OFFICE OF THE COMPTROLLER
ONE ASHBURTON PLACE, 9TH FLOOR
BOSTON, MASSACHUSETTS 02108
(617) 727-5000
MACOMPTROLLER.ORG

Interdepartmental Service Agreement Form Terms & Conditions

Effective: September 5, 2023
Last Updated: October 3, 2023

The following terms and conditions are incorporated by reference into any Interdepartmental Service Agreement (ISA).

Role of the Office of the Comptroller

All ISA fiscal transactions shall be made through the state accounting system as prescribed by the Office of the Comptroller (CTR). CTR will interpret 815 CMR 6.00 and applicable policies and take any fiscal or other actions necessary to ensure ISA compliance with state finance law, including but not limited to correcting accounting transactions, resolving ISA disputes and identifying corrective action by the Buyer/Parent or Seller/Child Departments.

Seller/Child Department Certifications

By executing an ISA the Seller/Child certifies that it is statutorily authorized to provide the type of performance sought by the Buyer/Parent, and shall at all times remain qualified to perform the ISA, that performance shall be timely and meet or exceed ISA standards, that the Seller/Child will not allow initial or amended performance to begin, may not authorize personnel or contractors to work, nor incur any obligation to be funded under an ISA prior to the execution of an ISA. The Seller/Child will make encumbrances and payments (incuding payroll) only from the authorized ISA Seller/Child account(s) and shall not be entitled to transfer charges made from any other account not approved in writing in advance by CTR. The Seller/Child must immediately notify CTR whenever a delay in funding is anticipated for which performance is expected. The Seller/Child is authorized to use ISA funding only for the actual costs of ISA performance and may not use ISA funds to supplement non-ISA related personnel or expenditures.

Buyer/Parent Department Certifications

Signature by the Buyer/Parent certifies that it is statutorily authorized or required to procure the type of performance required under this ISA, that the Buyer/Parent certifies it will ensure that sufficient funds are timely made available in the Seller/Child account(s), with the proper accounting codes, prior to the Seller/Child's need to begin intial or amended performance; that the Buyer/Parent will monitor and reconcile ISA performance in compliance with state appropriation language or federal grant requirements, communicate all fiscal information necessary for the setup of the Seller/Child account(s) including budget information and, if the ISA is funded with federal funds, provide accurate accounting information in Attachment C and immediately notify the Seller/Child of any changes in Attachment C (such as program codes) to ensure the ISA and Seller/Child account can be timely updated to avoid lapses in funding or the inability of the Seller/Child to make timely payroll and other expenditures from the Seller/Child account.

Chief Fiscal Officer

The Chief Fiscal Officer (CFO) for the Buyer/Parent and Seller/Child will be responsible for the fiscal management of ISAs within their department in accordance with these ISA Terms and Conditions, 815 CMR 6.00, and policies and procedures published by CTR.

ISA Manager

Both the Buyer/Parent and Seller/Child are responsible for ensuring that the ISA Manager listed on the ISA, or ISA Amendment, is current and that the ISA Manager is an authorized signatory for the department supported by the appropriate security profile. If the listed ISA Manager changes, the CFO shall be the ISA Manager until a replacement is identified in the same manner as other written notice.

Record-keeping and Retention, Inspection of Records

The Buyer/Parent and Seller/Child shall maintain all ISA records in such detail as necessary to support claims for payment, including reimbursement or federal financial participation (FFP), for at least six years from the last payment under an ISA Seller/Child account, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving an ISA. In addition to any specific progress, programmatic or expenditure reports specified in Attachment A, the Seller/Child is required to provide the Buyer/Parent (and to CTR, the State Auditor and the House and Senate Ways and Means Committees upon request) with full cooperation and access to all ISA information.

Payments and Compensation

The Seller/Child may accept compensation only for performance delivered and accepted by the Buyer/Parent in accordance with the specific terms and conditions of the ISA. All ISA payments are subject to appropriation pursuant to M.G.L. c. 29, or the availability of sufficient non-appropriated funds for the purposes of an ISA. Overpayments or disallowed expenditures shall be reimbursed by the Seller/Child or may be offset from future ISA payments in accordance with state finance law and instructions from CTR.

ISA Termination or Suspension

An ISA shall terminate on the date specified, unless this date is properly amended prior to this date, or unless terminated or suspended in accordance with this section upon prior written notice to the Seller/Child. The Buyer/Parent may terminate an ISA without cause and without penalty with at least thirty days prior written notice, or may terminate or suspend an ISA with reasonable notice if the Seller/Child breaches any material term or condition or fails to perform or fulfill any material obligation required by an ISA, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of an ISA, or in the event of an unforeseen public emergency mandating immediate Buyer/Parent action. Upon immediate notification to the other party, neither the Buyer/Parent nor the Seller/Child 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. Contractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Seller/Child's control.

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 Buyer/Parent or the Seller/Child. Unless otherwise specified in the ISA, legal notice sent or received by the Buyer/Parent's ISA Manager or the CFO (with confirmation of actual receipt) at the listed mailing address or email address for the ISA Manager will satisfy written notice under the ISA. Any written notice of termination or suspension delivered to the Seller/Child 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 Seller/Child during the notice period.

Confidentiality

The Seller/Child shall comply with M.G.L. c. 66A if the Seller/Child becomes a "holder" of "personal data". The Seller/Child shall also protect the physical security and restrict any access to personal or other Buyer/Parent data in the Seller/Child's possession, or used by the Seller/Child in the performance of an ISA, which shall include, but is not limited to the Buyer/Parent's public records, documents, files, software, equipment or systems. If the Seller/Child is provided access with any other data or information that triggers confidentiality requirements under the Fair Information Practices Act, HIPAA or other federal or state laws, the Seller/Child shall be responsible for protection of this data as instructed by the Buyer/Parent.

Assignment

The Seller/Child may not assign, delegate or transfer in whole or in part any ISA, or any liability, responsibility, obligation, duty or interest under an ISA, to another department or an outside contractor. Assumption of an ISA by a successor department due to a legislative change in the Seller/Child or Buyer/Parent's department status shall be accomplished through the execution of a new ISA.

Subcontracting By Seller/Child

Since it is presumed that contracting through the Seller/Child is more cost effective and a better value than the Buyer/Parent directly contracting with an outside contractor(s), any subcontract entered into by the Seller/Child for the purposes of fulfilling the obligations under an ISA must be approved by the Buyer/Parent in advance of the ISA and justified as part of the ISA Attachment A. The Seller/Child is responsible for state finance and procurement law compliance for all subcontracts, and shall supply a copy of any subcontract to the Buyer/Parent upon request.

Affirmative Action, Non-Discrimination in Hiring and Employment

In performing this ISA, the Seller/Child shall comply with all federal and state laws, rules, regulations and applicable internal state policies and agreements 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 Seller/Child commits, when possible, to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities in accordance with the Commonwealth's Affirmative Market Program.

Waivers

Forbearance, indulgence or acceptance by the Seller/Child or Buyer/Parent of any breach or default in any form shall not be construed as a waiver and shall not limit enforcement remedies or allow a waiver of any subsequent default or breach.

Risk of Loss

The Seller/Child shall bear the risk of loss for any materials, deliverables, personal or other data that is in the possession of the Seller/Child or used by the Seller/Child in the performance of an ISA until is accepted by the Buyer/Parent.

Disputes

The Buyer/Parent and Seller/Child agree to take all necessary actions to resolve any dispute arising under the ISA within 30 calendar days including department head and secretariat involvement, but in no event shall a dispute remain unresolved beyond May 30 in any fiscal year, nor may the Buyer/Parent or Seller/Child allow a dispute to create a violation of state finance law or ISA terms (such as a delay in funding, failure to timely communicate funding or program code changes, or failure to timely process ISA paperwork). Seller/Child and Buyer/Parent must immediately notify CTR to assist in resolution of the dispute and shall implement any action required by CTR to resolve the dispute, which shall be considered final.

Interpretation, Severability, Conflicts with Law, Integration

Any amendment or attachment to any ISA that contains conflicting language or has the effect of deleting, replacing or modifying any printed language of the ISA shall be interpreted as superseded by the ISA Form as published. If any ISA provision is 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 to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the ISA, or portions thereof, shall be enforced to the fullest extent permitted by law. The terms of this ISA shall survive its termination for the purpose of resolving any claim, dispute or other action, or for effectuating any negotiated representations and warranties.