

Commonwealth IT Terms and Conditions

Frequently Asked Questions

Q: What is the goal of the IT Terms and Conditions?

A: The goal is to more closely align with current industry standards for IT contracting. We expect that the issuance of these new documents will:

- Encourage more IT companies of all sizes to submit responses to IT Requests for Response (RFRs) because of the more favorable limitation of liability provisions;
- Facilitate more streamlined negotiations; and
- Improve the pricing that the Commonwealth receives for some IT contracts since bidders may no longer increase costs to cover their current limitation of liability.

Q: How are the IT Terms and Conditions different from the Commonwealth Terms and Conditions?

A: A number of changes have been made to the Commonwealth Terms and Conditions to address unique issues with information technology contracts. The IT Terms and Conditions differ from the default Commonwealth Standard Terms and Conditions in the following ways:

First Unnumbered Paragraph

The current statement that the Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds is clarified. In addition, the definition of a “Contract” is expanded and moved to this paragraph.

Section 1. Contract Effective Date

The definition of the effective date and the signature process of the Department is clarified.

Section 4. Contract Termination Or Suspension.

The Department’s right to terminate or suspend without cause is clarified.

Section 6. Confidentiality, Privacy, and Protection of Data.

The reference to the Executive Office of Technology Services and Security Enterprise Information Security Policies and Standards from the Standard Contract Form Instructions’ section on “Protection of Commonwealth Data, Personal Data and Information” is mirrored here to make the two documents consistent. A reference to M.G.L. c. 93H is added.

Section 8. Assignment.

The Department’s ability to assign or delegate a Contract is specified.

Section 9. Subcontracting By Contractor.

The Contractor’s responsibilities regarding subcontractors are clarified.

Section 11. Liability.

A new Section 11 is added to address the Contractor's liability under the Contract.

Section 12. Indemnification

A new Section 12 is added to address the Contractor's obligation to indemnify the Department for three categories of claims: (i) Unlimited Claims, which consist of claims for personal injury, property damage, or infringement of property rights; (ii) Data Breach, which consists of claims in connection with a security or data breach or unauthorized disclosure of data; and (iii) other claims. Subcategory (ii) has been added, as Data Breach is a major potential risk of IT Contracts.

Section 13. Limitation of Liability.

A new Section 13 is added to address limitations on the Contractor's liability. The Contractor's liability for Unlimited Claims remains uncapped, liability for Data Breach is capped at a higher amount, and liability for other claims is capped at a lower amount. The uncapped liability on Unlimited Claims and high cap on Data Breach provides robust protections to the Department. The stated caps on Data Breach and other claims provides visibility to the Contractor.

In addition, the Contractor's liability for incidental or consequential damages is removed. This change more closely aligns the IT Commonwealth Terms and Conditions with IT contracting structures used by Contractors.

Section 16. Forum, Choice of Law, and Mediation.

The Department's ability to approve of venue in a Federal Court outside of Massachusetts with the Attorney General's approval is clarified.

Q: How do I use the new IT Terms and Conditions?

The IT Terms and Conditions should be provided to bidders and prospective vendors during the solicitation process. The IT Terms and Conditions should be used in connection with the Commonwealth Standard Contract Form. Please check off "IT Terms and Conditions" on the corresponding Standard Contract Form prior to execution.

Q: When should a Department use the IT Terms and Conditions?

The IT Terms and Conditions should be used to govern Contracts subject to the object codes for information technology as defined by the Office of the Comptroller's [Expenditure Classification Handbook](#) or other contracts as expressly approved in writing by the Executive Office of Technology Services and Security (EOTSS), the Executive Office for Administration and Finance (ANF), the Operational Services Division (OSD), or the Office of the Comptroller (CTR).

Departments should consult the following guidance when deciding which version of the Commonwealth's contract documents to use:

Agency Procurement under a Statewide Contract	Agency Procurement without a Statewide Contract		
	Procurement initiated after 7.1.2020	Procurement initiated before 7.1.2020 and agreement signed after 7.1.2020	Agreement signed before 7.1.2020 and renewal or amendment signed after 7.1.2020
<p>The existing T/C and Standard Contract Form used in the Statewide Contract shall govern any agreement or SOW executed under the Statewide Contract</p> <p>OSD will transition to IT T/C and 7.1.2020 Standard Contract Form upon renewal/re-bid of Statewide Contracts</p>	Use IT T/C and 7.1.2020 Standard Contract Form	Use IT T/C and 7.1.2020 Standard Contract Form, although department may use the Commonwealth T/C and the previous version of the Standard Contract Form. Departments should use their best judgment during transition between use of the old forms or the new forms.	Use IT T/C and 7.1.2020 Standard Contract Form, although department may use the Commonwealth T/C and the previous version of the Standard Contract Form. Departments should use their best judgment during transition between use of the old forms or the new forms.

Q: Whom can I contact for further information?

For further assistance, please contact EOTSS, CTR, or OSD.

For EOTSS: Contract Management (itcontracts@mass.gov)

For CTR: CTR Solution Desk (comptroller.info@mass.gov)

For OSD: OSD Legal Bureau (OSDLegal@osd.state.ma.us)