assessment under this agreement, then the parties shall mutually determine to take one of the following courses of action:

1. The LEA and/or MASSACHUSETTS shall correct the data file or student information; or
2. The LEA and/or MASSACHUSETTS shall request WCER to correct the data file or student information, where MASSACHUSETTS shall pay the cost incurred by WCER to correct the data file or student information.

WCER shall have no obligation to provide test administration services to an LEA and/or MASSACHUSETTS if the parties cannot mutually determine a course of action to remedy the LEA and/or MASSACHUSETTS errors/omissions.

ASSESSMENT PROCEDURES AND SEA OBLIGATIONS

MASSACHUSETTS shall establish and implement or cause LEAs to implement, consistent with this MOU, the necessary procedures and policies to administer the annual ACCESS for ELLs assessment in Massachusetts, including policies and procedures to maintain the security and secure nature of the ACCESS for ELLs assessment within Massachusetts. MASSACHUSETTS acknowledges that timely administration of ACCESS for ELLs requires adherence to administration procedures by LEA personnel. MASSACHUSETTS shall cooperate and provide assistance to WCER in any dispute that it may have with a LEA in Massachusetts related to the provision of services under this MOU.

SUBCONTRACTORS

MASSACHUSETTS acknowledges that only subcontractors of WCER that directly provide services to MASSACHUSETTS, as part of the Core Package, are covered by the provisions of this MOU. WCER shall obtain all subcontractors in accordance with State of Wisconsin and University of Wisconsin procurement laws and rules. In light of the preceding, MASSACHUSETTS further acknowledges that due to the multistate nature of the WIDA Consortium, i.e. WCER providing the same services to multiple states, it is not practical or economically feasible to require WCER's subcontractors to meet each of the WIDA Consortium member state's specific subcontractor requirements. Any specific requirements that MASSACHUSETTS may place on WCER's subcontractors that goes beyond State of Wisconsin and University of Wisconsin procurement laws and rules may result in additional costs to MASSACHUSETTS.

MASSACHUSETTS acknowledges that WCER will obtain a vendor and has selected Data Recognition Corporation to provide the annual printing, distribution, scoring and reporting (the "PDSR Contractor" or "DRC") of the ACCESS for ELLs assessments. WCER obtained the PDSR

Contractor through an open competitive bidding process, proposal no.15-5335, Amendment no. 2 (the "PDSR Contractor RFP").

INTELLECTUAL PROPERTY OWNERSHIP AND LICENSE

WCER and the Board of Regents of the University of Wisconsin System, on behalf of the WIDA Consortium, own the copyrights of all works covered under this agreement (collectively the "WIDA Works"). This agreement does not convey any exclusive rights, title or interest in or to the WIDA Works to MASSACHUSETTS. Because WCER makes these materials available to all WIDA Consortium members, MASSACHUSETTS shall not take any actions that would limit or restrict access to the materials by other states or otherwise adversely affect the proprietary nature of the WIDA Works.

Unless otherwise expressed in writing, MASSACHUSETTS shall retain all rights in training and other materials developed by MASSACHUSETTS. Any specific works that WCER develops and delivers solely for MASSACHUSETTS shall be expressly agreed upon in writing and shall be on a work made for hire basis with MASSACHUSETTS retaining ownership of the works.

The WIDA Works includes the following:

1. ACCESS for ELLs English language proficiency test ("ACCESS for ELLs"), including online and paper-based versions and Alternate ACCESS for ELLs;
2. WIDA English language proficiency placement test (the "WIDA Screener"), including both paper-based and online versions as they are developed and the Kindergarten W-APT;
3. WIDA English Language Development Standards and Resource Guide ("WIDA ELD Standards"), including Essential Actions, WIDA Can Do Descriptors by grade level cluster, individual figures, tables and charts from the Resource Guide and future ELD Standards, Can Do Descriptors and Resource Guide editions;
4. WIDA Early English Language Development Standards; WIDA Early Spanish Language Development Standards, in Spanish and English; WIDA Spanish Language Development Standards; and WIDA Spanish Language Arts Standards (collectively, "WIDA Language Standards");
5. WIDA Facilitator Toolkit ("WIDA Facilitator Toolkit") or other comparable resource, including ACCESS for ELLs administration and WIDA ELD Standards training materials;
6. WIDA Consortium professional learning materials ("WIDA PL Materials"); and
7. ACCESS for ELLs technical documents and research reports.

For the purposes of this agreement, WIDA Works does not include WIDA Early Years assessments, WIDA Early Years professional learning and training materials, WIDA Early Years family engagement materials and standards correspondence. Use of those WIDA Early Years works are covered under a separate agreement with WCER and are subject to additional fees and terms.

WCER hereby grants MASSACHUSETTS the right to use the WIDA Works for Massachusetts educational purposes within Massachusetts and subject to the following conditions:

MASSACHUSETTS license to use the ACCESS for ELLs is subject to the payment of the required fees set forth in Schedule B—Invoice and Payment of this MOU and shall remain in effect as long as MASSACHUSETTS elects to use the ACCESS for ELLs for Massachusetts educational purposes. MASSACHUSETTS acknowledges that ACCESS for ELLs is a secure test, as that term is defined in 37 C.F.R. § 202.20(b)(4). MASSACHUSETTS shall implement statewide policies and procedures to ensure that the security of the test is maintained. MASSACHUSETTS shall immediately notify WCER if it learns of any breach or threatened breach of test security. WCER will print and distribute the ACCESS for ELLs for MASSACHUSETTS in accordance with the Statement and Performance of Work schedule of this MOU. The ACCESS for ELLs shall not be copied, modified, distributed or displayed, including electronic storage or retrieval, in any manner without express written permission from WCER and the appropriate security measures in place.

MASSACHUSETTS' license to use the WIDA Screener Online grades 1-12 is not subject to any fee, as long as MASSACHUSETTS elects to use the ACCESS for ELLs. MASSACHUSETTS, LEAs, and individual schools in Massachusetts, including educational collaborative and approved private special education schools within and outside Massachusetts that serve publicly funded Massachusetts students, may print and duplicate the appropriate downloadable, WIDA Screener consumable forms for use by LEA or school staff as needed. WIDA Screener materials and resources shall not be modified or publicly displayed, including electronic storage or retrieval, in any manner without express written permission from WCER. WCER shall provide, as long as this contract is in effect, a version of the WIDA Screener Online that is not subject to any fee.

MASSACHUSETTS' license to use the Kindergarten W-APT is not subject to any fee and shall remain in effect as long as MASSACHUSETTS elects to use the ACCESS for ELLs. Kindergarten W-APT is a semi-secure test, meaning it is made available from a password-protected secure website. WCER will make Kindergarten W-APT available electronically in PDF format. MASSACHUSETTS, LEAs and individual schools in Massachusetts, including educational collaborative and approved private special education schools within and outside Massachusetts that serve publicly funded Massachusetts students, may print and duplicate the Kindergarten W-APT for use by LEA or school staff as needed. The Kindergarten W-APT shall not be modified or publicly displayed, including electronic storage or retrieval, in any manner without express written permission from WCER. Notwithstanding the foregoing, WCER may phase out all support for the Kindergarten W-APT if/when it introduces a new version of the WIDA Screener for Kindergarten. WCER shall provide, as long as this contract is in effect, a version of the WIDA Screener for Kindergarten that is not subject to any fee.

MASSACHUSETTS' license to use the WIDA ELD Standards is not subject to any fee and shall remain in effect as long as MASSACHUSETTS and/or the Massachusetts Board of Elementary and Secondary Education elects to use the WIDA ELD Standards as the State's English language development Standards. WCER will make the WIDA ELD Standards available electronically in PDF format from the WIDA Consortium website. WCER will publicly display and provide the WIDA ELD Standards for download free of charge for personal and educational

purposes. Educational purposes shall include LEA and individual school/teacher use within the State of Massachusetts, including educational collaborative and approved private special education schools within and outside of Massachusetts that serve publicly funded Massachusetts students. This license does not include the right for MASSACHUSETTS or any LEA within the State of Massachusetts to copy and distribute the WIDA ELD Standards beyond de minimis use (de minimis use is less than 100 copies per event, however, making copies for multiple planned events is not de minimis use). WCER will publish or license to publish full color bound copies of the WIDA ELD Standards and make available to MASSACHUSETTS, LEAs and other educators within the State of Massachusetts at a lower WIDA Consortium member rate. The WIDA ELD Standards shall not be modified or publicly displayed for electronic storage and retrieval in any manner without express written permission from WCER. However, linking to the WIDA Consortium website and stating the free availability of the WIDA ELD Standards is encouraged. WCER will grant additional permissions upon request but MASSACHUSETTS acknowledges that WCER may include additional reasonable restrictions for quality control purposes depending on the nature of the request.

MASSACHUSETTS' license to use the WIDA Language Standards is not subject to any fee and shall remain in effect as long as MASSACHUSETTS and/or the Massachusetts Board of Elementary and Secondary Education elects to use the WIDA Language Standards as the State's language standards. For purpose of this license, MASSACHUSETTS shall include any governmental agency of the State of Massachusetts. WCER will make the WIDA Language Standards available electronically in PDF format from the WIDA Consortium website. WCER will publicly display and provide the WIDA Language Standards for download free of charge for personal and educational purposes. Educational purposes shall include the following: LEA, individual school/teacher, non-profit agency use within the State of Massachusetts. This license does not include the right for MASSACHUSETTS, LEAs or non-profit agencies within the State of Massachusetts to copy and distribute the WIDA Language Standards beyond de minimis use (de minimis use is less than 100 copies per event, however, making copies for multiple planned events is not de minimis use). WCER will publish or license to publish full color bound copies of the WIDA Language Standards and make available to MASSACHUSETTS, LEAs, non-profits and other educators within the State of Massachusetts at a lower WIDA Consortium member rate. The WIDA Language Standards shall not be modified or publicly displayed for electronic storage and retrieval in any manner without express written permission from WCER or except in accordance with published guidelines issued by WIDA. However, linking to the WIDA Consortium website and stating the free availability of the WIDA Language Standards is encouraged. WCER will grant additional permissions upon request but MASSACHUSETTS acknowledges that WCER may include additional reasonable restrictions for quality control purposes depending on the nature of the request.

MASSACHUSETTS' license to use the WIDA Facilitator Toolkit is not subject to any fee and shall remain in effect as long as MASSACHUSETTS elects to use the ACCESS for ELLs. WCER will make the WIDA Facilitator Toolkit or a comparable resource available electronically from the password-protected section of the WIDA Consortium website. MASSACHUSETTS and Massachusetts' LEAs, including educational collaboratives and approved private special education schools within and outside Massachusetts that serve publicly funded Massachusetts students, may use the WIDA Facilitator Toolkit and its individual components for MASSACHUSETTS and LEA

in-service training purposes. MASSACHUSETTS and LEAs may modify individual components of the WIDA Facilitator Toolkit only in accordance with WCER provided user guidelines. MASSACHUSETTS and LEAs shall not publicly distribute or display, including electronic storage or retrieval, any training materials from the WIDA Facilitator Toolkit, unless specifically permitted by WCER user guidelines or WCER.

MASSACHUSETTS' license to use the WIDA PL Materials is not subject to any fee and shall remain in effect as long as MASSACHUSETTS elects to use the WIDA ELD Standards. WCER will make the WIDA PL Materials available electronically to MASSACHUSETTS prior to any professional learning. MASSACHUSETTS will be responsible for copying and distributing WIDA PL Materials to participants of MASSACHUSETTS sponsored professional learning offerings. The WIDA PL Materials shall not be modified or publicly displayed for electronic storage and retrieval in any manner without express written permission from WCER.

MASSACHUSETTS' license to use the ACCESS for ELLs technical documents and research reports is not subject to any fee and shall remain in effect as long as MASSACHUSETTS elects to use the ACCESS for ELLs. WCER will make the ACCESS for ELLs technical documents and research reports available electronically to MASSACHUSETTS from the public area of the WIDA Consortium website. All confidential and proprietary information will be removed from the ACCESS for ELLs technical documents and research reports that are posted in the public area of the WIDA Consortium website. MASSACHUSETTS will receive an individual electronic copy of all ACCESS for ELLs technical documents and research reports, including those documents and reports containing confidential and proprietary information. The ACCESS for ELLs technical documents and research reports shall not be modified and no documents or reports containing confidential and proprietary information shall be publicly displayed, including electronic storage and retrieval in any manner.

MASSACHUSETTS shall remove as soon as practicable any WIDA Works that it publicly displays, including electronic storage and retrieval systems, that WCER determines, in its sole discretion, contain confidential or proprietary information.

WIDA, the WIDA Consortium logo, WIDA MODEL and ACCESS for ELLs are trademarks of the Board of Regents of the University of Wisconsin System (collectively the "WIDA Trademarks"). Any use of the WIDA Trademarks shall inure to the benefit of WCER. MASSACHUSETTS acknowledges that WCER may, from time-to-time, issue trademark and copyright use guidelines and policies in order to maintain the proper use and integrity of the WIDA Trademarks and WIDA Works and the quality of WCER services and products. Current WIDA guidelines will be posted on the WIDA website or provided to MASSACHUSETTS as applicable. MASSACHUSETTS shall assist WCER in implementing any trademark and copyright use guidelines for all uses by MASSACHUSETTS LEAs, and MASSACHUSETTS Contractors (see below).

MASSACHUSETTS may contract with third parties ("MASSACHUSETTS Contractors") to provide services to LEAs and other educational agencies within the State of Massachusetts or organizations operating under the authority of MASSACHUSETTS that MASSACHUSETTS would otherwise provide ("In-service Activities"). Contracts for In-service Activities shall be

limited to a set geographic territory set by MASSACHUSETTS ("In-service Area") and shall not authorize the provision of any WCER, WIDA or WIDA Consortium service, unless MASSACHUSETTS receives prior written authorization from WCER to do so. MASSACHUSETTS Contractors may charge a fee to cover the cost of providing In-service Activities. However, MASSACHUSETTS Contractors are prohibited from charging a greater fee to LEAs and other educational agencies outside of their In-service Area, if their In-service Area is smaller than the whole state territory.

EDUCATION RECORD RELEASE AND DATA USE

The parties acknowledge that the unauthorized access to or dissemination of school student records is prohibited under state and federal law. In order to protect the privacy of students and parents, and to prevent the disclosure of MASSACHUSETTS' confidential information, the parties agree to enter the *Education Record Release and Data Use Agreement* attached as Schedule C to this MOU.

DISCLAIMER

The parties acknowledge that the Massachusetts State Board of Elementary and Secondary Education sets educational policies, and the Massachusetts Department of Elementary and Secondary Education implements the educational policies for Massachusetts, including, but not limited to, the determination of how MASSACHUSETTS will meet the federal requirements under ESSA.

THE WIDA WORKS AND RELATED SERVICES OFFERED UNDER THIS MOU WERE DEVELOPED AS PART OF THE NON-PROFIT RESEARCH AND EDUCATIONAL ACTIVITIES OF THE UNIVERSITY OF WISCONSIN-MADISON, AND ARE PROVIDED TO MASSACHUSETTS AS PART OF THE UNIVERSITY'S MISSION OF OUTREACH AND SERVICE TO THE EDUCATIONAL COMMUNITY. THE UNIVERSITY HAS NO REASON TO BELIEVE THAT THE WIDA WORKS INFRINGE ON THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, OR ARE UNFIT FOR THE PURPOSES DESCRIBED IN THIS MOU; HOWEVER, DUE TO THE NON-COMMERCIAL NATURE OF THE UNIVERSITY IT CANNOT PROVIDE WARRANTIES FOR THE WIDA WORKS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Neither party shall be liable under this MOU for any special, consequential, indirect or incidental damages.

TERMINATION

The parties shall provide notice, in writing, of any failure to keep in force any of the terms and conditions of this MOU. The parties shall have the right to terminate this MOU without cause at any time during the term by giving sixty (60) days' notice in writing. Upon termination, WCER shall be paid for all services detailed in Schedule A—Statement and Performance of Work

satisfactorily rendered up to the date of termination. Notwithstanding termination, the provisions on intellectual property and confidentiality shall survive termination.

Each party shall notify the other party immediately upon receiving information at any time that lack of continued governmental funding or any other set of circumstances may prevent continuation of this project. WCER acknowledges that MASSACHUSETTS may suspend or terminate this MOU upon providing notice of discontinuation of governmental funding.

LIABILITY PROTECTION AND HOLD HARMLESS

The State of Wisconsin is self-funded for State liability purposes. The State's Self-Funded Liability Program provides coverage against claims made as the result of the negligent acts of University officers, employees and agents. The State's liability protection is afforded under Wisconsin Statute 895.46 (1) and extends to all employees in the course and scope of their duties.

Neither party shall be liable for the acts and omissions of the other.

MISCELLANEOUS

This MOU may be amended at any time by mutual consent set forth in writing.

In the event of a disagreement regarding the terms or implementation of this MOU, the parties agree to discuss their dispute in good faith and make best efforts to achieve a mutually agreed-upon resolution.


MASSACHUSETTS acknowledges that WCER is a research center/sub-unit of the University of Wisconsin System and therefore, is an agency of the State of Wisconsin Government. Nothing in this agreement shall be construed as waiving the sovereign immunity of the State of Massachusetts or the State of Wisconsin.

WCER shall comply with all federal and state laws. WCER and its subcontractors shall comply with Federal and State of Wisconsin non-discrimination laws, including the Wisconsin Fair Employment Act and similar federal law.

WCER receives federal funds and is therefore subject to federal regulations regarding federal fund recipients. WCER certifies that it complies with all federal funding certifications and assurances required by the U.S. Office of Management and Budget. WCER certifies that it and its principal officers are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from doing business with the Federal Government. WCER certifies that it is in compliance with the Federal Immigration Reform and Control Act and that it verifies the employment eligibility of all of its employees. Additional information on WCER's representations and certification can be obtained from the federal system for award management website under DUNS: 626535538.

This memorandum of understanding will become effective once MASSACHUSETTS and WCER both sign it. The date of this memorandum of understanding shall be the date on which it is signed by the last party to sign it.

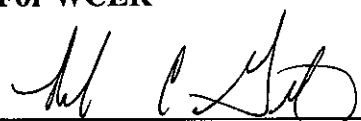
For Massachusetts Department of Elementary and Secondary Education



Jeffrey C. Riley
Commissioner
Massachusetts Department of Elementary and Secondary Education

7-10-18
Date

For WCER



Robert Gratzl, Managing Officer
Research & Sponsored Programs
Richelle Martin
Assistant Director, Office of Industrial Partnerships
University of Wisconsin-Madison

6/29/18
Date

Schedule A

STATEMENT AND PERFORMANCE OF WORK

WCER shall provide the professional services listed in paragraphs (a) through (c). The professional services set forth below shall be performed: (i) using the requisite degree of skill, care and diligence; and (ii) in accordance with professional standards consistent with nationally recognized contractors performing similar professional services.

- a. WCER shall develop, administer and score the ACCESS for ELLs assessment for **2018–2019, 2019–2020, and two optional renewal years** upon mutual agreement of the parties, in accordance with the following:
 - i. The assessment will be administered online unless the following exceptions apply: a student requires a printed version of the assessment as an accommodation or a district/school does not have the required IT infrastructure to administer the online version.
 - ii. WCER shall coordinate/oversee the PDSR Contractor. The PDSR Contractor may include an additional 15% of printed test booklets in its distribution to LEAs in order to accommodate fluctuations in ELL populations in larger districts. In addition to the per student charge for the ACCESS for ELLs administration, MASSACHUSETTS shall be responsible for actual printing and distribution costs of unused tests printed and distributed in excess of 120% of the number of actual students tested.
 - iii. WCER, through the PDSR Contractor, will use best efforts to provide error free printing, distribution, scoring and reporting of the ACCESS for ELLs assessment. WCER shall correct and provide replacement materials for any errors in printed test booklets that materially affect the reliability or validity of the test at no cost to MASSACHUSETTS and Massachusetts' LEAs. WCER shall issue an errata sheet for all errors that do not materially affect the reliability or validity of the test at no cost to MASSACHUSETTS and Massachusetts' LEAs.
 - iv. MASSACHUSETTS shall determine each year, through consultation with the PDSR Contractor, the testing year window dates, e.g. pre-coding, test ordering, test delivery, test window, etc. MASSACHUSETTS shall be responsible for informing Massachusetts LEAs of the annual testing year window dates and schools' corresponding task responsibilities, e.g. online ordering and corrections submissions. MASSACHUSETTS shall take steps to encourage accurate ordering by Massachusetts' schools to prevent over-ordering of test booklets.
 - v. WCER shall provide a MASSACHUSETTS Profile that establishes communication protocols, describes MASSACHUSETTS' policies, test delivery specifics, and any additional cost options per MOU. This MASSACHUSETTS' Profile will be shared with the WCER and DRC Help Desks to ensure MASSACHUSETTS-specific protocols are followed. The MASSACHUSETTS Profile will be updated in collaboration with MASSACHUSETTS.

vi. Printing, distribution, scoring, and reporting policies and procedures include the following:

1. DRC will provide a secure, web-based ordering system and administrative portal supported by toll-free customer service representatives (September through May, 6:00 am–8:00 pm CT and June through August, 6:00 am–6:00 pm CT). LEAs may contact a customer service representative via email at WIDA@datarecognitioncorp.com. DRC will provide the minimum web browser requirements for the administrative portal on the login page of the administrative portal.
2. MASSACHUSETTS will send student identification and demographic data via file upload through the administrative portal. DRC will populate student testing records for students testing online, and produce Pre-ID labels for all students taking paper-based tests. Pre-ID labels will be packaged with the testing materials for each school.
3. Any submission of information for Pre-ID labels past the valid submission window will result in a late submission fee.
4. DRC will consult with MASSACHUSETTS and share a preview of MASSACHUSETTS specific ordering items in advance of school ordering to determine the appropriate file formats, ordering instructions, and other related information.
5. DRC will provide test materials in large-print format upon request. Schools shall place their orders during the test ordering window to ensure on-time delivery of large-print materials.
6. DRC will provide test materials in braille format upon request, for a fee. Schools shall place their orders through the test ordering window to ensure on-time delivery of braille materials.
7. If a student requires additional accommodations, the LEA or school shall consult with MASSACHUSETTS to determine the appropriate assessment options, if any.
8. Through the administrative portal, DRC will provide software downloads for the DRC INSIGHT secure browser, which will be used as the secure test administration platform for all students testing online.
9. DRC will ship orders of initial and additional test materials to each school as ordered by the school.
10. DRC will use United Parcel Service (UPS) for distribution to schools. Materials will be shipped to arrive two (2) weeks prior to the opening of the assessment window in Massachusetts. Special arrangements can be made to provide material earlier to specific sites, if approved by the WCER. Delivery of materials will be scheduled during regular school hours, 9:00 am to 3:00 pm in the appropriate time zone. DRC will send email notifications to test coordinators when materials are shipped. All sites receiving a large volume of material will receive notification at least 24 hours before the materials are

delivered. All shipments will be designated as “inside delivery required” and “secure testing materials enclosed.” Signatures of receipt will provide proof of delivery and allow DRC and districts and schools to track all shipments. DRC will provide all district- and school-specific return shipping labels and forms and will be responsible for all costs associated with the return of materials. DRC may include an additional 15% of test booklets in its distribution to schools in order to accommodate fluctuations in EL populations in larger districts.

11. Schools will place additional test materials orders, as needed, to conduct testing (if applicable) and DRC will ship the orders directly to the appropriate schools within 3 days of order receipt. If overnight or two-day expedited shipping is needed by the school, then shipping charges may apply. Additional materials orders beyond the one (1) allowed per school may require approval from MASSACHUSETTS.
12. DRC will scan student booklets to capture each student’s test data. Booklets that cannot be scanned due to damage or extenuating circumstances will be reported to MASSACHUSETTS.
13. DRC will connect each student’s data with a unique identification number.
14. Test scoring personnel will be overseen by the ACCESS for ELLs Scoring Director, housed at DRC. All test materials will be identified and scored using the unique identification number assigned during test data capture. Twenty percent of all items will be blind double-scored and the Scoring Director will monitor scorers daily to ensure inter-rater reliability of 70% or higher.
15. DRC shall provide electronic reports and data files to MASSACHUSETTS, and to Massachusetts’ LEAs and schools via the administrative portal, and printed score reports, as described below. Custom and specialized reports are available from DRC for additional charges.
 - a. MASSACHUSETTS will receive:
 - initial and final draft data in electronic format, including all demographic and student response data collected, raw, scale scores, and proficiency levels are included in the file
 - MASSACHUSETTS (State) Frequency Report.
 - b. Massachusetts LEAs will receive 1 copy of the following reports:
 - District Frequency Report.
 - c. Massachusetts **schools** will receive 1 copy of the following reports:
 - School Frequency Report.
 - Student Roster Report.
 - Individual Student Report

- vii. Schools shall return tests to DRC for scoring and reporting. Reports will be available on the mutually agreed upon date. WIDA will also provide MASSACHUSETTS with print and electronic **mode adjusted score reports** for students who took paper-based tests, including composite scores that have been adjusted by WIDA to compensate appropriately for the effects of tests taken on paper (See Schedule B).
- viii. General Data Corrections/Booklet Searches after the Data Validation window has closed and/or Scoring Appeals will be provided by DRC upon request.
 - 1. A combined total of **Twenty-six (26)** General Data Corrections/Booklet Searches (after Data Validation window has closed) and/or Scoring Appeals are included in the price of the ACCESS for ELLs assessment.
 - 2. General Data Corrections/Booklet Searches (after Data Validation window has closed) and/or Scoring Appeals beyond the number included in the price of the assessment are available from DRC for additional charges.
 - 3. Scoring Appeal - If it is found that the score was incorrectly calculated, there will be no charge for the Scoring Appeal
- b. WCER shall provide technical assistance to and in consultation with MASSACHUSETTS.
 - i. Technical assistance (TA) shall consist of providing MASSACHUSETTS with analysis and consultation concerning MASSACHUSETTS ACCESS for ELLs test score data in relation to MASSACHUSETTS' and Massachusetts' LEAs' requirements.
 - ii. Up to eight hours of TA per testing year are included in the price of the ACCESS for ELLs assessment. The included hours of TA do not include any on-site visits. MASSACHUSETTS may obtain additional TA as needed at the daily rate in place at the time of ordering. MASSACHUSETTS shall submit a purchase order to WCER to obtain additional TA. TA hours expire on June 30th of each testing year and cannot be rolled over from year to year.
 - iii. WCER shall produce a technical report on the ACCESS for ELLs assessments that, at a minimum, fulfills federal requirements regarding the technical quality of English language proficiency assessments. The non-confidential technical report shall be made available for download on WCER's website.
 - iv. WCER may create and provide MASSACHUSETTS with access to a comprehensive, longitudinally-based, online dashboard application comprising of aggregate ACCESS for ELLs assessment information and data from other national databases in support of MASSACHUSETTS educational programs. The dashboard will only contain aggregate and/or de-identified data in accordance with Schedule C—Education Record Release and Data Use Agreement.
- c. WCER shall provide test administration training and professional learning services to MASSACHUSETTS and Massachusetts' LEAs in consultation with MASSACHUSETTS.
 - i. Test administration training
 - 1. WCER shall provide separate training modules for online and paper-based ACCESS for ELLs administration.

- a. Both training modules will be delivered online from the password-protected area of the WIDA website. User accounts shall be set up according to MASSACHUSETTS in consultation with WCER. User accounts will include training certification and test administrator security agreements.
 - b. Paper-based administration. Everyone who administers the paper-based ACCESS for ELLs test needs to take training and receive their training certification. Training certification for paper-based administration will require completion of all applicable training units and passing all applicable quizzes. Certification through the paper-based administration training program shall produce an electronic record of those who have passed the online quizzes and it shall provide a certificate to the test administrator completing the course.
 - c. Online administration. Everyone who administers the online ACCESS for ELLs test needs to take training and receive their training certification. Training certification for online administration will require completion of all applicable training units. Certification through the online administration training program will consist of a certification checklist and shall produce an electronic record of those who completed the training and it shall provide a certificate to the test administrator completing the course.
 - d. Webinars for the MASSACHUSETTS State Education Agency. WCER shall provide a series of multi-state webinars for SEA support. These webinars will be conducted live and recorded. Webinars will be archived on the SEA secure portal on wida.us.
 - e. Webinars for Local Education Agencies. WCER shall provide a series of multi-state webinars in support of Local Education Agencies and schools. These webinars will be conducted live and recorded. Webinars will be archived on a secure page on wida.us.
 - f. WCER will provide MASSACHUSETTS with a Checklist detailing ACCESS for ELLs administration procedures. WCER will collaborate with MASSACHUSETTS to ensure that procedures are state-specific.
2. WCER shall provide technical support to MASSACHUSETTS and its LEAs' test administrators through the Client Services Center (CSC). The CSC shall be available to assist with registering for the online training programs and troubleshooting technical difficulties related to WIDA online resources as well as answering any ACCESS for ELLs and WIDA Screener related question. Technical questions concerning the test ordering platform or testing platform will be referred to the DRC Help Desk. The CSC representatives shall be available in April-October, Monday-Thursday, 8:00 am-5:00 pm Friday, 8:00 am-4:30 pm, and in November-March, Monday-Thursday, 7:00 am-7:00 pm Friday, 7:00 am-5:00 pm and shall be available via email (help@wida.us), through the WIDA website (www.wida.us), or by toll free telephone (1-866-276-7735).

ii. Professional Learning

1. The parties shall cooperatively develop a plan for offering professional learning (PL) activities related to the administration of the ACCESS for ELLs assessment and use and classroom implementation of the WIDA ELD Standards by Massachusetts educators. The activities shall be geared toward helping MASSACHUSETTS and its LEAs meet their Title I and III requirements.
2. Twenty-Six (26) PL Units for testing year 2018-19 are included in the price of the ACCESS for ELLs assessment. PL Units expire on June 30th of each testing year and cannot be rolled over from year to year. The number of PL units included in the price is subject to change based on the number of students tested in the previous testing year:

| Students Tested | PL Units |
|-----------------|----------|
| 65,000-84,999 | 22 Units |
| 85,000-104,999 | 26 Units |
| 105,000-124,999 | 30 Units |

3. WCER will send electronic copies of all course materials for workshops to MASSACHUSETTS in advance of the training. The electronic materials will include printing instructions and room set-up instructions. MASSACHUSETTS shall be responsible for any participant registration and making and distributing all necessary hard copies of course materials, or providing online access for participants to print materials.
4. MASSACHUSETTS is responsible for local expenses (e.g., rental of meeting space, participant's per diems, and substitute teachers).
5. MASSACHUSETTS shall submit a purchase order to WCER to obtain additional professional learning services.
6. If MASSACHUSETTS cancels a jointly scheduled professional learning offering for which WCER has incurred non-cancelable costs, then MASSACHUSETTS may either reimburse WCER for the incurred costs and reschedule the professional learning offering or it may elect to relinquish the professional learning units altogether at no additional cost to MASSACHUSETTS. The non-cancelable costs are as follows:

| Time | Cancellation | Rescheduling |
|-------------------------------|--|---|
| 22-42 days prior to the event | \$500 + Travel costs + \$200 per Additional Day OR 1 Unit | 50% of the total first day cancellation fees + additional day(s) cancelation fee OR 1 Unit |
| 0-21 days prior to the event | \$2,000 + Travel costs + \$700 per Additional Day OR Workshop Unit Cost | |

- a. No penalty will be incurred for professional learning offerings cancelled 43 days or more prior to the event.
 - b. WIDA facilitators will make every effort to be on-site for workshops. In the event that WCER must cancel an event, MASSACHUSETTS will receive an additional webinar in addition to rescheduling the workshop.
 - c. Cancellations due to weather will be rescheduled at no charge within the same academic year.
7. WCER will provide ELD Standards training and other instructional resources online.
 8. Opportunities will be available in 2018-19 for SEAs to participate in the pilot phase of the new Professional Learning package.
 9. WCER is working toward a new Professional Learning package by 2019-20 where a minimum 50% of PL Units allocation will be delivered through a menu of e-Learning options and the balance will be delivered through face-to-face workshops.

Schedule B

INVOICE AND PAYMENT

PAYMENT SCHEDULE

For professional services rendered in accordance with this MOU and the Statement and Performance of Work in Schedule A, MASSACHUSETTS shall pay WCER the following fees:

- a. MASSACHUSETTS agrees to pay the yearly ACCESS for ELLs costs as follows:

| Testing Year | 2018-2019 | 2019-2020 |
|--|---------------------------|---------------------------|
| Online Test (per student) | \$27.75 | Not-to-Exceed \$30.00 |
| Paper Test (per student) | \$27.75 | Not-to-Exceed \$32.00 |
| Alternate ACCESS (per student) | \$77.00 | Not-to-Exceed \$81.25 |
| Alternate ACCESS test development (per student) | N/A | Not-to-Exceed 60.00 |
| Braille Test (per student) | \$187.75 | Not-to-Exceed \$194.00 |
| Total Pop. Est. | 98,615 | 103,115 |
| Online Pop. Est. | 78,000 | 82,680 |
| Paper Pop. Est. | 19,000 | 18,820 |
| Alternate Pop. Est. | 1,600 | 1,600 |
| Braille Pop. Est. | 15 | 15 |
| Online Cost Est. | \$2,164,500.00 | \$2,480,400.00 |
| Paper Cost Est. | \$527,250.00 | \$602,240.00 |
| Alternate Cost Est. (inc. test development) | \$123,200.00 | \$226,000.00 |
| Braille Cost Est. | \$2,816.25 | \$2,910.00 |
| Mode-Adjusted Score Reports | Not-to-exceed \$25,000 | Not-to-exceed \$25,000 |
| School Ship Estimate | \$20,000 | \$20,000 |
| Discount over 75,000 Tests | (\$35,422.50) | (\$42,172.50) |
| Total Cost Estimate | \$2,827,343.75 | \$3,314,377.50 |

1. For testing year 2018–2019, if more than 75,000 students are tested by MASSACHUSETTS, WCER will discount the price of the online and/or paper test by \$1.50 for the number of students tested in excess of 75,000 students. Future volume price discounts will be announced when future ACCESS pricing is determined.
 2. WCER shall invoice MASSACHUSETTS for test development and pre-operational costs of \$1,250,000 on or before December 1 and MASSACHUSETTS shall pay within 45 calendar days.
 3. WCER shall invoice MASSACHUSETTS for the balance of the cost, based on the actual number of students tested, upon completion and delivery of the annual test reports and MASSACHUSETTS shall pay within 45 calendar days.
- b. WCER shall invoice MASSACHUSETTS for the shipping and receiving of paper test materials (including overage) to and from Massachusetts schools, rather than to and from LEAs, at an additional cost of \$.99 per student per year, exclusive of Boston public schools which is included in the base price and MASSACHUSETTS shall pay within 45 calendar days.
 - c. WCER will provide MASSACHUSETTS with mode-adjusted reports for students who took a paper-based ACCESS test. Mode adjustments will be incorporated in all printed ISRs, school and district frequency reports, and in the state, LEA, and school electronic reporting files, due on the date negotiated in the state's schedule, at a cost not to exceed \$25,000.
 - d. WCER will invoice MASSACHUSETTS for the printing and distribution costs of unused tests ordered, printed and distributed in excess of 120% of the number of actual students tested and MASSACHUSETTS shall pay within 45 calendar days.
 - e. WCER will invoice MASSACHUSETTS for the cost of General Data Corrections submitted past the valid submission window at \$100 per student, if MASSACHUSETTS has surpassed the number of included combined General Data Corrections/Booklet Searches and/or Scoring Appeals and MASSACHUSETTS shall pay within 45 calendar days.
 - f. WCER will invoice MASSACHUSETTS for the cost of Scoring Appeals at \$200 per domain per student, if MASSACHUSETTS has surpassed the number of included combined General Data Corrections/Booklet Searches and/or Scoring Appeals and MASSACHUSETTS shall pay within 45 calendar days.
 - g. WCER will invoice MASSACHUSETTS for the cost of Booklet Searches submitted past the valid submission window at \$100 per student if requested with a scan code or \$200 per student, if requested without a scan code, if MASSACHUSETTS has surpassed the number of included combined General Data Correction/Booklet Searches and/or Scoring Appeals and MASSACHUSETTS shall pay within 45 calendar days.
 - h. WCER will invoice MASSACHUSETTS for the cost of Pre-ID labels if the submission of information is past the valid submission window for Pre-ID labels at \$5 per student and MASSACHUSETTS shall pay within 45 calendar days.

- i. The daily rate for additional TA or PL will be determined at the time of purchase based on current Consortium member state pricing.

MISCELLANEOUS

WCER may use up to 1.5% of the total contract amount to cover the cost of the following events and activities which will be conducted in compliance with UW-Madison cost regulations and policies governing meals and alcoholic beverages. Documentation for these expenses will be retained for three years and will be available for review if requested. Events and activities include: WIDA-Sponsored events at key professional conferences to discuss WIDA activities and services, working dinners with SEA or potential SEA partners or other key Consortium partners, and other events intended to further the WIDA Consortium's goals and objectives.

STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of WCER relevant to this contract are subject to examination by the Massachusetts Auditor or the Auditor's designee. WCER will maintain all such records for at least seven years following completion of this contract.

TAXPAYER ID

WIDA's federal employer ID number is: 39-1805963

Schedule C

Education Record Release and Data Use Agreement

This educational record release and data use agreement is between the Massachusetts Department of Elementary and Secondary Education ("MASSACHUSETTS") and The Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison's Wisconsin Center for Education Research ("WCER").

Title I and Title III of the Federal Elementary and Secondary Education Act (currently enacted as The Every Student Succeeds Act of 2015 or "ESSA") establish Federally-supported education programs and activities related to English language instruction, acquisition and achievement; require local educational agencies and institutions to evaluate and report the biennial progress made by English learners; and require state education agencies ("SEAs") to develop accountability models for English learners that relate to these children's development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.

The Family Education Rights and Privacy Act ("FERPA") allows educational agencies and institutions to disclose personally identifiable information ("Confidential Data" or "PII") from the education records of students, without consent of students or parents, to authorized representatives of SEAs in order to evaluate and comply with these federal programs and legal requirements. 20 U.S.C. § 1232g(b)(1)(C) and (b)(3) and 34 C.F.R. § 99.31(a)(3) and § 99.35.

Concurrently with its entry into this educational record release and data use agreement, MASSACHUSETTS and WCER are entering a memorandum of understanding (the "MOU") to provide services relating to MASSACHUSETTS' compliance with federal requirements under ESSA, including, but not limited to, the administration and scoring of the ACCESS for ELLs English language proficiency assessment ("Evaluation Services").

The MOU, by its terms, establishes WCER and its subcontractors as authorized representatives of MASSACHUSETTS with respect to the Evaluation Services provided by WCER.

WCER wishes to obtain access to and collect personally identifiable information from the education records of students without the consent of the students or their parents during the performance of these Evaluation Services and MASSACHUSETTS wishes to acquire these Evaluation Services, while protecting the privacy of students and parents within MASSACHUSETTS. The purpose of this Agreement is to document the terms under which MASSACHUSETTS is authorized to release to WCER, through its PDSR contractor, personally identifiable information from the education records of Massachusetts students for the reasons set forth in the MOU and herein, and to designate WCER as MASSACHUSETTS' authorized representative consistent with the above-cited authority, and applicable provisions concerning access to, and confidentiality of, personally identifiable education record information. The terms "personally identifiable information" and "education record" shall have the meaning set forth in 34 CFR 99.3.

The Parties therefore agree as follows:

1. Acknowledgment of Release of Confidential Data and Description of Use.

- A. The parties acknowledge that MASSACHUSETTS is releasing Confidential Data to WCER for the purposes outlined in Section 3(H) below, and that the release of MASSACHUSETTS Confidential Data to WCER is necessary for the completion of Evaluation Services. The personally identifiable information to be disclosed to and collected by WCER is attached to this agreement as Exhibit A. WCER shall notify MASSACHUSETTS and MASSACHUSETTS shall provide written consent, if approved, of any changes to the list of disclosed information necessary for the provision of Evaluation Services.
- B. WCER will use PII from education records in order to facilitate the administration, scoring and reporting of individual student assessments and to connect student records from year to year in order to establish a longitudinal data set that can be used for the evaluation and federal compliance purposes described in this section. WCER will only use de-identified data and/or aggregated data for evaluation activities once student records are connected.
- C. WCER's use of MASSACHUSETTS' Confidential Data is strictly limited to the uses specifically authorized under this agreement. WCER acknowledges that misuse, unauthorized release or violation of the Prohibited Uses Section, below, of MASSACHUSETTS' Confidential Data by WCER or its subcontractor(s), etc., or any other violation of this agreement may be determined to be a material breach of the MOU and grounds for termination.

2. Designation of Authority and MASSACHUSETTS Access to System.

- A. MASSACHUSETTS hereby designates WCER, its subcontractors, including Data Recognition Corporation, and ACCESS for ELLs quality assurance participants as authorized representatives of MASSACHUSETTS with respect to the provision of Evaluation Services and, specifically, the use of personally identifiable information disclosed under this agreement.
- B. WCER shall provide MASSACHUSETTS and MASSACHUSETTS designated personnel with secure access to Confidential Data via WCER's Assessment Management System.
- C. WCER shall facilitate access to and correction of any factually inaccurate student information in response to an inquiry from an LEA or from MASSACHUSETTS. MASSACHUSETTS shall act as an intermediary on behalf of the LEA for any such LEA inquiry.

3. Receiving Institution Obligations.

The undersigned receiving institution, WCER, agrees to abide by the following student privacy and information security requirements:

- A. WCER shall not share Confidential Data with anyone, except those employees of WCER, WCER's subcontractors, including Data Recognition Corporation, and ACCESS for ELLs quality assurance participants ("Authorized Users") that are directly involved and have a legitimate educational interest in providing Evaluation Services according to the terms of the MOU.
- B. WCER shall require all Authorized Users to comply with FERPA and other applicable state and federal student privacy law. WCER shall require and maintain confidentiality agreements with each Authorized User of Confidential Data. The terms of the Authorized User confidentiality agreements shall contain, at a minimum, the terms and conditions of this educational record release and data use agreement. A copy of the current WCER employee confidentiality agreement is attached to this agreement as Exhibit B. WCER shall perform and cause its subcontractors to perform background checks on all of its employees and agents that are Authorized Users, prior to providing authorized access to Confidential Data. All background checks will be performed in accordance with the State of Wisconsin/University of Wisconsin background checks for employees and contractors.
- C. WCER certifies that it has the capacity to restrict access to Confidential Data solely to Authorized Users and ensure that the Confidential Data is accessed only for the purposes described in this agreement. WCER shall protect Confidential Data in a manner that does not permit personal identification of students and their parents by anyone except those bound by this agreement and MASSACHUSETTS. WCER and its subcontractors subject to this section shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of Confidential Data. A copy of WCER's Standard Security Policies and Procedures is attached to this agreement as Exhibit C. WCER shall notify MASSACHUSETTS in accordance with the procedures in Exhibit C if it learns of any of the following:
 - i. A use of Confidential Data by anyone that is inconsistent with the terms of this agreement or for a use not authorized under the MOU;
 - ii. A security breach to any system containing Confidential Data; or
 - iii. Any disclosure of Confidential Data to anyone other than an Authorized User or MASSACHUSETTS officials authorized to receive Confidential Data.

WCER shall cooperate and take all reasonable means prescribed by MASSACHUSETTS to secure any breaches as soon as practicable.

- D. WCER shall not store, process or transfer Confidential Data outside the United States.
- E. WCER shall not redisclose Confidential Data to any other party, nor shall it request consent from any parent or eligible student to redisclose Confidential Data..
- F. WCER shall destroy all Confidential Data within 45 days after it is no longer needed

to perform the Evaluation Services described in this agreement, upon MASSACHUSETTS' request or upon termination of this agreement, whichever occurs first or unless otherwise agreed upon in writing. WCER shall provide written verification of the data destruction to MASSACHUSETTS within 45 days after the data is destroyed. Prior to destruction, MASSACHUSETTS may request a copy of all electronically stored Confidential Data retained by WCER or its subcontractor in accordance with the Transfer Protocol section below. "Destroy" means to remove Confidential Data from WCER's systems, paper files, records, databases, and any other media regardless of format so that the Confidential Data is permanently irretrievable in the WCER's and Subcontractor's normal course of business.

- G. WCER shall permit MASSACHUSETTS, at MASSACHUSETTS' cost, to audit, upon reasonable request, that it is complying with the Standard Security Policies and Procedures in Exhibit C and/or that it has destroyed the data as verified.
- H. WCER shall collect and use these Confidential Data only for the purpose of assisting MASSACHUSETTS to carry out an audit or evaluation of Federal and State supported education programs and to comply with the Federal legal requirements related to the activities outlined in the MOU, including but not limited to:
 - i. Activities related to the development, administration, scoring and reporting of the annual assessment of student English proficiency;
 - ii. Activities related to the evaluation of federally-supported education programs;
 - iii. Activities related to English language instruction, acquisition, assessment, and achievement; and
 - iv. The development of accountability measures and models for limited English proficient children that relate to these children's development and attainment of English proficiency while meeting challenging State academic content and student academic achievement standards.
- I. If MASSACHUSETTS requests additional services for activities beyond the scope specified in Section H, above, but consistent with MASSACHUSETTS' federal and state requirements, then WCER shall obtain prior written approval from MASSACHUSETTS before accessing Confidential Data. Any Confidential Data collected by WCER under activities approved by MASSACHUSETTS under this sub-section, which is not regularly collected within the scope of Section H, above, but is consistent with the activities of Section H, shall be subject to the terms and conditions of this agreement.
- J. WCER shall obtain from the University of Wisconsin-Madison Institutional Review Board either approval or a determination of exemption for all research conducted using Confidential Data where required by law and/or University policy.
- K. If WCER becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then WCER shall use all reasonable efforts to provide MASSACHUSETTS with prior

notice before disclosure so that MASSACHUSETTS may seek a protective order or other appropriate remedy to prevent the disclosure; provided, however, that WCER will use all reasonable efforts to maintain the confidentiality of Confidential Data. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, WCER will disclose only that portion of Confidential Data that it is legally required to disclose.

4. Prohibited Uses

- A. WCER shall not sell MASSACHUSETTS' Confidential Data, use MASSACHUSETTS' Confidential Data for purposes of targeted advertising to students or any party, or use MASSACHUSETTS' Confidential Data to create a personal profile of a student other than supporting the Evaluation Services described in this Contract. "Targeted Advertising" means selecting and sending advertisements to a student based on information obtained or inferred over time from the student's online behavior, use of applications, or PII.
- B. WCER shall not use Confidential Data to measure, capture, record, or analyze any biological characteristics that can be used for automated recognition of an individual. WCER shall not create or maintain any biometric records, as defined by FERPA, using PII disclosed, captured or received during the course of providing Evaluation Services to MASSACHUSETTS.
- C. WCER shall contractually require any subcontractor that it discloses MASSACHUSETTS' Confidential Data in accordance with this contract to comply with the requirements of this Data Use Agreement.

5. Transparency Requirements

WCER shall provide transparency to parents, school districts and the public about its collection and use of PII for ACCESS for ELLs test administrations by posting the following information in plain English on its public website:

- A. Contact information for an individual within WCER's organization that can provide information on or answer questions related to the use of PII by WCER and Data Recognition Corporation.
- B. An explanation of how the PII will be shared with Subcontractors or disclosed to any third party.
- C. The types of PII WCER collects, generates, or uses. This information must include all PII that is collected regardless of whether it is initially collected or ultimately held individually or in the aggregate.
- D. An explanation of the PII, an explanation of how the PII is used, and the learning purpose for which the PII is collected and used.

- E. WCER shall update this information on its website as necessary to maintain accuracy. WCER acknowledges that MASSACHUSETTS may post this information on its public website, in MASSACHUSETTS' sole discretion.
- F. WCER shall send MASSACHUSETTS a written notice that includes a clear explanation of the proposed changes prior to making a material change to the transparency information required by this section.

6. Use of Aggregate Data.

- A. In order to provide Consortium level data and analysis to WIDA consortium members, WCER will aggregate MASSACHUSETTS data with all other WIDA Consortium member states.
- B. WCER shall follow the recommended practices outlined in the IES-SLDS Technical Brief Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting, December 2010, Brief 3 NCES 2011-603, including the use of a minimum of 10 students for the reporting subgroup size limitation in Aggregate Reporting.

7. Permission to Use Data.

MASSACHUSETTS acknowledges that by entering this agreement it is approving, in writing, of WCER's use of these Confidential Data within the scope of purposes outlined in this agreement and Section 3H, above.

8. Transfer Protocol.

The parties shall work cooperatively to determine the proper medium and method for the transfer of Confidential Data between each other. The party receiving Confidential Data shall confirm the transfer of Confidential Data and notify the transferring party as soon as practicable of any discrepancies between the actual data transferred and the data described in this agreement.

9. Remedies.

WCER acknowledges that the breach of this Agreement on its part may result in irreparable and continuing damage to MASSACHUSETTS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this Agreement by WCER, MASSACHUSETTS, in addition to any other rights and remedies available to it at law or in equity, may be entitled to preliminary and permanent injunctions, enjoining and restraining the breach or threatened breach.

10. Binding Effect and Assignability.

The rights and obligations of each party under this Agreement shall inure to the benefit of and shall be binding upon that party and its respective successors and assigns.

11. Waiver.

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising from this Agreement shall be valid or binding for any purpose unless in writing and duly executed by the party against whom they are asserted.

12. Severability.

Any provision of this Agreement that is declared invalid by a court of competent jurisdiction or by operation of law, shall not affect the validity or enforceability of any other provision of this Agreement.

13. Term.

The term of this Agreement shall be the same as the term of the MOU of even date herewith between MASSACHUSETTS and WCER/University of Wisconsin for the development, administration and scoring of ACCESS for ELL's and other testing services, unless terminated earlier by either party upon thirty (30) days advanced written notice.

14. Data Custodians.

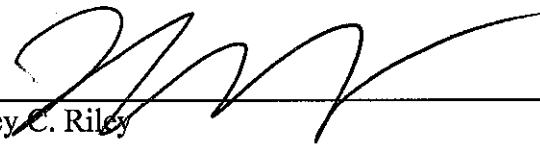
The following individuals are the designated data custodians for their respective entities with respect to this educational record release and data use agreement:

For WCER
WIDA Consortium
H. Gary Cook
Research Director
1025. W Johnson St., MD#23
Madison, WI 53706
Phone: 608-890-0471
Email: hcook@wisc.edu

For Data Recognition Corporation – Assessment platform vendor
Karen Jans
Sr. Director, Education Programs
13490 Bass Lake Road
Maple Grove, MN 55311
Phone: 763-268-2040
Email: kjans@datarecognitioncorp.com

This educational record release and data use agreement will become effective once MASSACHUSETTS and WCER both sign it. The date of this agreement shall be the date on which it is signed by the last party to sign it.


For Massachusetts Department of Elementary and Secondary Education



Jeffrey C. Riley
Commissioner
Massachusetts Department of Elementary and Secondary Education


7/10/16
Date

For WCER



Robert Gratzl, Managing Officer
Research & Sponsored Programs

6/29/15
Date



Richelle Martin
Assistant Director, Office of Industrial Partnerships
University of Wisconsin-Madison

Schedule D

WIDA Consortium Board

1. Purpose

- a. Advisory - The WIDA Consortium Board serves as an advisory board to the WIDA Consortium operational leadership. The WIDA Consortium leadership solicits input on and the WIDA Consortium Board offers guidance and support on the annual offering of WIDA's Core Package of educational services in consideration of recommendations made by subcommittees.
- b. Collaborative - The WIDA Consortium Board provides an organized opportunity for SEAs to associate and address common issues relating to English learners, the academic English language development of kindergarten through grade 12 students and other issues related to SEA and LEA requirements of Title I and III of ESSA.

2. Structure

- a. Board Member Appointment - Each WIDA Consortium Member should appoint one SEA representative to the WIDA Consortium Board. Wisconsin, Illinois and Florida are each entitled to appoint one additional representative to the WIDA Consortium Board.
- b. Term of WIDA Consortium Board Members - Each WIDA Consortium Board Member will serve until replaced by their respective SEA or until their SEA is no longer a WIDA Consortium Member.
- c. Removal of WIDA Consortium Board Members - WIDA Consortium Board Members may only be removed by their respective SEA. An SEA will appoint a successor member to the WIDA Consortium Board if that SEA removes its appointed member.
- d. Compensation - Members of the WIDA Consortium Board do not receive compensation.

3. Operations

- a. General - WCER, through the WIDA Consortium will facilitate the activities of the WIDA Consortium Board. WCER will provide the necessary personnel to serve as a liaison between the WIDA Consortium Board Members and the WIDA Consortium.
- b. Meetings - The WIDA Consortium will hold the following meetings:
 - i. Annual Meeting - WCER will conduct an annual gathering of the WIDA Consortium Board. The gathering will be held in late spring.
 - ii. Committee Meetings - WCER will conduct committee meetings of the WIDA Consortium Board as provided in Section 4.c. below, Committees.
 - iii. Special Meetings - WCER will conduct special meetings concerning the ongoing development and review of the annual offering of the Core Package of educational services as necessary. WCER may hold special meetings either in person or via teleconference. Attendance at special meetings may be held to a limited number of WIDA Consortium Board Members.
- c. Communications

- i. General – WCER will provide the necessary infrastructure to facilitate the WIDA Consortium Board activities.
 - ii. Meeting Summaries – WCER will maintain meeting notes and provide meeting summaries to the WIDA Consortium Board Members after any WIDA Consortium Board meeting.
- d. Costs
 - i. General - WCER will pay the costs associated with operating the WIDA Consortium Board.
 - ii. Travel Expenses - WCER will pay for/reimburse WIDA Consortium Board Members' travel expenses incurred in connection with attending a WIDA Annual Board meeting. If an SEA wants to bring *up to two additional people* to attend the WIDA Annual Board Meeting, that SEA is responsible for their travel expenses. In the first year an SEA becomes a WIDA Consortium Member WCER will pay for/reimburse the travel costs of one additional person from that state to attend the WIDA Annual Board meeting. All travel expense reimbursements will be made in accordance with State of Wisconsin guidelines.
- e. Fiscal Impact - The activities of the WIDA Consortium Board will have no direct fiscal impact on individual WIDA Consortium Members without an additional written agreement between the individual WIDA Consortium members and WCER. If WIDA Consortium Board Members recommend and the WIDA Consortium adopts any changes to the Core Package of educational services that affect the price of the Core Package, then no price change will take effect until the individual WIDA Consortium Members execute written agreements with WCER that reflect these changes.

4. Activities

- a. General - The activities of the WIDA Consortium Board include the following:
 - i. Attendance at the WIDA Annual Board meeting;
 - ii. Participation on WIDA subcommittees as appointed; and
 - iii. Participation at special meetings conducted by the WIDA Consortium.
- b. WIDA Annual Board Meetings - WCER, through the WIDA Consortium, will coordinate the meetings of the WIDA Consortium Board.
 - i. Meeting Agendas - The WIDA Consortium will set the agendas for the WIDA Annual Board meetings.
 - ii. Meeting Activities
 - 1. Presentations - The WIDA Consortium will present updates on WIDA Consortium activities related to the implementation, research, and development of the Core Package.
 - 2. Discussion and Review Groups - The WIDA Consortium will facilitate discussion groups on targeted topics related to the implementation, research, and development of the Core Package. The discussion groups are an opportunity for WIDA Consortium Board Members to provide input to the WIDA Consortium and to interact and exchange ideas with other SEAs.

3. Policy Orientation and Priority Setting - The WIDA Consortium may poll the WIDA Consortium Board in order to ascertain the position of WIDA Consortium Board Members on issues related to the policy orientation and priorities of the implementation, research and development of the Core Package. Each WIDA Consortium Board Member present will receive one vote. The votes will be recorded by the WIDA Consortium.

c. Committees

- i. Executive Committee – The Executive Committee is a standing committee that meets to discuss issues that require cross-collaboration among subcommittees.

1. Purpose - The purpose of the Executive Committee is to recommend, advise, and comment on policy and priority issues related to the implementation, research, and development of the Core Package and provide recommendations to WIDA leadership.
2. Makeup - Membership on the Executive Committee will consist of the following:
 - a. SEA representatives (one from each subcommittee with expertise in that area);
 - b. One LEA representative (appointed by the LEA Advisory Committee); and
 - c. Three standing members (one Wisconsin Department of Public Instruction representative, one Illinois State Board of Education representative, and one Florida Department of Education representative).
3. Term - Executive Committee members serve a two year term.
4. Meetings - The Executive Committee meets virtually and face-to-face each year. Face-to-face meetings include the WIDA Annual Board Meeting in June and one in the late fall. Virtual meetings are scheduled as needed.

- ii. Subcommittee organizational structure – WCER, through the WIDA Consortium, will form standing subcommittees for the purpose of vetting policy and priority issues related to the implementation, research, and development of the Core Package. Each subcommittee will focus on one main component of the Core Package and may collaborate with other subcommittees, as needed.

1. Standing subcommittees:
 - a. Accessibility, Accommodations, and Equity
 - b. Assessment-Development and Implementation
 - c. Assessment-Psychometrics
 - d. National Policy
 - e. Professional Learning
 - f. Research
 - g. Standards
2. SEA Membership:
 - a. WIDA Consortium Members may have representation on

- three subcommittees, plus Research, for a maximum of four subcommittees.
- b. Each SEA representative may join no more than two subcommittees.
- c. No more than one SEA representative per consortium state member may serve on any one subcommittee.
- 3. Membership process - SEA representatives interested in serving on a subcommittee must complete and submit the Subcommittee Interest Questionnaire during open enrollment June 1–30. Notices are sent to members in July.
- 4. Terms of subcommittee membership - Each SEA representative appointed to serve on a subcommittee will actively serve to the end of their appointed term based on subcommittee guidance.
- 5. Compensation - Members serving on WIDA subcommittees do not receive compensation from WIDA.
- 6. Communications - Notes from subcommittees will be made available to all WIDA Consortium members via the secure website. Information and updates will be shared through the established SEA Quarterly and Regional meetings schedule, in addition to standard communication channels.
- iii. LEA Advisory Committee – The LEA Advisory Committee is a standing committee comprised of local education representatives from each of the regions.
 - 1. Purpose - The purpose of the LEA Advisory Committee is to raise and vet policy and priority issues related to the implementation, research and development of the Core Package with respect to issues effecting local education agencies.
 - 2. Makeup - Two LEAs per region, one representing Subgroup A and one representing Subgroup B, will be nominated by their SEA and approved by the regional group. Regions and Subgroups are defined on the WIDA website at <https://www.wida.us/membership/regions/>.
 - 3. Term of membership – LEAs serve a two-year term on a staggered rotation as outlined below.
 - a. Subgroup A for all four Regional Groups
 - i. June 15, 2015–June 14, 2017
 - ii. June 15, 2017–June 14, 2019
 - iii. June 15, 2019–June 14, 2021
 - b. Subgroup B for all four Regional Groups
 - i. June 15, 2016–June 14, 2018
 - ii. June 15, 2018–June 14, 2020
 - iii. June 15, 2020–June 14, 2022
 - 4. Meetings – The LEA Advisory Committee meets five times annually: one face-to-face session at WIDA Central in Madison, and quarterly, four 1.5 hour WebEx sessions. There may be additional opportunities to share feedback by independent review

of materials and/or one-on-one discussions with various WIDA departmental members.

- iv. Ad Hoc Committees – WIDA may form ad hoc committees as needed. The ad hoc committees meet to address a specific task or object and dissolve after completion or accomplishment of the assigned task or objective.

5. Definitions

- a. SEA – “SEA” means state educational agency and includes each state’s education Superintendent.
- b. LEA – “LEA” means local educational agency and includes any educational agency within a WIDA Consortium Member state subject to the requirements of Titles I and III of ESSA.
- c. WCER – “WCER” means Wisconsin Center for Education Research at the University of Wisconsin-Madison.
- d. WIDA Consortium – “WIDA Consortium” means the operational unit of the Wisconsin Center for Education Research at the University of Wisconsin-Madison, which offers educational services related to English language learners and academic English language development for pre-kindergarten through grade 12.
- e. WIDA Consortium Member – “WIDA Consortium Member” means any state educational agency that approves and/or purchases the Core Package of WIDA Consortium educational services to satisfy the state and local educational agencies requirements of Title I and Title III of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA), which pertain to: the academic assessment of limited English proficient students; the academic assessment of English language proficiency; the development and meeting of annual measurable achievement objectives for limited English proficient students and the building and enhancement of capacity to offer programs that assist limited English proficient students in obtaining academic English language proficiency.
- f. WIDA Consortium Board Member – “WIDA Consortium Board Member” means any person appointed to the WIDA Consortium Board according to the Board Member Appointment subsection below, *see* sec. 3a.
- g. Core Package - “Core Package” means the multi-state copyright licenses and related educational services offered by WCER under the name WIDA Consortium to WIDA Consortium Members, namely: limited copyright licenses to certain WIDA assessments, including ACCESS for ELLs, Alternate ACCESS for ELLs, the WIDA Screener, language development standards and resource guides, instructional and educator training/support materials; technical assistance and professional learning associated with implementing the WIDA ELD Standards; the printing, distributing, scoring and reporting of the ACCESS for ELLs English language test; and educator and technical assistance and professional learning associated with administering and interpreting the ACCESS for ELLs English language test and test results. WIDA Consortium Members all receive the same Core Package of educational services. Individual member States may contract with WCER to obtain enhancements to the Core Package for additional charges.

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at www.mass.gov/osc under Guidance For Vendors - Forms or www.mass.gov/osd under OSD Forms.

| | | | |
|---|--------------------------|--|--------------------------|
| CONTRACTOR LEGAL NAME: University of Wisconsin-Madison (and d/b/a): WIDA Consortium at WCER | | COMMONWEALTH DEPARTMENT NAME: Dept of Elementary & Secondary Education MMARS Department Code: DOE | |
| Legal Address: (W-9, W-4,T&C): 21 N. Park St. Ste. 510 Madison, WI 53715 | | Business Mailing Address: 75 Pleasant St. Malden, MA 02148 | |
| Contract Manager: Becki Kohl | | Billing Address (if different): | |
| E-Mail: rtkohl@wisc.edu | | Contract Manager: Michol Stapel | |
| Phone: 608-890-0410 | Fax: 608-263-3733 | E-Mail: mstapel@doe.mass.edu | |
| Contractor Vendor Code: VC6000242221 | | Phone: 781-338-3625 | Fax: 781-338-3630 |
| Vendor Code Address ID (e.g. "AD001"): AD | | MMARS Doc ID(s): | |
| (Note: The Address ID must be set up for EFT payments.) | | RFR/Procurement or Other ID Number: | |

| | |
|--|--|
| <p><u> </u> NEW CONTRACT</p> <p>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</p> <p><u> </u> Statewide Contract (OSD or an OSD-designated Department)</p> <p><u> </u> Collective Purchase (Attach OSD approval, scope, budget)</p> <p><u> </u> Department Procurement (includes State or Federal grants 815 CMR 2.00) (Attach RFR and Response or other procurement supporting documentation)</p> <p><u> </u> Emergency Contract (Attach justification for emergency, scope, budget)</p> <p><u> </u> Contract Employee (Attach Employment Status Form, scope, budget)</p> <p><u> </u> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)</p> | <p><u> </u> CONTRACT AMENDMENT</p> <p>Enter Current Contract End Date <u>Prior</u> to Amendment: June 30, 2017.</p> <p>Enter Amendment Amount: \$ _____ (or "no change")</p> <p>AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.)</p> <p><u> </u> Amendment to Scope or Budget (Attach updated scope and budget)</p> <p><u> </u> Interim Contract (Attach justification for Interim Contract and updated scope/budget)</p> <p><u> </u> Contract Employee (Attach any updates to scope or budget)</p> <p><u> </u> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)</p> |
|--|--|

The following **COMMONWEALTH TERMS AND CONDITIONS (T&C)** has been executed, filed with CTR and is incorporated by reference into this Contract.

 Commonwealth Terms and Conditions **Commonwealth Terms and Conditions For Human and Social Services**

COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.

 Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)

 Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or *new* Total if Contract is being amended). \$ _____

PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting **accelerated** payments must identify a PPD as follows: Payment issued within 10 days % PPD; Payment issued within 15 days % PPD; Payment issued within 20 days % PPD; Payment issued within 30 days % PPD. If PPD percentages are left blank, identify reason: agree to standard 45 day cycle statutory/legal or Ready Payments (G.L. c. 29, § 23A); only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) As a member of WIDA, WCER administers the English language test, Assessing Communication and Comprehension in English State to State for English Language Learners (under the brand name ACCESS for ELLs) and related evaluation services, technical assistance and professional development.

ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:

 1. may be incurred as of the **Effective Date** (latest signature date below) and **no** obligations have been incurred **prior** to the **Effective Date**.

 2. may be incurred as of , 20 , a date **LATER** than the **Effective Date** below and **no** obligations have been incurred **prior** to the **Effective Date**.

 3. were incurred as of , 20 , a date **PRIOR** to the **Effective Date** below, and the parties agree that payments for any obligations incurred prior to the **Effective Date** are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of June 30, 2020, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached **Contractor Certifications** (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable **Commonwealth Terms and Conditions**, this Standard Contract Form including the **Instructions and Contractor Certifications**, the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in **801 CMR 21.07**, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

| | |
|---|---|
| <p>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</p> <p>X: <u>[Signature]</u> Date: <u>6/29/18</u></p> <p>(Signature and Date Must Be Handwritten At Time of Signature)</p> <p>Print Name: <u>Robert Gratzl, Managing Officer</u></p> <p>Print Title: <u>Research & Sponsored Programs</u></p> | <p>AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:</p> <p>X: <u>[Signature]</u> Date: <u>7-3-18</u></p> <p>(Signature and Date Must Be Handwritten At Time of Signature)</p> <p>Print Name: <u>William Bell</u></p> <p>Print Title: <u>Chief Financial Officer</u></p> |
|---|---|

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



INSTRUCTIONS AND CONTRACTOR CERTIFICATIONS

The following Instructions and terms are incorporated by reference and apply to this Standard Contract Form. Text that appears underlined indicates a "hyperlink" to an Internet or bookmarked site and are unofficial versions of these documents and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. Please note that not all applicable laws have been cited.

CONTRACTOR LEGAL NAME (AND D/B/A): Enter the Full Legal Name of the Contractor's business as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) and the applicable Commonwealth Terms and Conditions If Contractor also has a "doing business as" (d/b/a) name, BOTH the legal name and the "d/b/a" name must appear in this section.

Contractor Legal Address: Enter the Legal Address of the Contractor as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) and the applicable Commonwealth Terms and Conditions, which must match the legal address on the 10991 table in MMARS (or the Legal Address in HR/CMS for Contract Employee).

Contractor Contract Manager: Enter the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing Contract issues. The Contract Manager is considered "Key Personnel" and may not be changed without the prior written approval of the Department. If the Contract is posted on Comm-PASS, the Contract Manager must be listed on the Vendor Section tab.

Contractor E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Contractor Contract Manager. This information must be kept current by the Contractor to ensure that the Department can contact the Contractor and provide any required legal notices. Notice received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any written legal notice requirements.

Contractor Vendor Code: The Department must enter the MMARS Vendor Code assigned by the Commonwealth. If a Vendor Code has not yet been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department is responsible under the Vendor File and W-9s Policy for verifying with authorized signatories of the Contractor, as part of contract execution, that the legal name, address and Federal Tax Identification Number (TIN) in the Contract documents match the state accounting system.

Vendor Code Address ID: (e.g., "AD001") The Department must enter the MMARS Vendor Code Address ID identifying the payment remittance address for Contract payments, which MUST be set up for EFT payments PRIOR to the first payment under the Contract in accordance with the Bill Paying and Vendor File and W-9s policies.

COMMONWEALTH DEPARTMENT NAME: Enter the full Department name with the authority to obligate funds encumbered for the Contract.

Commonwealth MMARS Alpha Department Code: Enter the three (3) letter MMARS Code assigned to this Commonwealth Department in the state accounting system.

Department Business Mailing Address: Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for legal notice.

Department Billing Address: Enter the Billing Address or email address if invoices must be sent to a different location. Billing or confirmation of delivery of performance issues should be resolved through the listed Contract Managers.

Department Contract Manager: Identify the authorized Contract Manager who will be responsible for managing the Contract, who should be an authorized signatory or an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing Contract issues.

Department E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Department Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

MMARS Document ID(s): Enter the MMARS 20 character encumbrance transaction number associated with this Contract which must remain the same for the life of the Contract. If multiple numbers exist for this Contract, identify all Doc IDs.

RFR/Procurement or Other ID Number or Name: Enter the Request for Response (RFR) or other Procurement Reference number, Contract ID Number or other reference/tracking number for this Contract or Amendment and will be entered into the Board Award Field in the MMARS encumbrance transaction for this Contract.

NEW CONTRACTS (left side of Form):

Complete this section ONLY if this Contract is brand new. (Complete the **CONTRACT AMENDMENT** section for any material changes to an existing or an expired Contract, and for exercising options to renew or annual contracts under a multi-year procurement or grant program.)

PROCUREMENT OR EXCEPTION TYPE: Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See State Finance Law and General Requirements, Acquisition Policy and Fixed Assets, the Commodities and Services Policy and the Procurement Information Center (Department Contract Guidance) for details.

Statewide Contract (OSD or an OSD-designated Department). Check this option for a Statewide Contract under OSD, or by an OSD-designated Department.

Collective Purchase approved by OSD. Check this option for Contracts approved by OSD for collective purchases through federal, state, local government or other entities.

Department Contract Procurement. Check this option for a Department procurement including state grants and federal sub-grants under 815 CMR 2.00 and State Grants and Federal Subgrants Policy, Departmental Master Agreements (MA). If multi-Department user Contract, identify multi-Department use is allowable in Brief Description.

Emergency Contract. Check this option when the Department has determined that an unforeseen crisis or incident has arisen which requires or mandates immediate purchases to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of clients or other persons or serious damage to property is threatened.

Contract Employee. Check this option when the Department requires the performance of an Individual Contractor, and when the planned Contract performance with an Individual has been classified using the Employment Status Form (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

Legislative/Legal or Other. Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

CONTRACT AMENDMENT (Right Side of Form)

Complete this section for any Contract being renewed, amended or to continue a lapsed Contract. All Contracts with available options to renew must be amended referencing the original procurement and Contract doc ids, since all continuing contracts must be maintained in the same Contract file (even if the underlying appropriation changes each fiscal year.) "See Amendments, Suspensions, and Termination Policy."

Enter Current Contract End Date: Enter the termination date of the Current Contract being amended, even if this date has already passed. (Note: Current Start Date is not requested since this date does not change and is already recorded in MMARS.)

Enter Amendment Amount: Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter "no change" for Rate Contracts or if no change.

AMENDMENT TYPE: Identify the type of Amendment being done. Documentation supporting the updates to performance and budget must be attached. **Amendment to Scope or Budget.** Check this option when renewing a Contract or executing any Amendment ("material change" in Contract terms) even if the Contract has lapsed. The parties may negotiate a change in any element of Contract performance or cost identified in the RFR or the Contractor's response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response, provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response. Any "material" change in the Contract terms must be memorialized in a formal Amendment even if a corresponding MMARS transaction is not needed to support the change. Additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

Interim Contracts. Check this option for an Interim Contract to prevent a lapse of Contract performance whenever an existing Contract is being re-procured but the new procurement has not been completed, to bridge the gap during implementation between an expiring and a new procurement, or to contract with an interim Contractor when a current Contractor is unable to complete full performance under a Contract.

Contract Employee. Check this option when the Department requires a renewal or other amendment to the performance of a Contract Employee.

Legislative/Legal or Other. Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach supporting documentation to explain and justify the exemption and whether Contractor selection has been publicly posted.

COMMONWEALTH TERMS AND CONDITIONS

Identify which Commonwealth Terms and Conditions the Contractor has executed and is incorporated by reference into this Contract. This Form is signed only once and recorded on the Vendor Customer File (VCUST). See Vendor File and W-9s Policy.

COMPENSATION

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



Identify if the Contract is a **Rate Contract** (with no stated Maximum Obligation) or a **Maximum Obligation Contract** (with a stated Maximum Obligation) and identify the Maximum Obligation. If the Contract is being amended, enter the new Maximum Obligation based upon the increase or decreasing Amendment. The Total Maximum Obligation must reflect the total funding for the dates of service under the contract, including the Amendment amount if the Contract is being amended. The Maximum Obligation must match the MMARS encumbrance. Funding and allotments must be verified as available and encumbered prior to incurring obligations. If a Contract includes both a Maximum Obligation component and Rate Contract component, check off both, specific Maximum Obligation amounts or amended amounts and Attachments must clearly outline the Contract breakdown to match the encumbrance.

PAYMENTS AND PROMPT PAY DISCOUNTS

Payments are processed within a 45 day payment cycle through EFT in accordance with the Commonwealth Bill Paying Policy for investment and cash flow purposes. Departments may NOT negotiate accelerated payments and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth's loss of investment earnings for this earlier payment, or unless a payment is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under G.L. c. 29, s. 23A). See Prompt Pay Discounts Policy. PPD are identified as a percentage discount which will be automatically deducted when an accelerated payment is made. Reduced contracts rates may not be negotiated to replace a PPD. If PPD fields are left blank please identify that the Contractor agrees to the standard 45 day cycle; a statutory/legal exemption such as Ready Payments (G.L. c. 29, § 23A); or only an initial accelerated payment for reimbursements or start up costs for a grant, with subsequent payments scheduled to support standard EFT 45 day payment cycle. Financial hardship is not a sufficient justification to accelerate cash flow for all payments under a Contract. Initial grant or contract payments may be accelerated for the first invoice or initial grant installment, but subsequent periodic installments or invoice payments should be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle in accordance with the Bill Paying Policy. Any accelerated payment that does not provide for a PPD must have a legal justification in Contract file for audit purposes explaining why accelerated payments were allowable without a PPD.

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the Expenditure Classification Handbook) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2012" or "FY2012-14"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

ANTICIPATED START DATE

The Department and Contractor must certify WHEN obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the Effective Date (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2012" or "FY2012-14") in the Brief Description section. Performance starts and encumbrances reflect the default Effective Date (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to fiscal year. Option 3 is used in lieu of the Settlement and Release Form when the Contract/Amendment is signed late, and obligations have already been incurred by the Contractor prior to the Effective Date for which the Department has either requested, accepted or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility, and approximate costs. Any obligations incurred outside the scope of the Effective Date under any Option listed, even if the incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth from further obligations for the identified performance. All settlement payments require justification and must be under same encumbrance and object codes as the Contract payments. Performance dates are subject to G.L. c.4, § 9.

CONTRACT END DATE

The Department must enter the date that Contract performance will terminate. If the Contract is being amended and the Contract End Date is not changing, this date must be re-entered again here. A Contract must be signed for at least the initial duration but not longer than the period of procurement listed in the RFR, or other solicitation document (if applicable). No new performance is allowable beyond the end date without an amendment, but the Department may allow a Contractor to complete minimal close out performance obligations if substantial performance has been made prior to the termination date of the Contract and prior to the end of the fiscal year in which payments are appropriated, provided

that any close out performance is subject to appropriation and funding limits under state finance law, and CTR may adjust encumbrances and payments in the state accounting system to enable final close out payments. Performance dates are subject to G.L. c.4, § 9.

CERTIFICATIONS AND EXECUTION

See Department Head Signature Authorization Policy and the Contractor Authorized Signatory Listing for policies on Contractor and Department signatures.

Authorizing Signature for Contractor/Date: The Authorized Contractor Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Contract Start Date". Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. **Rubber stamps, typed or other images are not acceptable.** Proof of Contractor signature authorization on a Contractor Authorized Signatory Listing may be required by the Department if not already on file.

Contractor Name /Title: The Contractor Authorized Signatory's name and title must appear legibly as it appears on the Contractor Authorized Signatory Listing.

Authorizing Signature For Commonwealth/Date: The Authorized Department Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Start Date". **Rubber stamps, typed or other images are not accepted.** The Authorized Signatory must be an employee within the Department legally responsible for the Contract. See Department Head Signature Authorization. The Department must have the legislative funding appropriated for all the costs of this Contract or funding allocated under an approved Interdepartmental Service Agreement (ISA). A Department may not contract for performance to be delivered to or by another state department without specific legislative authorization (unless this Contract is a Statewide Contract). For Contracts requiring Secretariat signoff, evidence of Secretariat signoff must be included in the Contract file.

Department Name /Title: Enter the Authorized Signatory's name and title legibly.

CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein:

Commonwealth and Contractor Ownership Rights. The Contractor certifies and agrees that the Commonwealth is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish Commonwealth rights to deliverables nor may Contractors sell products developed with Commonwealth resources without just compensation. The Contract should detail all Commonwealth deliverables and ownership rights and any Contractor proprietary rights.

Qualifications. The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

Business Ethics and Fraud, Waste and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

Collusion. The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

Public Records and Access The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under Executive Order 195 and G.L. c. 11, s.12 seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 950 C.M.R. 32.00.

Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



including, Executive Order 147; G.L. c. 29, s. 29F; G.L. c. 30, § 39B; G.L. c. 149, § 27C; G.L. c. 149, § 44C; G.L. c. 149, § 148B and G.L. c. 152, s. 25C.

Applicable Laws. The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; the Official Code of Massachusetts Regulations; Code of Massachusetts Regulations (unofficial); 801 CMR 21.00 (Procurement of Commodity and Service Procurements, Including Human and Social Services); 815 CMR 2.00 (Grants and Subsidies); 808 CMR 1.00 (Compliance, Reporting and Auditing for Human And Social Services); AICPA Standards; confidentiality of Department records under G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.

Invoices. The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth Bill Paying Policy. Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15th for performance made and received (goods delivered, services completed) prior to June 30th, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15th or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of this estimated payment releases the Commonwealth from further claims for these invoices. If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.

Payments Subject To Appropriation. Pursuant to G.L. c. 29 § 26, § 27 and § 29, Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by G.L. c. 29, § 9C. A Department cannot authorize or accept performance in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

Intercept. Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to G.L. c. 7A, s. 3 and 815 CMR 9.00. Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

Tax Law Compliance. The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; State tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts. The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at least 45 days prior to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is any risk to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

Federal Anti-Lobbying and Other Federal Requirements. If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

Protection of Personal Data and Information. The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under G.L. c. 93H and c. 66A and Executive Order 504. The Contractor is required to comply with G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the

Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) Information Technology Division (ITD) Protection of Sensitive Information, provided further that any Contractor having access to credit card or banking information of Commonwealth customers certifies that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth and provide access to any information necessary for the Commonwealth to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

Corporate and Business Filings and Reports. The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of the Commonwealth, the Office of the Attorney General or other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

Employer Requirements. Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to G.L. c. 5, s. 1 (Prevailing Wages for Printing and Distribution of Public Documents); G.L. c. 7, s. 22 (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); minimum wages and prevailing wage programs and payments; unemployment insurance and contributions; workers' compensation and insurance, child labor laws, AGO fair labor practices; G.L. c. 149 (Labor and Industries); G.L. c. 150A (Labor Relations); G.L. c. 151 and 455 CMR 2.00 (Minimum Fair Wages); G.L. c. 151A (Employment and Training); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); G.L. c. 152 (Workers' Compensation); G.L. c. 153 (Liability for Injuries); 29 USC c. 8 (Federal Fair Labor Standards); 29 USC c. 28 and the Federal Family and Medical Leave Act.

Federal And State Laws And Regulations Prohibiting Discrimination including but not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 U.S.C. Sec. 12101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16 s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act); Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

Small Business Purchasing Program (SBPP). A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP SmartBid subscription process at: www.comm-pass.com and with acceptance of the terms of the SBPP participation agreement.

Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized). The Information Technology Mandatory Specifications and the IT Acquisition Accessibility Contract Language are incorporated by reference into Information Technology Contracts. The following language will apply to Information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the Expenditure Classification Handbook or other Contracts as approved by CTR or OSD. Pursuant to Section 11. Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

Northern Ireland Certification. Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor 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 any activity in Northern Ireland.

Pandemic, Disaster or Emergency Performance. In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the Commonwealth even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

Consultant Contractor Certifications (For Consultant Contracts "HH" and "NN" and "U05" object codes subject to G.L. Chapter 29, s. 29A). Contractors must make required disclosures as part of the RFR Response or using the Consultant Contractor Mandatory Submission Form.

Attorneys. Attorneys or firms providing legal services or representing Commonwealth Departments may be subject to G.L. c. 30, s. 65, and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under the Contract.

Subcontractor Performance. The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

EXECUTIVE ORDERS

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts.

For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

Executive Order 130. Anti-Boycott. The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)-(4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

Executive Order 346. Hiring of State Employees By State Contractors Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

Executive Order 444. Disclosure of Family Relationships With Other State Employees. Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

Executive Order 504. Regarding the Security and Confidentiality of Personal Information. For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the

Commonwealth Information Technology Division's Security

Policies. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "Security Policies"; (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the Commonwealth's Terms and Conditions, withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

Executive Orders 523, 524 and 526. Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478), Executive Order 524 (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390), Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program.) All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to purchase 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. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

ADDENDUM TO STANDARD CONTRACT FORM for Contract between Massachusetts Department of Elementary and Secondary Education and the Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison's Wisconsin Center for Education Research (WCER).

The Commonwealth's Standard Contract Form must be complied with, except in those areas identified and clarified by this addendum. Notwithstanding any language to the contrary, this addendum will control the agreement between the parties for the provisions covered by this addendum.

Introductory Paragraph

The Commonwealth is joining the WIDA Consortium, housed at WCER, in order to obtain access to WIDA Consortium assessment products and services made available by WCER to a consortium of other state departments of education (WIDA Consortium members). WCER is providing the Commonwealth a license to use the WIDA Consortium products and services to implement the WIDA Consortium products.

Commonwealth and Contractor Ownership Rights.

The WIDA Consortium products provided under this license shall not be considered deliverables for which the Commonwealth is entitled ownership and possession. Only products developed specially and solely for Massachusetts shall be considered deliverables for which the Commonwealth is entitled ownership and possession.

Applicable Laws.

Contractor agrees to comply with all applicable laws to the extent that compliance that does not conflict with the sovereign immunity of the State of Wisconsin.

Tax Law Compliance.

Contractor certifies compliance with Federal and State of Wisconsin tax laws. Due to Contractor's status as a sovereign state government, Massachusetts state tax laws are not applicable.

Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts.

Contractor will only inform the Department of any legal proceeding against Contractor or Contractor's key personnel and subcontractors that may have a material impact on the performance of this contract.

Protection of Personal Data and Information.

The Department represents that the requirements of this Protection of Personal Data and Information section is addressed in the Education Record Disclosure and Data Use Agreement, Schedule C to the attached WIDA Consortium Memorandum of Understanding.

Employer Requirements.

Contractor certifies compliance with Federal and State of Wisconsin employment laws. Due to Contractor's status as a sovereign state government, Massachusetts state employment laws are not applicable.

Federal And State Laws And Regulations Prohibiting Discrimination.

Contractor certifies compliance with Federal and State of Wisconsin non-discrimination laws, including the Wisconsin Fair Employment Act and similar Federal law. Due to Contractor's status as a sovereign state government, Massachusetts state non-discrimination laws are not applicable.

Limitation of Liability for Information Technology Contracts.

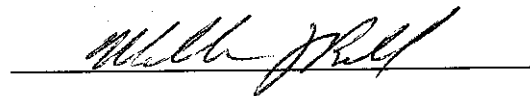
The Department represents that this is not an Information Technology Contract.

Contractor Authorized Signatory:

Department of Elementary and Secondary
Education Authorized Signatory:



Name



Title:

Robert Gratzl, Managing Officer
Research & Sponsored Programs

Title:

William Bell
Chief Financial Officer

Date:

6/29/18

Date:

7-3-18

ADDENDUM TO TERMS AND CONDITIONS for Contract between Massachusetts Department of Elementary and Secondary Education and the Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison's Wisconsin Center for Education Research (WCER).

The Commonwealth's Terms and Conditions must be complied with, except in those areas identified and clarified by this addendum. Notwithstanding any language to the contrary, this addendum will control the agreement between the parties for the provisions covered by this addendum.

Introductory Paragraph

The Commonwealth is joining the WIDA Consortium, housed at WCER, in order to obtain access to WIDA Consortium assessment products and services made available by WCER to a consortium of other state departments of education (WIDA Consortium members). WCER is providing the Commonwealth a license to use the WIDA Consortium products and services to implement the WIDA Consortium products. The WIDA Consortium products provided under this license shall not be considered deliverables for which the Commonwealth is entitled ownership and possession. Only products developed special and solely for Massachusetts shall be considered deliverables for which the Commonwealth is entitled ownership and possession.

Paragraph 2.

WCER will have 30 days to provide any written objection to a payment or partial payment before such acceptance shall operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a contract.

Paragraph 4.

The ability to terminate the contract shall be mutual according to the terms of the MOU. WCER acknowledges that the Commonwealth's right to terminate or suspend the contract includes the event of an elimination of an appropriation or availability of sufficient funds for the purpose of the contract.

Paragraph 9.

The Department has approved WCER's current subcontract with Data Recognition Corporation (DRC) and the Center for Applied Linguistics (CAL). WCER will give the Department notice as soon as practicable if it intends to obtain the services provided by DRC and CAL from a new subcontractor. The Department acknowledges that WCER may subcontract with individuals for the provision of professional development services associated with the WIDA Consortium products. The Department will have the opportunity to select and approve of any subcontracted individual prior to scheduling and professional development. The Department may exercise its right to terminate this contract if it is dissatisfied with any proposed subcontractor.

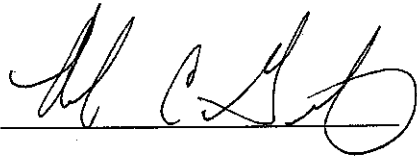
Paragraphs 11 and 14.

It is understood that other states may be constitutionally prohibited, like the Commonwealth, from contractually agreeing to indemnifying other entities. The parties agree that any claim, including counterclaims, against the Commonwealth of Massachusetts, its agencies, departments, officials or employees, arising out of or in connection with activities of the contract shall be governed by the laws of Massachusetts and shall be filed in an appropriate court in that forum. The parties further agree that any claim, including counterclaims, against the University of Wisconsin-Madison's Wisconsin Center for Education Research (WCER), its agencies, departments, officials or employees, arising out of or in connection with activities of the contract shall be governed by the laws of Wisconsin and filed in an appropriate court in that forum. It is understood and agreed that prior to the filing of any formal action that the parties agree to pursue mediation or other informal voluntary negotiations, in a mutually agreeable location, with each party being responsible for its own expenses, and the expenses of a mediator to be shared by each party, to attempt to resolve the dispute in a cost effective and efficient manner prior to the filing of a claim. It is understood and agreed by the parties that any indemnification or payment of damages arising from this contract shall be made in accordance with the law of the state making payment and subject to appropriation.

Certification

The contractor is certifying its intention and current ability to comply with the Commonwealth terms and conditions. Any future breach of the terms and conditions will be subject to the contractual remedies provided in the terms and conditions and/or under law, not as a matter of perjury. By signing this addendum, the Commonwealth certifies the same.
Accepted:

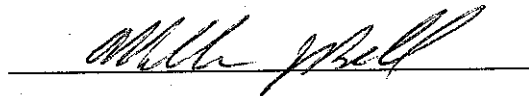
Contractor Authorized Signatory:



Title:

Robert Gratzl, Managing Officer
Research & Sponsored Programs

Department of Elementary and Secondary
Education Authorized Signatory:



Title:

William Bell
Chief Financial Officer

Date:

6/29/18

Date:

7-3-18



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 these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

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

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

3. Contractor Payment Mechanism. All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's 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 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 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, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority



COMMONWEALTH TERMS AND CONDITIONS

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

CONTRACTOR AUTHORIZED SIGNATORY: _____

(signature)

Print Name: Robert Gratzl

Title: Managing Officer

Date: 6/29/18

(Check One): ☒ Organization ☐ Individual

Full Legal Organization or Individual Name: Board of Regents of the University of Wisconsin System

Doing Business As: Name (If Different): UW-Madison

Tax Identification Number: 396006492

Address: 21 N Park Street, Suite 6401, Madison, WI 53715

Telephone: 608/262-3822 FAX: 608/262-5111

INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed



COMMONWEALTH TERMS AND CONDITIONS

this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

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



COMMONWEALTH OF MASSACHUSETTS CONTRACTOR AUTHORIZED SIGNATORY LISTING

CONTRACTOR LEGAL NAME : The Board of Regents of the University of Wisconsin System, UW-Madison
CONTRACTOR VENDOR/CUSTOMER CODE:

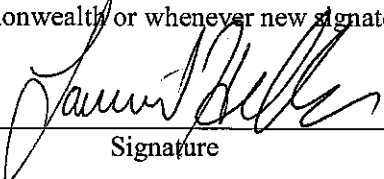
INSTRUCTIONS: Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor's behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor's authorized signatory, and not by a representative, designee or other individual.)

NOTICE: *Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.*

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver's licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth reserves the right to publish the names and titles of authorized signatories of contractors.

| AUTHORIZED SIGNATORY NAME | TITLE |
|---------------------------|-----------------------|
| Robert Gratzl | Managing Officer, RSP |
| | |
| | |
| | |
| | |

I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk or Legal Counsel for the Contractor and as an authorized officer of the Contractor I certify that the names of the individuals identified on this listing are current as of the date of execution below and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor's employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.


Signature

Date: 7/4/18

Title: CFO

Telephone:

Issued May
2004



COMMONWEALTH OF MASSACHUSETTS CONTRACTOR AUTHORIZED SIGNATORY LISTING

CONTRACTOR LEGAL NAME :

CONTRACTOR VENDOR/CUSTOMER CODE:

Fax:

Email:

[Listing can not be accepted without all of this information completed.]

A copy of this listing must be attached to the "record copy" of a contract filed with the department.

**Request for Taxpayer
Identification Number and Certification**

**Give Form to the
requester. Do not
send to the IRS.**

► Go to www.irs.gov/FormW9 for instructions and the latest information.

| | | |
|--|--|--|
| Print or type. See Specific Instructions on page 3. | 1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. University of Wisconsin System | |
| | 2 Business name/disregarded entity name, if different from above dba University of Wisconsin-Madison dba Wisconsin Center for Education Research | |
| | 3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input checked="" type="checkbox"/> Other (see instructions) ► Govt-Higher Ed | 4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small> |
| | 5 Address (number, street, and apt. or suite no.) See instructions. 1025 W. Johnson Street | Requester's name and address (optional) |
| | 6 City, state, and ZIP code Madison, WI 53706 | |
| | 7 List account number(s) here (optional) | |

| | | | | | | | | | | | | | | | | | | | | | |
|--|--|---|---|---|---|---|---|---|---|--|--|---|---|---|---|---|---|---|---|---|---|
| Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> , later. Note: If the account is in more than one name, see the instructions for line 1. Also see <i>What Name and Number To Give the Requester</i> for guidelines on whose number to enter. | Social security number <table border="1"><tr><td></td><td></td><td></td><td>-</td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table> or Employer identification number <table border="1"><tr><td>3</td><td>9</td><td>-</td><td>1</td><td>8</td><td>0</td><td>5</td><td>9</td><td>6</td><td>3</td></tr></table> | | | | - | | | | | | | 3 | 9 | - | 1 | 8 | 0 | 5 | 9 | 6 | 3 |
| | | | - | | | | | | | | | | | | | | | | | | |
| 3 | 9 | - | 1 | 8 | 0 | 5 | 9 | 6 | 3 | | | | | | | | | | | | |

| |
|---|
| Part II Certification Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and 3. I am a U.S. citizen or other U.S. person (defined below); and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct. Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later. |
|---|

| | | |
|------------------|--|-----------------------|
| Sign Here | Signature of U.S. person ► <i>Rebecca Kohl</i> | Date ► <i>6-29-18</i> |
|------------------|--|-----------------------|

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

