

**UNIVERSITY OF MASSACHUSETTS
STAFF AUGMENTATION SERVICES
MASTER SERVICE AGREEMENT**

(P.O. No.) _____
(Bid No.) _____

This Staff Augmentation Services Master Service Agreement (the "Master Service Agreement") is made, entered into, and effective on _____ by and between the University of Massachusetts, _____(Campus), (hereinafter called "University"), an agency of the Commonwealth of Massachusetts and

(Contractor's legal name and address)
(hereinafter called the "Contractor" and collectively the "Parties").

Whereas, the University periodically requires temporary staff augmentation services to fill various technical, computer programming and management contract positions; and

Whereas, Contractor has been selected by the University through a competitive bidding process as a qualified provider of professional staff augmentation services; and

Whereas, the Parties agree that this Master Service Agreement shall set forth the terms and conditions under which Contractor shall provide staff augmentation services to the University;

Therefore, in consideration of the mutual promises and covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Statements of Work.** The University may submit requests to Contractor for certain staffing services as provided herein. The specific staffing services to be provided by Contractor shall be set forth in an individual Statement of Work. Each Statement of Work shall be in the form attached hereto as Attachment "A" and shall include: 1) a detailed description of the staffing service to be provided, including a schedule of deliverables; 2) the qualifications of the personnel assigned to perform the services; 3) the period of performance during which the staffing services will be provided; and 4) the applicable pricing and any additional terms and conditions applicable to the staffing service set forth therein. Statements of Work will not become effective until they are signed by authorized representatives of both Parties. Each Statement of Work shall constitute a separate agreement incorporating all of the terms and conditions set forth herein. In the event of a conflict between the provisions of any Statement of Work and the provisions set forth in this Master Service Agreement, the provisions of the Statement of Work shall govern.
2. **Change Orders.** Any revisions to existing individual Statements of Work must be made by written agreement of the Parties (a "Change Order") executed by the Parties' authorized representatives. Each Change Order shall provide a detailed description of the revisions agreed upon by the Parties and shall be attached to the original Statement of Work upon execution by the Parties.
3. **Term:** From: _____ To: _____
(Start Date) (Completion Date)
4. **Responsible University Official:** The University Official exercising managerial and budgetary control for this Master Service Agreement shall be:

(Name and Title)
5. **Payment:**
 - A. The University shall compensate the Contractor for the services rendered as set forth in the individual Statements of Work. In no event shall the Contractor be reimbursed for time other than that actually spent providing the described service(s).
 - B. Payment will be made upon submittal and approval of the Contractor's Invoice(s) that is (are) received as set forth in the individual Statements of Work.
 - C. Reimbursement for Travel and Other Contractor Expenses shall be as set forth in the individual Statements of Work.
 - D. The University's payment terms are net thirty (30) days from the date of receipt of Contractor's invoice, with late penalty interest assessable at rates established by the Commonwealth after 45 days in accordance with Mass. Gen. Laws ch. 29 § 29C and with Commonwealth regulation 815 C.M.R. 4.00.

6. **Status of Contractor.** All personnel assigned by Contractor to provide services to the University pursuant to this Master Service Agreement shall, for all purposes, be considered employees or subcontractors of Contractor only (“Contractor’s Personnel”). Contractor shall assume sole and exclusive responsibility for the payment of all wages, including all required withholdings, and benefits, if any, to Contractor’s personnel for services performed by said personnel for the University. Contractor hereby agrees to indemnify, defend, and hold harmless the University from and against any and all liability relating to the employment status of Contractor’s personnel.
7. **Assignment of Personnel.**
- A. Contractor shall provide the University with personnel having the professional qualifications stated in the applicable Statement of Work. The Contractor represents that the individuals identified within each Statement of Work are its full-time employees and will be assigned to complete the Contractor’s obligations under this Agreement.
- B. In the event the Contractor proposes, for any reason, to replace or substitute any individual(s) identified in a Statement of Work, the Contractor shall do so in writing and prior to the proposed replacement or substitution and shall permit the University to review the qualifications of the proposed replacement personnel. Any proposed replacement or substitution personnel shall possess qualifications comparable to those of the individual being replaced. The University reserves the right to disapprove any such replacement(s) or substitution(s).
- C. The University shall have the right to require the Contractor, by written notice, to relieve any of the Contractor’s personnel from further work under this Master Service Agreement if, in the University’s opinion, the individual is not performing satisfactorily or personality conflicts with University personnel hinder effective progress on the work of the project. Should the University exercise its rights under this paragraph, the Contractor shall propose replacement personnel in accordance with paragraph (B) above.
- D. The University’s right to disapprove any replacement or substitution personnel as provided in paragraph (B) or the right to require the Contractor to relieve personnel from further work under this Agreement as provided in paragraph (C), does not create a joint employer relationship or rise to the level of supervisory control over the Contractor’s employees by the University.
8. **Certification.** Contractor certifies under the pains and penalties of perjury that pursuant to Mass. Gen. Laws ch.62C, §49A, that the Contractor has filed all state tax returns, paid all taxes and complied with all applicable laws relating to taxes; and that pursuant to Mass. Gen. Laws ch.151A, §19A(b), has complied with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System; and, if applicable, with all laws of the Commonwealth relating to Worker’s Compensation, Mass. Gen. Laws ch.152 and payment of wages, Mass. Gen. Laws ch. 149, § 148. Pursuant to federal law, Contractor shall verify the immigration status of all workers assigned to provide services under a Statement of Work without engaging in unlawful discrimination; and Contractor shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker.
9. **Conflict of Interest:** Contractor acknowledges that it may be subject to the Massachusetts Conflict of Interest statute, Mass. Gen. Laws ch. 268A, and to that extent, Contractor agrees to comply with all requirements of the statute in the performance of this Master Service Agreement.
10. **Independent Contractor Status.** The Contractor is an independent contractor and not an employee or agent of the University. No act or direction of the University shall be deemed to create an employer/employee or joint employer relationship. The University shall not be obligated under any Master Service Agreement, subcontract, or other commitment made by the Contractor.
11. **Contractor’s Qualifications and Performance.** In accordance with the terms and conditions of this Master Service Agreement, the Contractor represents that it is qualified to perform the services set forth herein and in each Statement of Work and has obtained all requisite licenses and permits to perform the services. In addition, the Contractor agrees that the services provided hereunder and in each Statement of Work shall conform to the professional standards of care and practice customarily expected of firms engaged in performing comparable work; that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them; and that the recommendations, guidance, and performance of such personnel shall reflect such standards of professional knowledge and judgment.
12. **Termination:**
- A. **Without Cause.** This Master Service Agreement and any individual Statement of Work may be terminated without cause by either party by giving written notice to the other at least thirty (30) calendar days prior to the effective date of termination stated in the notice.
- B. **With Cause.** If Contractor breaches any material term or condition stated herein or fails to perform or fulfill any material obligation required by this Master Service Agreement or any individual Statement of Work, the University may

terminate this Master Service Agreement and/or the Statement of Work by giving written notice to the Contractor stating the circumstances of the breach at least seven (7) calendar days before the effective date of termination stated in the notice. Notwithstanding the foregoing, the notice of termination provided by the University may state a period during which the alleged breach may be cured by the Contractor, which cure shall be subject to approval by the University. In the event of a breach by Contractor, Contractor may be subject to any and all applicable contract rights and remedies available to the University. Applicable statutory or regulatory penalties may also be imposed.

13. Obligations in Event of Termination:

- A. Upon termination of this Master Service Agreement or any individual Statement of Work, all finished or unfinished documents, data, studies, and reports prepared by the Contractor, shall become the property of the University.
 - B. Upon termination of this Master Service Agreement or any individual Statement of Work without cause, the University shall promptly pay the Contractor for all services performed to the effective date of termination, subject to offset of sums due the Contractor against sums owed by the Contractor to the University, and provided Contractor is not in default of this Master Service Agreement or any individual Statement of Work and Contractor submits to the University a properly completed invoice, with supporting documentation covering such services, no later than thirty (30) calendar days after the effective date of termination.
- 14. Recordkeeping, Audit, and Inspection of Records:** The Contractor shall maintain books, records and other compilations of data pertaining to the requirements of the Master Service Agreement to the extent and in such detail as shall properly substantiate claims for payment under the Master Service Agreement. All such records shall be kept for a period of six (6) years or for such longer period as is specified herein. All retention periods start on the first day after final payment under this Master Service Agreement. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. The Governor, the Secretary of Administration and Finance, the State Comptroller, the State Auditor, the Attorney General, the Federal grantor agency (if any), the University, or any of their duly authorized representatives or designees shall have the right at reasonable times and upon reasonable notice, to examine and copy, at reasonable expense, the books, records, and other compilations of data of the Contractor which pertain to the provisions and requirements of this Master Service Agreement. Such access shall include on-site audits, review, and copying of records.
- 15. Political Activity Prohibited.** The Contractor may not use any funds received from the University, and none of the services to be provided by the Contractor may be used for any partisan political activity or to further the election or defeat of any candidate for public office.
- 16. Title, Ownership.** Unless provided otherwise by law or the University, title and possession of all data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for with University funds shall vest with the University at the termination of the Master Service Agreement or any individual Statement of Work. If the Contractor, or any of its subcontractors, publishes a work dealing with any aspect of performance under this Master Service Agreement, or of the results and accomplishments attained in such performance, the University shall have a royalty-free non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.
- 17. 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 its services under this Master Service Agreement, 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.
- 18. Assignment and Delegation.** The Contractor shall not assign or in any way transfer any interest in this Master Service Agreement without the prior written consent of the University, nor shall the Contractor subcontract any service without the prior written approval of the University. Any purported assignment of rights or delegation of performance in violation of this Section is VOID.
- 19. Nondiscrimination in Employment.** The Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual

orientation or a person who is a member of, applies to perform, or has an obligation to perform service in a uniformed military service of the United States, including the National Guard on the basis of that membership, application or obligation. The Contractor agrees to comply with all applicable Federal and State employment statutes, rules and regulations

20. **Severability.** If any provision of this Master Service Agreement is declared or found to be illegal, unenforceable, or void, then both Parties shall be relieved of all obligations under that provision. The remainder of the Master Service Agreement shall be enforced to the fullest extent permitted by law.
21. **Choice of Law.** This Master Service Agreement is entered into in the Commonwealth of Massachusetts, and the laws of the Commonwealth, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this Master Service Agreement and all of the transactions it contemplates, including, without limitation, its validity, interpretation, construction, performance and enforcement.
22. **Forum Selection.** The Parties agree to bring any action arising out of or relating to this Master Service Agreement or the relationship between the Parties in the state courts of the Commonwealth of Massachusetts which shall have exclusive jurisdiction thereof. The Contractor expressly consents to the jurisdiction of the state courts of the Commonwealth of Massachusetts in any action brought by the Commonwealth or the University arising out of or relating to this Master Service Agreement or the relationship between the Parties, waiving any claim or defense that such forum is not convenient or proper. This paragraph shall not be construed to limit any other legal rights of the Parties.
23. **Force Majeure.** Neither party shall be liable to the other or be deemed to be in breach of this Master Service Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of nature or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.
24. **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 Master Service Agreement, 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 agreement 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 Master Service Agreement.
25. **Risk of Loss.** The Contractor shall bear the risk of loss of any Contractor materials used in the performance of Contractor's services and for all deliverables and work in process.
26. **Tax Exempt Status.** The University is exempt from federal excise, state, and local taxes; therefore, sales to the University are exempt from Massachusetts sales and use taxes. If the University should become subject to any such taxes during the term of this Master Service Agreement, the University shall reimburse the Contractor for any cost or expense incurred. Any other taxes imposed on the Contractor on account of this Master Service Agreement shall be borne solely by the Contractor.
27. **Waivers.** All conditions, covenants, duties and obligations contained in this Master Service Agreement or in any Statement of Work can be waived only by written agreement. 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.
28. **Amendments.** This Master Service Agreement may be amended only by written agreement of the Parties, executed by the Parties' authorized representatives and in compliance with all other regulations and requirements of law. Any such amendment shall be attached to this Master Service Agreement upon execution by the Parties.
29. **Entire Agreement.** The Parties understand and agree that this Master Service Agreement and any Statements of Work executed pursuant hereto and their amendments (if any) constitute the entire understanding between the Parties and supersede all other verbal and written agreements and negotiations by the Parties relating to the services provided by Contractor under this Master Service Agreement.

30. **Notice.** Unless otherwise specified, any notice hereunder shall be in writing addressed to the persons and addresses indicated below (Name, postal address, phone, email address):

To the University: _____

To the Contractor: _____

Employees of the University shall not be held personally or contractually liable by or to the Contractor under any term or provision of this Master Service Agreement or because of any breach thereof. This Master Service Agreement is not binding until signed by an authorized University official.

IN WITNESS WHEREOF, the Parties have caused this Master Service Agreement to be executed by their respective duly authorized officers as of the date first above written.

UNIVERSITY OF MASSACHUSETTS
_____ (Campus)

CONTRACTOR
_____ (Name)

Sig: _____

Sig: _____

Name: _____

Name: _____

Title: _____
(Authorized University Official)

Title: _____

Sig: _____

Name: _____

Title: _____

Sig: _____

Name: _____

Title: _____