# COMMBUYS Agreement and Terms of Use for Sellers

Revised: January 27, 2016

**I.** COMMBUYS (“the System,” “the Site”) is the procurement system of record for the Commonwealth of Massachusetts (Commonwealth) administered by the Operational Services Division (OSD). COMMBUYS may be used by other eligible public entities within Massachusetts borders.

**A.** You are not required to register on this Site in order to access any publicly displayed record posted on this site by eligible public entities;

**B**. Completing a COMMBUYS registration and creating a Seller account does not:

**1.** Confer any status upon your company;

**2**. Qualify your company to bid with or to sell goods and services to;

**3.** Guarantee any Award or Contract with; or,

**4.** Promise any sales of services or commodities to

the Commonwealth of Massachusetts or eligible public entities that post their Bids on COMMBUYS.

The COMMBUYS Agreement and Terms of Use for Sellers (“Terms of Use”) govern Seller’s use of the Site only. The sale of products and services by a Seller to the Commonwealth or eligible public entities shall be governed by the separate purchase agreement entered into by and between the Commonwealth and the Seller.

Qualifications and specifications for goods and services procurements are determined by the public purchasing entity. Authorization to sell is determined by the public purchasing entity awarding a Contract or Purchase Order.

**C**. A COMMBUYS account is required in order to:

1. submit responses (Quotes) in response to solicitations (Bids) issued by eligible public entities, ask questions about solicitations, accept Purchase Orders, develop online catalogs, issue invoices, and engage in any other activity as required by the eligible public entities in their solicitations and contracts. Submission rules are specified by the eligible public entity using COMMBUYS within each Bid;
2. Become an authorized Statewide Contract vendor per OSD’s terms and requirements;
3. Become a qualified Small Business Purchasing Program (SBPP) vendor per OSD’s requirements.

**D.** COMMBUYS provides Seller users a range of features, including but not limited to account management, Bid notification, electronic Quote submission, vendor catalogs, invoicing and others.

**E.** Sellers registered on COMMBUYS must designate a Seller Administrator, who assumes responsibility for overall account administration and oversight and will be required to:

1. Maintain up-to-date and accurate information on the Seller Company, including but not limited to contact information and commodity and service codes;
2. Add and remove other users for the Seller Company and assign their roles within the site, including setting up additional Seller Administrators;
3. Add associated organizations using the same Tax ID number.

Sellers are responsible for ensuring that the Seller Administrator(s) selected are authorized to perform and are capable of performing these tasks.

**F.** A unique Tax ID number is required to establish a COMMBUYS account. If a Tax ID you have entered to create an account already exists you will receive an error message. In such cases, users will be required to contact their Seller Administrator to add them as Sellers to the existing company account, or to establish their companies as separate organizations with the same Tax ID.

In order to activate your COMMBUYS account, you must accept this COMMBUYS Agreement and Terms of Use for Sellers on the “Categories and Certifications” page of your COMMBUYS registration by checking off “Yes (Required to continue registration)” and pressing “Save & Continue.”

This agreement also incorporates by reference the following documents:

* Commonwealth of Massachusetts Privacy Policy, Linking Policy, Web Accessibility Policy, Terms of Use, and Social Media Policy available at: <http://www.mass.gov/anf/utility/site-policies.html>
* Because COMMBUYS is hosted by Periscope Holdings, Inc., their Standard Data Management and Security Policy, Privacy Policy and Acceptable Use Policy will also apply. Those policies are available at: <http://www.mass.gov/anf/docs/osd/commbuys/periscopepolicies.docx>.

Use of Social Security Numbers on COMMBUYS is strongly discouraged. We strongly suggest that you review the above-mentioned Privacy Policies to learn how the Commonwealth and COMMBUYS will treat information collected by this site, what such information is used for, and how it may be shared.

This agreement and Terms of Use will be accessible on the “Categories and Certifications” page for your organization in COMMBUYS.

**II.** Use of a Secure Browser - COMMBUYS transactions may involve sending certain personal or private information, such as Federal Employee Identification Numbers (FEIN), Social Security Numbers (SSN) or other Tax Identification Numbers (TIN), over the Internet, which is a public communication network.

To ensure a reasonable degree of security for your request to the OSD, you must use a web browser with Secure Socket Layer (SSL) capability. If you do not use an SSL compatible browser, we will not be able to accept your request. Acceptable browsers can be downloaded directly at no charge from www.microsoft.com or http://www.mozilla.com

**III.** Ownership of Trademarks and Trade Dress – COMMBUYS and other marks, graphics, logos, page headers, icons, scripts unique to the Commonwealth on the site are the trademarks and/or trade dress of the Commonwealth and are the property of the Commonwealth.

Use of the Commonwealth’s trademarks and trade dress may be prohibited without the prior approval of the Commonwealth. In no case shall such trademarks or trade dress be used in any manner that is likely to cause confusion, in any manner that disparages or discredits the Commonwealth and in connection with any service or product that is not sponsored, endorsed or produced by the Commonwealth. Sellers seeking to use Commonwealth logos for punchout catalogs must receive written approval from OSD.

COMMBUYS utilizes Periscope Holdings, Inc.’s BuySpeed Product. Trademarks not owned by the Commonwealth that appear on this site are the property of their respective owners.

In addition, Bidders and contractors are not allowed to display the Commonwealth of Massachusetts Seal in their quotes, bid packages or subsequent marketing materials if they are awarded a contract because use of the coat of arms and the Great Seal of the Commonwealth for advertising or commercial purposes is prohibited under M.G.L. c. 2, § 5 and 950 CMR 34.11 (1 (b)).

**IV.** Public Records - All of the materials which are posted to this site are “Public Records” within the definition found in M.G.L. c. 66 (the “Public Records Law”) including those available without the use of an authenticating or authorizing mechanism, such as your COMMBUYS login ID and password, as well as some of the information posted to this site and available through use of an authenticating or authorizing method. Unless subject to an exception, the Commonwealth is required, upon request, to provide copies of Public Records in accordance with the provisions of the Public Records Law and regulations promulgated under such law. Nothing in the Public Records Law limits the copyright or other intellectual property rights of either the Commonwealth or third party holders in these materials.

**V.** Limitations on the Use of Copyrighted Material - The materials available to you over this site may be viewed and downloaded from this site for your personal use. Except as set forth below, such material may not be reproduced, adapted, published, performed or displayed other than in a manner that would constitute “fair use” under the copyright laws. “Fair use” includes use of limited portions of the copyrighted materials in connection with such activities such as criticism, comment, news reporting, teaching, research, and other related activities.

**VI.** Limitations on the Use and Dissemination of Information Received through COMMBUYS – The notices that you receive from COMMBUYS regarding Bid postings and other activity may only be used by and disseminated within your organization or with your affiliates and business partners. You may not resell or disseminate these notices or any content or other information from these notices to any other individual or entity solely for the purpose of generating income from distribution of bid notices. To do so would be a direct violation of the terms of this Agreement and would be grounds for immediate termination of your COMMBUYS account.

**VII.** Submission of Quotes and/or Information to this Site - This site permits you to submit quotes, questions and/or comments, including the uploading of documents in support of your quotes and to provide information through data entry into electronic COMMBUYS forms as long as the submission including document transfer, if any, is completed prior to the specified Bid Opening Date/Time for formal bids, or the Purchaser’s tabulation of quotes for informal bids, where the latter can occur at any time including prior to the Bid Opening Date/Time, as specified in the Bid. The COMMBUYS system clock will be used to record the official time of submission of documents, quotes, invoices and other transactions. If you submit information to this website, in any form, you may do so on the condition that what you submit is not obscene, illegal, threatening, or defamatory and so long as what you submit does not invade the privacy or infringe the intellectual property of a third party. Further, do not submit software viruses, mass mailings, chain letters, or any form of SPAM. You may not use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin of the information. When submitting quotes, catalogs, invoices or other information you agree that they will remain valid for the minimum time period required by the eligible public entity’s bid.

By submitting information in any form, you grant the Commonwealth a nonexclusive, royalty-free, perpetual right to reproduce, use, , make public, via publication on COMMBUYS or other means, to the extent permissible pursuant to M.G.L. c. 66, § 10, adapt, translate and distribute for legitimate business purposes, including but not limited to evaluating your response.. By submitting information, however, Seller does not grant the Commonwealth any rights to edit, modify or alter in any manner such information or content. By submitting information you also represent and warrant that to the best of your knowledge and belief the content is accurate as of the date of submission; you own or have permission to use the content that you submit; and that use of the content will not cause injury to any person or entity.

**VIII.** Electronic Signature – In order to register, submit an online quote and perform other operations as required by the eligible public entity, this site requires that you electronically sign, and therefore accept and agree to, all files attached to the Bid, PO or other system document in order to complete the transaction. Your signature is valid under the Massachusetts Uniform Electronic Transactions Act (MUETA) within MGL c. 110G, § 1, et seq. effective February 24, 2004. The electronic signature of your submission may be that of the official bidder, or their agent, as designated by their access to the privileged portion of the secure account through the authentication mechanism.

**IX.** Disclaimer - The Commonwealth intends for the content, materials and information contained on this site to be accurate and reliable, however, since the content, materials and information have been compiled by the Commonwealth from a variety of sources, it is provided "as is."

THE COMMONWEALTH EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER RELATING TO OR REFERENCED BY THIS SITE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON INFRINGEMENT.

IN ADDITION, THE COMMONWEALTH DISCLAIMS ANY LIABILITY FOR THE IMPROPER OR INCORRECT USE OF INFORMATION OBTAINED FROM THIS SITE OR FOR THE QUALITY OF INFORMATION OR EFFECTIVENESS OF THIS SERVICE AND ASSUMES NO LIABILITY FOR THE ACCURACY, RELIABILITY OR COMPLETENESS OF THIS SERVICE OR FOR ANY INFORMATION SENT THROUGH THIS SERVICE.

ALL SERVICES AND INFORMATION PROVIDED THROUGH THIS WEB SITE ARE SUBJECT TO CHANGE WITHOUT NOTICE.

**X.** COMMBUYS Seller’s Responsibility – The COMMBUYS features for registered Sellers are meant to provide certain efficiencies and conveniences. However, COMMBUYS does not guarantee that the registered Seller will receive notification of all relevant bids and does not relieve any Seller of the responsibility to locate opportunities or comply with the eligible public entity’s procurement process and requirements.

An understanding of the system’s capabilities and limitations is the key to correct and successful transactions and to successful notification of Bids that you wish to receive.

Neither OSD, the Commonwealth of Massachusetts nor any of the eligible public entities using COMMBUYS are responsible or liable if; and you may not receive email notification(s) of the actual opportunities you seek if; and your transaction(s) may not be processed if:

* You rely solely on COMMBUYS email notifications which will not include all bid opportunities;
* You submit inaccurate, incomplete or overly narrow data or information on the commodity and service codes for opportunities you seek;
* You fail to modify such inaccurate, incomplete, overly narrow or outdated information;
* You enter, maintain or fail to update erroneous or outdated email address(es) and contact information including Seller name, taxpayer identification number, address and telephone number; or
* You have technical problems, including those with your computer, network or internet service provider (ISP), which cause e-mail communications (sent to/from your computer, network or ISP) to be lost or rejected by any means including email or spam filtering problems with your internet service provider (ISP), computer or computer network, for technical transmission errors, or for undeliverable emails for any reason, such as full mailboxes, bad email addresses, or scheduled or unscheduled interruptions in service due to any reason including but not limited to power outages or maintenance downtime.

Consequently, registered Sellers are responsible for:

1. Utilizing COMMBUYS browse and search tools to locate opportunities posted outside your commodity and service code selections;
2. Entering information accurately and confirming it before submitting it;
3. Maintaining accurate and current information through the Seller Administrator / Maintain Organization Information capability;
4. Monitoring the (those) email inbox(es) for communications from COMMBUYS; and
5. Ensuring that your network and mail service treat messages from the domain “@commbuys.com” as “friendly” or “not junk/SPAM,” and,
6. Ensuring that your computer, network and ISP are not encountering any problems, including but not limited to those described above.

**XI.** Confirmation of Completed Transactions - Upon approval of your request for a COMMBUYS account, you will receive a confirmation email with your Login ID, password and Vendor #. This email confirms the activation of your account. Similarly, the system may notify you about the completion of other transactions, including but not limited to electronic quote submission, change order approval, and others.

**XII.** Small Business Purchasing Program Conditions and Seller’s Responsibility – Sellers registered on COMMBUYS may qualify for the Small Business Purchasing Program (SBPP). Any company, including all of its affiliates combined, is eligible to participate in the Small Business Purchasing Program if that business attests to the following through COMMBUYS:

* has its principal place of business in Massachusetts;
* is organized or registered to do business in Massachusetts;
* is independently owned and operated;
* has been in business for at least one year;
* employs a combined total of 50 or fewer full-time equivalents;
* has gross revenues of $15 million or less, based on a three-year average;
* is a for-profit business; and,
* accepts the SBPP Participation Agreement.

After entering and attesting to the accuracy of information in your COMMBUYS account, those Sellers that meet these SBPP Small Business eligibility criteria will be presented with the opportunity to bid on SBPP procurements conducted by Massachusetts Executive Departments.

1. Changes to these Terms of Use - The Commonwealth may change this Agreement and Terms of Use from time to time without notice. Changes to the terms will apply to use of the web site as of the date of the change. As a result, we recommend that regular users of this site review the Agreement and Terms of Use on a periodic basis. See Section I § F of this document for information on accessing the document.

If there is a determination that any provision of this Agreement and Terms of Use is invalid or unenforceable, that determination will not affect the rest of the Agreement and Terms of Use and the Agreement and Terms of Use shall be deemed amended to the minimum extent necessary to make them valid and enforceable.

**XIV.** Applicable Law - These Terms of Use shall be governed by the law of the Commonwealth of Massachusetts without regard to its conflicts of law principles.

By selecting “Yes (Required to continue registration)” and pressing “Save & Continue” on the “Categories and Certifications” page of your COMMBUYS registration, you are electronically signing and thereby agreeing to all the terms of this COMMBUYS Agreement and Terms of Use.

Sellers may request deletion of an erroneous account at any time by sending an email to commbuys@state.ma.us which includes the Company Name provided at the time of registration on COMMBUYS.