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Operating Rules

*For use in the Electronic Procurement Project
Known as the "Multi-State E-Mall"™*

Draft Version 3.0
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A. Scope

These Operating Rules govern use of the Multi-State EMail (the EMail). These Operating Rules apply to every participant in the EMail. No party may play any role or otherwise act as a participant in the EMail without the prior approval of the Community Sponsor, currently the Commonwealth of Massachusetts Operational Services Division (OSD). The Commonwealth of Massachusetts possesses sole ownership, management and control over participation within the EMail and the Commonwealth shall be the final arbiter of all questions, issues, disputes and controversies arising out of or related to the EMail.

A.1 Intended Purpose and Authorized Use

The intended use of the EMail is for electronic procurement by participating public entities of goods and services from private suppliers who are legally authorized to sell in accordance with valid underlying contracts. The EMail may only be used for authorized purposes. The OSD may modify

these Operating Rules with two weeks notice by publishing the proposed revised draft at the EMail URL. The OSD may modify these Operating Rules at any time and without notice when it believes there is it is necessary to protect the right or property of the Commonwealth of Massachusetts.

A.2 Electronic Form of Operating Rules, Contracts and Agreements

These Operating Rules and associated contracts or agreements may exist solely in electronic form and shall not be unenforceable or invalid solely on the grounds that they do not constitute a writing.

B. Boundary of EMail Community

All buyers and other users must receive approval to participate in the EMail from the OSD directly, which may include an online registration process if authorized by OSD. Upon being approved as a buyer in the EMail, a party shall receive a user name and password allowing secure, authenticated transactions within the EMail. It is incumbent upon every buyer to safeguard their password and user name. The user name and password combination are created to designate an authorized member of the EMail community. Unauthorized use of a parties password could result in binding quotes by suppliers or binding purchase orders by buyers.

C. Creation of Legally Binding Quotes and Purchases

A valid OBI Order must be generated as the result of the authorized approval process specified by the OSD. Every valid and enforceable sale of goods or services through the EMail resulting from an OBI Order shall be subject primarily to the underlying contracts between the relevant Supplier and State User and also shall be subject to these Operating Rules and related agreements as well as the terms and conditions within the OBI Order itself. In order to be merged into the final terms of a purchase, any provisions inserted into an OBI Order Request must conform to the OBI Specification as implemented within the EMail system. The terms ***OBI Order Request*** and ***OBI Order*** are to be construed in accordance with the OBI 1.1 specification. For purposes of this section, the term ***EMail Server*** shall mean the EMail server or servers hosted by Intelisys for the purpose of conducting OBI-compliant transactions. For purposes of this section, the term ***Supplier Server*** shall mean the web server of a Supplier Partner for the purpose of conducting OBI-compliant transactions.

C.2 OBI Order Request and Quotes

Subject to applicable law and the pre-existing contracts for procurement between the parties, an OBI Order Request and any related Quote shall constitute a contractual offer by the Supplier Partner to sell the specified commodities at the specified price and other included terms once it has been successfully posted by the Shopper's web browser to the EMail Server at the agreed upon

post-back URL.

C.2 OBI Order

Subject to applicable law and the pre-existing contracts for procurement between the parties, an OBI Order shall constitute a contractual acceptance by the transacting State Partner once it has been successfully posted by the EMall Server to the Supplier Server at the agreed upon post-back URL, provided that an obligation to pay for goods is contingent upon delivery and acceptance of conforming goods.

D. Intellectual Property and Confidentiality

D.1 Copyright and Trademark

These Operating Rules are subject to Copyright by the Commonwealth of Massachusetts and the "Multi-State EMall" is a trademark of the Commonwealth of Massachusetts.

D.2 Ownership

It is acknowledged that the Community Sponsor owns all right and interest in the ecPortal Transaction data and content, except for IEC's rights to include such data in the aggregate transactive information. The details of individual transactions, including but not limited to the buyers names, phone number, shipping address, billing codes, products, product costs, est. will not be disclosed outside the Community, absent a valid court order or other legally binding requirement to disclose.

D.2 Confidentiality and Disclosure

Unless otherwise specified in these Operating Rules and related agreements and to the extent permitted under applicable law, all personally identifiable information related to the EMall pilot, including User information, usage statistics related to an individual User, the names of administrators, any telephone, address or other individually identifiable data should be considered confidential and should not be disclosed to any person outside of the EMall system. Similarly, no EMall Participant should make any public statements including press releases, information available on a web site and slide presentation related to the EMall or about any other person or organization's participation in the EMall pilot, unless that statement has first:

- * appeared on the official EMall web site, or
- * appeared in the public press, or
- * been authorized by an EMall Administrator, or
- * is a matter of public record under applicable law

E. Governing Law

Disputes between a State User and a Supplier regarding the purchase of goods or services via the EMall, including pricing, quality or service guarantees and remedies, shall be governed under the laws of the Commonwealth of Massachusetts.

F. Liability Disclaimer

EXCEPT AS EXPRESSLY PROVIDED IN THESE OPERATING RULES, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE EMALL, WHETHER EXPRESS OR IMPLIED, ARISING UNDER LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY THE COMMONWEALTH, ITS AGENTS OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

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