

Attachment A - University of Massachusetts Contract for Services T's & C's – Appendix 1

The following Model Terms are provided to assist Respondents in deciding whether to submit a Proposal. The Model Terms are not intended to constitute the final language or a comprehensive statement of all the terms and conditions in any Letter of Intent (“LOI”) or definitive agreement the University will require or deem acceptable, but as a statement of selected **key** threshold terms from which the University does not intend to deviate.

Non-Negotiable Terms for RFX and Subsequent Contract

Respondent shall select either “Accept” or “Reject” in the column labelled “Response”.

“Accept” indicates that Respondent agrees with the material substance of the term and, subject to submission of an LOI in a form acceptable to the University, or execution of a final definitive agreement (as the case may be) setting forth specific language acceptable to both parties, is willing to accept the material substance of such term in such LOI and/or definitive agreement. Respondent may elect not to accept one or more of such terms, by selecting “Reject”. Such a selection will result in a non-conforming Proposal and likely rejection of the Proposal by the University.

Ref	Model Term	Response
A1	No Indemnification. The University will not agree to any covenant or provision which purports to require it, directly or indirectly, in whole or in part, to defend, indemnify or hold harmless, the prospective Buyer of the Subject Licenses, or any other person whether or not related to or affiliated therewith, for or against any losses, obligations, fees, expenses, costs, demands, claims or liabilities whatsoever.	-
A2	<p>Choice of Law and Exclusive Forum. This RFP process, the transaction contemplated herein, and all associated instruments and contracts (including the LOI and definitive agreement contemplated herein), shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts (without regard to the conflicts of laws principles thereof), and, to the extent applicable, the laws of the United States. The Respondent agrees that:</p> <ul style="list-style-type: none"> a. Regardless of whether or not a basis for federal subject-matter jurisdiction exists, any action or proceeding relating to or arising from this RFP process, transaction, or associated instruments and contracts shall be brought exclusively in a state court of competent jurisdiction in the Commonwealth of Massachusetts and for that purpose each Party irrevocably and unconditionally attorns and submits to the jurisdiction of such Massachusetts state court b. it irrevocably waives any right to and will not oppose any Massachusetts action or proceeding on the basis of lack of jurisdiction over its person, or over the fact that the action or proceeding is laid in a Massachusetts state court forum, including improper venue or <i>forum non conveniens</i>. <p>it will not oppose on the basis of want of a Massachusetts state court’s jurisdiction over its person, the enforcement</p>	-

	against it, in any other jurisdiction, of any judgment or order duly obtained from a Massachusetts state court as contemplated herein.	
A3	No Arbitration. The University will not agree to submit any dispute, claim or defense to arbitration.	-
A4	Confidentiality/Privacy. The Contractor shall comply with all applicable state and federal laws and regulations relating to confidentiality and privacy. In addition, in the performance of this Contract, the Contractor may acquire or have access to “personal data” and become a “holder” of such personal data (as defined in Mass. Gen. Laws ch. 66A) or personal information (as defined in Mass.Gen.Laws ch. 93H). Personal data and personal information shall be deemed to be “Personal Information.” Contractor shall implement feasible safeguards to restrict access and ensure the security, confidentiality and integrity of all Personal Information owned, controlled, stored, or maintained by University and provided to or accessed by Contractor in the performance of services irrespective of the medium in which it is held. The Contractor agrees that it shall inform each of its employees, servants or agents, having involvement with Personal Information of the laws and regulations relating to confidentiality and privacy.	-
A5	Indemnification of University. The Contractor shall defend, indemnify, and hold harmless the Commonwealth, the University, its Trustees, Officers, servants, and employees from and against any and all claims, liability, losses, third party claims, damages, costs, or expenses (including attorneys’ and experts’ fees) arising out of or resulting from the performance of the services performed by the Contractor, its agents, servants, employees, or subcontractors under this Contract, provided that any such claims, liability, losses, third party claims, damages, costs, or expenses are attributable to bodily injury, personal injury, pecuniary injury, damage to real or tangible personal property, resulting therefrom and caused in whole or in part by any intentional or negligent acts or omissions of the Contractor, its employees, servants, agents, or subcontractors. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Commonwealth and/or the University that would otherwise exist. The University shall give the Contractor prompt and timely notice of any claims, threatened or made, or any law suit instituted against it which could result in a claim for indemnification hereunder. The extent of this Contract of indemnification shall not be limited by any obligation or any term or condition of any insurance policy. The obligations set forth above shall survive the expiration or termination of this Contract.	-

<p>A6</p>	<p>PCI Compliance. If, in the course of its engagement by University, Contractor has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, Contractor shall at all times remain in compliance with the Payment Card Industry Data Security Standard (“PCI DSS”) and if applicable, Payment Application Data Security Standard (PA DSS) requirements, including remaining aware at all times of changes to these standards and promptly implementing all procedures and practices as may be necessary to remain in compliance with these standards, including promptly notifying the University of its non-compliance, in each case, at Contractor’s sole cost and expense. Both parties are responsible for the security of the cardholder data that is in such party’s control or possession, as mandated by PCI Security Standards Council (PCI SSC) in the performance of their individual and mutual responsibilities under this Agreement.</p>	
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