



IT SERVICE CONTRACT

DATE: 11/26/2024	CONTRACT AMOUNT: 7.55% of Total Net Sales and Bailment Estimated amount (based on FY24): \$18,700,000
ADVANTAGE CONTRACT #: CT 18L 20241113000000001221	
DEPARTMENT AGREEMENT #:	
START DATE: 12/1/2024	END DATE: 11/30/2034

This Contract is between the following State of Maine Department and Provider:

STATE OF MAINE DEPARTMENT		
DEPARTMENT NAME: DAFS / Bureau of Alcoholic Beverages and Lottery Operations		
ADDRESS: 8 State House Station		
CITY: Augusta	STATE: ME	ZIP CODE: 04330
PROVIDER		
PROVIDER NAME: Pine State Trading Co.		
ADDRESS: 100 Enterprise Ave		
CITY: Gardiner	STATE: ME	ZIP CODE: 04345
PROVIDER'S VENDOR CUSTOMER #: VC1000073160		

Each signatory below represents that the person has the requisite authority to enter into this Contract. The parties sign and cause this Contract to be executed.

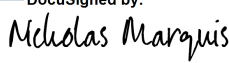
Department Representative:

Provider Representative:

BY: **Kirsten LC Figueroa**,
DAFS Commissioner
 Date: **11/26/2024**

BY: **P. Nicholas Alberding**,
Chief Executive Officer
 Date: **11/26/2024**

Department of Administrative and Financial Services, Office of Information Technology:

DocuSigned by:


BY: **Nicholas Marquis, Chief Information Officer**

Date: 11/26/2024

Upon final approval by the Office of State Procurement Services, a case details page will be made part of this contract.

DEPARTMENT AND PROVIDER POINT OF CONTACT

AGREEMENT ADMINISTRATOR: The following person is designated as the Agreement Administrator on behalf of the Department for this Contract. All financial reports, invoices, correspondence and related submissions from the Provider as outlined in Rider A, Reports, shall be submitted to:

NAME: Louis Luchini		
EMAIL: louis.luchini@maine.gov	TELEPHONE: (207) 287-8289	
ADDRESS: 19 Union St		
CITY: Augusta	STATE: ME	ZIP CODE: 04330

PROVIDER CONTACT: The following person is designated as the Contact Person on behalf of the Provider for this Contract. All contractual correspondence from the Department shall be submitted to:

NAME: P. Nicholas Alberding		
EMAIL: nick@pinestatetrading.com	TELEPHONE: (207) 242-7500	
ADDRESS: 100 Enterprise Ave		
CITY: Gardiner	STATE: ME	ZIP CODE: 04345

Any changes to the individuals identified above may be changed at any time through written notice by either party.

TABLE OF RIDERS

The following riders are hereby incorporated into this Contract and made part of it by reference.

<input type="checkbox"/>	Funding Rider
<input checked="" type="checkbox"/>	Rider A – Specifications of Work to be Performed
<input checked="" type="checkbox"/>	Rider B-IT – Payment and Other Provisions
<input checked="" type="checkbox"/>	Rider C - Exceptions
<input checked="" type="checkbox"/>	Rider G – Identification of Country in Which Contracted Work will be Performed
<input checked="" type="checkbox"/>	ATTACHMENT A - Confidentiality and Non-Disclosure Agreement - Included at MainIT's Discretion
	Other – Exhibits A-D

FUNDING RIDER

Internal Purposes Only

CODING: (Departments – Insert additional tables as needed for additional coding.)

LINE TOTAL	FUND	DEPT	UNIT	SUB UNIT	OBJ	PROGRAM	PROGRAM PERIOD	APPR FUNDING	FISCAL YEAR
\$									

LINE TOTAL	FUND	DEPT	UNIT	SUB UNIT	OB J	PROGRAM	PROGRAM PERIOD	APPR FUNDING	FISCAL YEAR
\$									

LINE TOTAL	FUND	DEPT	UNIT	SUB UNIT	OB J	PROGRAM	PROGRAM PERIOD	APPR FUNDING	FISCAL YEAR
\$									

RIDER A: SCOPE OF WORK

TABLE OF CONTENTS

- I. Acronyms
- II. Introduction/Overview
- III. Deliverables
- IV. Technical Requirements
- V. Performance Measures (Delete if not applicable)
- VI. Reports (Delete if not applicable)

I. ACRONYMS/DEFINITIONS:

Term/Acronym	Definition
Agency Liquor Store	Agency Liquor Store as defined in 28-A MRS §2 .
Agreement	This formal and legal binding agreement between the Department and the Provider.
BABLO or Bureau	Bureau of Alcoholic Beverages and Lottery Operations
Broker	The person who is licensed by BABLO to be a sales representative for a Supplier in Maine.
Category Management System or CATMAN	Category management system used to provide data-driven capability to improve sales, working capital productivity and return on investment for procurement, sales, and marketing decisions.
Commission	State Liquor and Lottery Commission
Commingling Cooperative or Cooperative	As defined in 38 MRS §3102, sub§-3-A, the entity established pursuant to 38 MRS §3107, sub-§3-B to manage the collection of all beverage containers subject to the requirements of 38 MRS, ch. 33 under a single commingling program.
DAFS or Department	Department of Administrative and Financial Services
Effective Date	Date on which this Agreement has been fully executed by the parties and approved by the Controller and the State Procurement Review Committee.
Gross Receipts	All receipts derived by the Department, with no deduction or offset for Operating Agreement Expenses, BABLO Administrative Expenses or Department Administrative Expenses. Gross Receipts include Liquor Excise Taxes, Bottle Deposits, and Bailment.
Industry	Includes BABLO, Agency Liquor Stores, Suppliers, Brokers and the Provider.

Term/Acronym	Definition
Initiator of Deposit	A manufacturer, distributor or other person who initiates a deposit on a beverage container under 38 MRS §3103.
IT	Information Technology
MSI	A hand-held electronic scanning ordering device.
NABCA	National Alcohol Beverage Control Association
Net Receipts	Refers to: Gross Receipts, less BABLO's Administrative Expenses, the cost of the services under this Agreement, Product and Marketing Expenses and Premium Taxes.
Net Receipts Clearing Account	The clearing account established by the Department for the deposit of Gross Receipts.
Product	Spirits as defined by 28-A MRS §2, sub-§31 , any liquor produced by distillation or, if produced by any other process, strengthened or fortified by the addition of Spirits of any kind.
Provider	Organization providing services under this Agreement.
PQRS	Electronic Price Quote Reporting System, maintained by NABCA
RFP	Request for Proposal #202309200
SKU	Stock Keeping Unit
Spirits	As defined by 28-A MRS §2, sub-§31 , any liquor produced by distillation or, if produced by any other process, strengthened or fortified by the addition of spirits of any kind.
Services	The management of the State's wholesale Spirits operations and Trade Marketing pursuant to this Agreement.
Spirits Business System / System	System used as described in this Agreement for: Administrative management; Product processing and management; price processing and management; financial processing, tracking and management; order processing, tracking and management; inventory processing, tracking and management; and reporting.
Spirits Trade Marketing	Oversight and management by the Bureau or any person awarded a Spirits Trade Marketing contract under 28-A MRS §90 . 'Spirits Trade Marketing' includes, but is not limited to, Agency Liquor Store category management, analysis and recommendations; Agency Liquor Store shelf reset recommendations; Agency Liquor Store displays, advertising, point-of-sale material and event marketing recommendations; development, Production and distribution of sales, marketing and information publications; consultation and coordination with spirits Suppliers on matters affecting their brands; and development, production and distribution of any social responsibility initiatives, and compliance related to those initiatives."

Term/Acronym	Definition
State	State of Maine
Supplier	Any company or person who sells Spirits to the State.

II. INTRODUCTION/OVERVIEW:

A. Purpose

Pursuant to [28-A MRS §90: Contract for wholesale spirits activities and marketing](#), the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations (BABLO) is partnering with the Provider to manage the State's wholesale spirits operations and trade marketing as described in this Agreement. The statute states: "The Legislature finds that it is in the Public interest to continue to maximize growth in the State's wholesale spirits business while ensuring that growth in revenue from the business is achieved in a socially responsible manner. The contracting of the operations of the wholesale spirits business serves this purpose and provides the State's Agency Liquor Store partners with effective and efficient services in order to responsibly serve consumers of spirits in the State.

As part of providing the Services, the Provider shall manage the wholesale Spirits business and Spirits Trade Marketing, including but not limited to, providing the following functions:

1. Spirits administration, including but not limited to:
 - a. Financial and performance management;
 - b. Profitable and responsible growth management;
 - c. Management of contracts;
 - d. Management of Agency Liquor Store matters and orders;
 - e. Personnel management;
 - f. Monitoring and reporting of Spirits inventory;
 - g. Management of bailment records and billing;
 - h. Management of accounts receivables, accounts payable and tax collection and reporting;
 - i. Sales and profit reporting;
 - j. Database administration for Agency Liquor Store accounts and orders;
 - k. Inventory management, Product management, pricing and reporting related to these data elements; and
 - l. Management of spirit Supplier matters, depletion allowances and orders.
2. Warehousing and distribution of Spirits to Agency Liquor Stores;
3. Bottle redemption services for Products; and

4. Spirits trade marketing, including but not limited to:
 - a. Agency Liquor Store category management, analysis and recommendations;
 - b. Agency Liquor Store shelf reset recommendations;
 - c. Agency Liquor Store displays, advertising, point of sale material and event marketing recommendations;
 - d. Development, production and distribution of sales, marketing and informational publications;
 - e. Consultation and coordination with Suppliers and Brokers on matters affecting their brands; and
 - f. Development, production and distribution of social responsibility initiatives and compliance.

III. DELIVERABLES:

A. General Requirements

1. The Provider shall maintain adequate transportation and distribution capabilities to transport to Agency Liquor Stores and shall make available a minimum of two (2) deliveries per week, per store (subject to delivery minimums as set forth herein).
2. The Provider shall maintain an operational warehouse system that has adequate capacity and ability to expand over the course of the Agreement.
3. The Provider shall follow Software as a Service (SaaS) model and maintain technology in place that will allow for:
 - a. Processing orders and invoices, including enhanced minimum or maximum ordering requirements and split-case restrictions;
 - b. Ability to show pending sales/receiving;
 - c. Inventory management;
 - d. Sales data analysis and reporting; and
 - e. Permission-based access for multiple users.
4. The Provider's System(s) shall be flexible, expandable, and customized to suit the reasonable business needs and rules of BABLO, Agency Liquor Stores, Suppliers and Brokers.
5. As of the Effective Date, the Provider affirms that neither they nor any principal officers, nor any affiliated entity has a direct financial interest in any business or entity in the State of Maine or any other state for the manufacture of Spirits, other than a minor investment of not more than 1% of the securities of a business entity that holds such a license or permit.
6. As of the Effective Date, the Provider affirms that they, any principal officer of the Provider and any named subcontractor have not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of liquor. If the Provider, any principal officer of the Provider and/or any subcontractor is found in violation of any state or federal law or rule governing the manufacture, distribution or sale of liquor, the Provider shall notify the Department promptly.

7. The Provider's facilities, equipment, and rolling stock shall meet all OSHA safety standards required.
8. Within six (6) months of the end of the State's fiscal year, the Provider shall submit to BABLO, in a manner determined by BABLO, an annual report audited by an independent 3rd party, as required by 28-A MRS §90(7)(A).
9. The Provider shall not engage in the State of Maine in activities reserved for Agency Liquor Stores licensed as reselling agents to provide Spirits to establishments licenses for on-premises consumptions, as required by 28-A MRS §90(7)(B).

B. Spirits Administration and Trade Marketing Staffing

On or prior to the Effective Date, the Provider shall provide an organizational chart with the names of staff and descriptions of the positions dedicated to the execution of the Services under this Agreement, including the names of management, supervisory, and key technical personnel who are expected to be active in the on-going operation of the System and services required under this Agreement. For staff not yet identified, the organizational chart shall identify and quantify them by title, role, or responsibility. The Provider shall make reasonable efforts to obtain BABLO's prior consent to any change in Provider staff, which consent shall not be unreasonably withheld, conditioned, or delayed. Any changes to staff shall be disclosed to BABLO as they occur.

C. Facilities

The Provider shall have a business office and warehouse located in Maine. The Provider's primary Spirits warehouse is: 4 Water Street, Hallowell, ME and the Provider's business office is located at 100 Enterprise Avenue in Gardiner, ME. Any change in primary warehouse location or business office must be located within thirty (30) miles of BABLO offices at 19 Union Street, Augusta, ME, and must be approved by BABLO, which shall not be unreasonably withheld, conditioned, or delayed. All of the Provider's facilities used in conjunction with the Services shall be in full compliance with all State and local fire codes, including obtaining all applicable State and local permits for the operation of the Spirits business.

D. Subcontractors

The Provider may enter into subcontracts for the provision of the Services under this Agreement subject to Rider B-IT, Section 6.

E. Agency Liquor Store Contact

1. The Provider shall establish and maintain designated delivery days for each Agency Liquor Store. The Provider shall provide regular communication with Agency Liquor Stores, including, but not limited to:
 - a. Notification of deliveries.

- b. Notice of newly listed Products.
 - c. Monthly sale pricing.
 - d. Quarterly price changes.
 - e. Stock outages.
 - f. Product recall.
 - g. System changes or updates.
 - h. Allocation of Product in short supply.
2. The Provider shall abide by any applicable laws and regulations regarding equitable treatment of Agency Liquor Stores with regard to:
 - a. Product delivery and educational outreach.
 - b. Inventory.
 - c. Marketing.
 - d. Sales promotion.
 - e. Seasonal Product distribution.
 - f. Sales support opportunities.
 3. The Provider shall provide an Agency Liquor Store telephone "hotline" and other electronic methods, including but not limited to email, to be used by Agency Liquor Stores to contact the Provider.
 4. The Provider shall provide a system to track hotline calls. The Provider shall have the ability to report on the number of hotline calls, responses and outcomes of hotline calls. The report shall be made available to BABLO upon request.
 5. The Provider shall use commercially reasonable efforts to answer ninety percent (90%) of Agency Liquor Store calls received during the Provider's normal business hours in under three (3) minutes.

F. Supplier or Suppliers' Representative Contact

The Provider shall provide equitable treatment to the Suppliers and Suppliers' representatives regarding the receipt, storage, storage space, and ancillary services for Product stored at the warehouse of the Provider. The Provider shall abide by all applicable laws and regulations regarding equitable treatment of Suppliers and Suppliers' representatives.

G. Spirits Business System

1. The Provider shall provide a real time, permissions-based Spirits Business System (System) for BABLO, Brokers, Suppliers and Agency Liquor Stores to support the Spirits business in Maine. The Provider shall work with BABLO to define user level permissions. The Provider shall work with BABLO to define all standard reports within the System and the frequency of the reporting.
2. The System shall:
 - a. Be accessible via a secure web-based platform or in a manner approved by BABLO.
 - b. Have a real-time reporting tool that allows all users to access information from the System, based on their permission level.
 - c. Provide reporting tools that are user friendly and adaptable to meet the needs of

the Industry user.

- d. Have all system components and communications and networking capabilities operational at the commencement of this Agreement.
3. The Provider shall implement a quality assurance test plan that must meet the review and approval of BABLO or an independent assessment from an independent third party selected by BABLO in its reasonable discretion.

H. Spirits Business System Requirements

1. The Provider's System shall meet the requirements described in Exhibit A, with such exceptions as are approved by BABLO. The Provider's System:
 - a. The System shall follow the Software as a Service (SaaS) model.
 - b. The module used to list, change or delist any Product shall be available at the commencement of the Agreement.
 - c. The System shall accommodate and manage all Product changes as described in Exhibit A.
 - d. BABLO utilizes the web-based Price Quote Reporting System (PQRS) provided by NABCA to list new Products and to make changes to existing Products. The Provider's System shall have the capability to interface with PQRS on a daily basis.
 - e. The System shall be able to handle multiple users at the same time without performance degradation.
 - f. The Provider may propose and implement additional features with BABLO's approval.

I. Product Pricing Management

1. BABLO has the statutory authority to regulate the wholesale and retail price for all Products sold in the State. BABLO may also change retail pricing or create special retail pricing with the approval of the State Liquor and Lottery Commission (Commission). BABLO currently uses a pricing formula to set the retail prices of Spirits.
2. The Provider has no authority to alter the pricing set by BABLO and the Commission. BABLO and the Provider will establish protocols for sharing information about new Products, monthly special pricing and quarterly price changes.
3. The Provider shall:
 - a. Track all Products and price changes through the Spirits Business System.
 - b. Provide to Industry the list of prices of all Products and update the list on a quarterly basis or as requested by BABLO and identify all Products that are being offered at a special price each month.
 - c. Provide electronically or in printed form, the current price list of all Products listed by the Commission. The price list must include the name of the Supplier, state code, description, size, pack size, retail price and agent price.
 - d. Post the price list on a website accessible to these constituents: Agency Liquor Stores, Suppliers, Suppliers' representatives and consumers.
 - e. Provide the monthly special retail pricing list electronically or in printed form. The monthly special retail pricing list must include the UPC, state code, description,

- size, pack size, regular retail price, special retail price for the given month and Agency Liquor Store cost.
- f. Post the monthly special retail pricing list on a website accessible to these constituents: Agency Liquor Stores, Suppliers, Suppliers' representatives and consumers
- g. Make price lists available for constituents, except retail consumers, in a format that is downloadable to other databases.
- h. Provide a pricing calculator accessible to BABLO, Brokers, and Suppliers that allows transparency in the calculation of pricing. The calculator shall have the ability to be updated to reflect any modifications to the pricing formula. BABLO may make the pricing calculator accessible to the public in a manner determined by BABLO.

J. System Operations Services

1. The Provider shall provide operations services for the System, including:
 - a. Start-up and shutdown tasks;
 - b. Disaster recovery plans and procedures;
 - c. Monitoring and mitigating performance issues;
 - d. System access;
 - e. Report generation;
 - f. Regular maintenance performed outside BABLO working hours of 8:00am to 5:00pm;
 - g. Daily, weekly, monthly, quarterly and annual file backups; and
 - h. Various operational procedures to enable the correct operation of the System.

K. System Training Programs, Initial and On-Going

Upon significant changes in the System or upon request from BABLO, the Provider shall offer training in the use of the System to BABLO, Agency Liquor Store users, Suppliers, and Supplier's representatives. Training locations must be approved by BABLO. Training provided to BABLO must include all aspects of System usage.

L. System User Documentation

1. Upon significant changes to the System, or implementation of a new System, the Provider shall create and provide quick reference guides on the correct use of the System for each user group, including BABLO, Suppliers/Suppliers' representatives and Agency Liquor Stores.
2. The Provider shall update the training materials and any user documentation (in each case, as reasonably appropriate) with any material change in the System or procedural change impacting users. The format must be approved by BABLO. Copies shall be supplied to all impacted users at least one (1) week prior to the System or procedural change. The Provider shall provide any supplementary video, graphical training or documentation directly through the internet-based System.

M. Other Host and Network Equipment Maintenance

The application shall be remotely hosted by the Provider or a certified partner thereof and consumed as a service by Industry.

N. Technical Requirements for SaaS Products

1. The Provider shall ensure all I.T. Products comply with the entire suite of Maine I.T. policies (<https://www.maine.gov/oit/policies-standards>). Special attention must be paid to the following policies/procedures:
 - a. General Architecture Principles;
 - b. System and Services Acquisition Policy and Procedures (SA-1);
 - c. Application Deployment Certification Policy;
 - d. Digital Accessibility and Usability Policy;
 - e. Remote Hosting Policy;
 - f. Data Exchange Policy;
 - g. Information Security Policy;
 - h. Access Control Policy;
 - i. Access Control Procedures for Users;
 - j. Risk Assessment Policy;
 - k. Vulnerability Scanning Procedure;
 - l. Security Assessment and Authorization Policy;
 - m. System and Information Integrity Policy;
 - n. Configuration Management Policy; and
 - o. Business Continuity and Disaster Recovery Policy.
2. In addition to the documents listed above, the Provider is further required to achieve and maintain the NIST 800-53 Rev 5 standards for the remaining security and privacy control families to a security baseline appropriate to the impact level of the data as determined by the Bureau:
 - a. Physical and Environmental Protection;
 - b. Awareness and Training;
 - c. Planning;
 - d. Audit and Accountability;
 - e. Assessment, Authorization, and Monitoring;
 - f. Personnel Security;
 - g. PII Processing and Transparency;
 - h. Contingency Planning;
 - i. Identification and Authentication;
 - j. Incident Response;
 - k. System and Communications Protection;
 - l. Maintenance;
 - m. Media Protection; and
 - n. Supply Chain Risk Management to a security baseline appropriate to the impact level of the data as determined by the Agency.

O. Technical Support Services

1. The Provider shall fulfil requests from BABLO for System support in a timely manner. The Provider shall implement System and software engineering support services for System management, System error correction and implement any changes to Federal and State law and BABLO's rules and requirements. Technical support services includes:
 - a. Software Support. The Provider shall provide software and systems engineering support for System changes. The Provider shall supply upgrades on at least a semi-annual basis or as needed to comply with a specific request by BABLO (which such requests must be consistent with the terms of this Agreement) and the periodic releases must be capable of including multiple administrative improvements to the System.
 - b. Quality Assurance and Acceptance Testing. The Provider shall provide a Quality Assurance capability and support for BABLO's internal acceptance testing.
 - c. Shared Records for Change Management for the System. The Provider shall provide shared access to BABLO on change requests and change tracking.

P. System Operations Security Plan

The Provider shall submit to BABLO a SOC 2 Type II report (subject to all five Trust Services Principles), annually with all Critical & High findings remediated in a manner that is approved by BABLO and/or Maine IT.

Q. IT Remediation and Deliverables

The Provider shall adhere to the below IT remediation and deliverables schedule:

Provider's Deliverable	Required Action	Verification
<p>Prior to execution of the contract, Provider will provide the State of Maine with a Plan of Action and Milestones (POAM) that details anticipated dates for remediation of all existing vulnerabilities as outlined in the Penetration Test results that have been provided by the Provider.</p> <p>Dates should align with the State of Maine's Vulnerability Scanning Procedure (RA-5) –</p>	<p>Plan for critical, high, and medium risk issues identified by Maine IT to be remediated within 60 days of the contract being executed. Schedule of remediation of all low-risk issues shall be laid out in POAM. All low-risk vulnerabilities should be remediated within 120 days of the contract being executed.</p>	<p>POAM submitted to BABLO & approved by MaineIT.</p>

https://www.maine.gov/oit/sites/maine.gov/oit/files/inline-files/VulnerabilityScanningProcedure.pdf		
<p>All critical, high, and medium issues identified, with the exception of “medium Finding E,” in March 2023 Comprehensive External Penetration Test performed by Tyler Technologies must be remediated within 60 days of the contract being executed.</p>	<p>See Tyler Technologies' recommendations in Penetration Test provided by the Provider.</p>	<p>Subsequent 3rd Party Remediation Penetration Test results submitted to BABLO/MaineIT within 60 days of the contract being executed, demonstrating that all previously identified findings referenced in the POAM have been satisfactorily remediated.</p>
<p>The Provider will pursue a SOC2 Type II (subject to all five Trust Services Principles), or other 3rd party audit certification as defined in State of Maine System and Services Acquisition Policy (Appendix C, Section 1.2).</p> <p>System and Services Acquisition Policy and Procedures (SA-1)</p>	<p>SOC 2 Type II audit engaged by January 31, 2025.</p>	<p>SOC2 Type II (subject to all five Trust Services Principles), or other 3rd party audit certification completed and satisfactory evidence that all critical and high findings have been remediated must be submitted to BABLO/MaineIT prior to December 31, 2025.</p>

R. Electronic Media, Computer Room Supplies

The Provider shall supply reasonable electronic media items, including, but not limited to, printers, printer paper, toner cartridges, pre-printed forms and supplies needed to operate the System, at all sites of the Provider.

S. Financial Administration

The Provider is responsible for all financial aspects of the Spirits business, including but not limited to those items outlined in Exhibit B. The Provider's financial management system (and ordering system if separate from the financial management system) shall adhere to generally accepted accounting principles. The Provider shall make available, for inspection by BABLO or its representatives, the systems and all financial and accounting records pertinent to the operation of the Spirits business under this Agreement. The financial accounting and ordering system of the Provider will be subject to audit by the State or contracted audit firms on behalf of the State.

T. Flow of Accounts Receivable and Accounts Payable

1. The Provider shall maintain records of all deposits and payments. The Department has established a Net Receipts Clearing Account for depositing all accounts receivable. The Provider agrees that:
 - a. Except as expressly set forth in this Agreement, all receivables from the Services, including warehousing, distribution and sale of Spirits will be funds or property of the State.
 - b. Funds collected shall be deposited in the Net Receipts Clearing Account.
 - c. The Provider, in its accounts receivable/accounts payable capacity, shall be acting solely as agent of the State, and not in its individual capacity.
 - d. The Provider shall be prohibited from commingling funds and financial activity as agent of the State pursuant to this Agreement with any other funds and financial activity of the Provider in its individual or other capacity.
 - e. The Provider shall have no rights of offset or other pecuniary interest in the Net Receipts Clearing Account or the receipts collected for deposit therein.
 - f. Payments received in connection with Spirits sales may be electronically transferred by the payor (Agency Liquor Store) directly into the Net Receipts Clearing Account, and checks from payors (Agency Liquor Stores) for such sales delivered into the possession of the Provider will be deposited directly into the Net Receipts Clearing Account.
 - g. Deposits into the Net Receipts Clearing Account shall be made by the Provider within one (1) business day following receipt.
 - h. The Provider shall not have access to funds in the Net Receipts Clearing Account for compensation to which it is entitled, or for making direct payment of invoices payable from receipts of the Spirits operations.
 - i. The Provider may directly pay invoices payable from receipts of the Spirits operations with its own funds, in which case it may submit an invoice to the Department for reimbursement.
 - j. The Provider and BABLO shall each be entitled to receive reports of all deposits to the Net Receipts Clearing Account.
2. The Department has the right to audit the Net Receipts Clearing Account.

U. Payments to Suppliers for Product

1. Twice per month, the Provider shall provide each Supplier with a purchase order that shows the Supplier's Product(s) distributed from the Provider's warehouse. The purchase order shall include:
 - a. An itemized list by SKU of each of the Supplier's Product(s) that were distributed from the warehouse.
 - b. The FOB price for each SKU on the itemized list described in this section and the extended total.
2. Upon receipt of the purchase order as described above, it will be the Supplier's responsibility to invoice the Provider. Upon receipt of an invoice from the Supplier, the Provider shall pay invoices based on terms agreed upon between the Provider and Suppliers. The Provider is solely responsible for payments to Suppliers as agent of the State, subject to the reimbursement obligations of the Department to Provider pursuant to the terms of this Agreement.

V. Payments from Agency Liquor Stores and Small Maine Distilleries

1. All payments received by the Provider from Agency Liquor Stores under this section shall be deposited into the Net Receipts Clearing Account established by the Department.
2. The Provider shall:
 - a. Invoice Agency Liquor Stores upon delivery. Agency Liquor Stores shall pay the Provider for Product within three (3) business days of receipt of Product and valid invoice.
 - b. Closely monitor all accounts for delinquencies and comply with all statutory requirements for the indebtedness of any person for liquor.
 - c. Report delinquent accounts to BABLO as they occur.
 - d. Have the capability to automatically sweep Agency Liquor Store accounts for payment of Product.
3. Small Maine distilleries may transfer Product from their bonded area and sell directly to consumers at up to 2 additional locations licensed under 28-A MRS §1355-A (5)(B)(3). Sales must be tracked by the distillery and reported by the 15th of each month for the previous month and reported to BABLO. The Provider shall have a process for accepting the transfer reports from BABLO for payment and billing to small Maine distilleries that sell from their distillery and/or two (2) additional locations, as required by 28-A MRS §1355-A (5)(G).
4. The Provider accepts 100% of the risk of default by Agency Liquor Stores and guarantees payment to the State of all receivables from Agency Liquor Stores which are delinquent by 180 days or more.

W. Payment of Taxes to BABLO

1. The Provider shall:
 - a. Calculate and collect any and all taxes imposed on Product sold to Agency

Liquor Stores and deposit those taxes into the Net Receipts Clearing Account, as required by law.

- b. Calculate premium taxes at the time of invoice on all Products delivered. The Provider shall deposit premium taxes each day to the Net Receipts Clearing Account on Product sold to Agency Liquor Stores at the time of invoice collection in accordance with requirements for payment from Agency Liquor Stores.
- c. Provide BABLO with a monthly report detailing the premium tax collected on every invoice in the period.

X. Warehouse General Requirements

1. The Provider's warehouse(s) premises shall meet the following requirements:
 - a. All activities and facilities on the Provider's warehouse(s) premises shall comply with relevant federal, state, and local regulations.
 - b. The Provider's warehouse facilities shall at all times be kept at a temperature range suitable for the long-term storage of Products without spoilage.
 - c. The Provider shall have capacity for alternate temperature ranges, including refrigerated Product, should BABLO and/or the Supplier require a different storage temperature range for any specific Product. The Provider shall make up to 12,000 square feet of refrigerated warehouse space available to Suppliers, if required by BABLO.
 - d. Product under the control of the Provider shall not be stored in unhoused trailers for a period sufficient to allow an unsuitable storage temperature to develop. This includes Product being delivered to and from the warehouse (but only to the extent such Product is under control of Provider).
 - e. Product shall be distributed on a "First in/First out" (FIFO) basis to prevent improper aging, except when directed to the contrary by a Supplier or BABLO. The Provider may recommend to BABLO other alternatives to the FIFO method.
 - f. To ensure security and minimize freezing during the winter, the Provider shall at all times have sufficient shipping, receiving, docking and storage capacities to promptly unload incoming scheduled deliveries typically within two (2) hours after physical arrival on the Warehouse premises during normal business hours.
 - g. The Provider shall effectively handle Product arriving in industry-standard packaging.
 - h. The Provider shall submit a schedule to BABLO listing hours of operation. Regular bailment hours are Monday through Friday from 4:00am to 4:30pm. This schedule may be adjusted with BABLO approval.
2. The Provider may make charges directly to Suppliers requiring refrigeration of Product and may charge Suppliers directly for warehouse services outside of bailment. The amount of such separate charges shall be subject to prior written approval by BABLO and may be included directly in Provider's invoices to Suppliers for bailment services.

Y. Warehousing and Distribution

1. The Provider shall provide warehouse space and staff to maintain sufficient Product inventory and to prepare and process orders. The Provider's warehouse shall be able to accommodate anticipated growth in Spirits sales.
2. The Provider shall disclose to BABLO all warehouses that store Spirits under this Agreement. All warehouses used in conjunction with the Services must be located in the State of Maine and approved by BABLO. BABLO reserves the right to inspect the Provider's warehouse facility or facilities used in conjunction with the Services with reasonable notice throughout the life of the Agreement.

Z. Warehouse Floor and Movement Capacity and Storage Strategy

1. The Provider shall have adequate equipment to move Products and sustain current sales operations as required in the Agreement. The Provider shall provide adequate space and facility, at full capacity, to isolate Product in special statuses, including but not limited to:
 - a. Broken and/or damaged.
 - b. Allocated.
 - c. Unsaleable status (permanent and/or temporary).
 - d. Carrier Returns.
2. The Provider is solely responsible for the management and payment/collection of loss related to items 1, 3 and 4 above.

AA. Warehouse Security

1. The Provider's warehouse(s) shall meet the following security requirements:
 - a. Have adequate security equipment and mechanisms, including cameras, to ensure that all doors and windows and other potential means of access to the warehouse, its contents, records of transactions between the Provider and Suppliers, and administrative control areas are secure and at all times connected to an adequate alarm system.
 - b. Secure access and egress to/from the warehouse shall be maintained and monitored by a competent authority at all times. Secure access is having control over the building relative to access to Product where stored to ensure unauthorized access to that area does not occur.
 - c. The Provider's warehouses shall be solely dedicated to the Spirits business in Maine or Product must be sufficiently segregated and secured from other Products not related to the Spirits business.

BB. Product Ownership

1. Product delivered to and stored at the Provider's warehouse shall remain the property of the Supplier until an order is shipped from the Provider's warehouse.

The Product shall become the property of the State of Maine at the point of shipment and shall become the property of the Agency Liquor Store licensee upon acceptance of delivery. The Provider shall have sufficient property insurance to cover inventory while at the Provider's warehouse and while in transit to Agency Liquor Stores to protect the interests of the Suppliers and the State. The Provider shall at no time take legal title to the Product.

CC. Inventory Control and Management System Requirements; Allocation

1. The Provider shall maintain an automated inventory management and information system to control Product inventory that is part of the System defined in this Agreement. Inventory control includes, but is not limited to receiving, slotting, selecting, shipping, invoicing, and processing exemptions, such as returns and damages. BABLO shall have the right to audit the system and to designate other State entities or non-state auditors to conduct audits of the system.
2. The Provider's inventory control and management system shall:
 - a. Permit real-time review of inventory levels by Suppliers, Suppliers' representatives, BABLO, and Agency Liquor Stores.
 - b. Notify Suppliers and BABLO when inventory is low or reorder points are reached.
 - c. Notify Suppliers, Suppliers' representatives and Agency Liquor Stores per BABLO direction when any Product is in short supply and to allocate Product fairly among Agency Liquor Stores.
 - d. Manage limited Product that is allocated by the Supplier.
 - e. Establish and track maximum order limits.
3. The Provider shall:
 - a. Work with Suppliers to maintain an adequate and balanced inventory for all Products consistent with historic and anticipated sales needs.
 - b. Work to ensure that Suppliers deliver Product in a sufficient quantity to enable the Provider to fill Agency Liquor Store orders.
 - c. Use commercially reasonable efforts to minimize out of stock issues, especially during peak selling periods.
4. The Provider may adopt a policy for the removal of any Product de-listed by BABLO and may charge Suppliers a fee for the removal of such Product. The policy and fee are subject to approval by BABLO.

DD. Product Orders by Agency Liquor Stores

1. The Provider shall provide multiple options for Agency Liquor Stores to submit orders for Product, including emergency ordering solutions. The Provider shall consider the needs of stores of all sizes and geographic locations. Web-based systems shall be available on a 24/7/365 basis, excluding any reasonably

necessary system downtime, not to exceed eight (8) hours. Any changes to Agency Liquor Store ordering options must be approved by BABLO.

2. The Provider shall allow Agency Liquor Stores to place orders until 8:00 A.M. one (1) business day before the Agency Liquor Store's designated delivery day. For Agency store pick-ups at the Provider's bailment warehouse, orders placed by 8:00 A.M. are available for pick-up on the same day.

EE. Agency Liquor Store Minimum Order Size and Delivery

1. The Provider shall make available a minimum of two (2) deliveries of Product per week for each Agency Liquor Store as outlined in this Agreement. All Agency Liquor Stores shall qualify for one (1) delivery every week. If only one (1) delivery is needed per week there shall be no minimum order requirement. The Provider shall make available a second weekly delivery to any Agency Liquor Store with a minimum order amount for the first delivery in any week of \$1,500 (the "Minimum First Delivery"), provided the second order is also for a minimum of \$1,500. The Provider may propose an increase to the Minimum First Delivery Amount, subject to BABLO approval, to reflect the percentage change in average cost of goods sold for the Products over the prior year.

FF. Order Fill Rate and Correction; Credit

1. The Provider shall maintain an order control system that minimizes the risk of order errors and provides for a timely and simple method for reporting order errors. The Provider shall implement a system to manage, track, credit and return Product to inventory for order errors. For any item delivered in error, the Provider shall issue a return authorization and issue a credit after the item is picked up for return or at the time of delivery if discovered at the time of delivery.
2. The Provider shall maintain a minimum Product order fill rate of 95%, excluding out-of-stock items. The Provider shall report order fill rate quarterly to BABLO.

GG. Bottle Pick

1. The Provider shall pick orders from Agency Liquor Stores based on the following parameters:
 - a. 50 milliliters Products shall be ordered by the sleeve or the smallest allowable pack size as determined by BABLO.
 - b. 100 milliliters Products shall be ordered in full cases unless packaged by sleeve, in which case they may be ordered by the sleeve.
 - c. 200 and 375 milliliters Products may be selected and shipped individually if the SKU is not packaged in a sleeve.
 - d. Bottle sizes above 375 milliliters shall be picked individually or by case as ordered by Agency Liquor Stores, unless otherwise directed by BABLO.

2. The Provider shall utilize a reward system to encourage Agency Liquor Stores to order Product by the case versus by the bottle. The reward system must be approved by BABLO. The benefit of the reward system shall be credited to the Agency Liquor Store account in a manner and frequency approved by BABLO. The reward system described in this section shall not be a penalty for bottle pick. Unless otherwise agreed by BABLO, the Provider shall be financially responsible for the costs of the reward system.

HH. Product Delivery to Agency Liquor Stores

1. The Provider shall provide delivery service to Agency Liquor Stores, assist in the unloading of Product and provide in-store delivery. The Provider shall allow sufficient time at delivery to permit the Agency Liquor Store to verify that the order delivered matches the packing list and the Agency Liquor Store's order confirmation.
2. The Provider shall include a packing list identifying the following with each order delivered:
 - a. Product in the delivery by code.
 - b. Quantity of Product in the delivery by code.
 - c. An indication of whether the delivery includes cases or split cases.

II. Warehouse Pick Up

The Provider shall permit Agency Liquor Stores to pick up orders at its warehouse facilities five (5) days per week. There shall be no minimum order size for a warehouse pick-up. Agency Liquor Stores must identify an order as a pick-up when ordering, and also specify which warehouse location for desired pick up. Prior to the Effective Date, the Provider shall submit to BABLO hours for pick up at each facility. Any changes to these hours must be approved by BABLO.

JJ. Bailment Assessment

The Provider shall be solely responsible for bailment collection. The Provider shall apply bailment charges equally to all Suppliers and provide incentive for Suppliers to manage inventory efficiently to ensure fresh and correct Product levels. The Provider has no authority to change bailment rates or related fees. The Provider may propose changes to the bailment charges. All requests for bailment changes must be made in writing to BABLO. BABLO must approve any changes to bailment rates and related fees. If a change in bailment rates or related fees is approved by BABLO, the Provider shall notify Suppliers no later than thirty (30) calendar days prior to the effective date of such change. The Provider shall transfer gross bailment income generated by this program to BABLO within forty-five (45) days after the end of each calendar quarter during the

Term. The applicable bailment and pre-bailment charges as of the Effective Date are outlined in Exhibit C.

KK. Non-Bailment Section of Primary Warehouse

Upon request of BABLO, the Provider will allocate a non-bailment section of its primary warehouse space that can accommodate up to twenty-five thousand (25,000) physical cases of Product to be used for special pricing promotions.

LL. Bottle Redemption and Deposit Fees

1. The Provider shall provide or arrange through a subcontractor for bottle redemption services in accordance with 38 MRS, ch. 33. The Provider is responsible for all costs associated with bottle redemption services related to the spirits business. The Provider shall be responsible for the collection of bottle deposit fees, payment of pick up fees, and the reimbursement of statutory deposit fees and handling fees to redemption centers.
2. Until the Cooperative (as defined in 38 MRS §3102 (3-A)) implements a plan ("Plan") that is approved by the Department of Environmental Protection (pursuant to 38 MRS §3107 (3-B)(B) and (C)), the Provider shall:
 - a. Act as the pick up agent for the purpose of providing or contracting for all transportation and recycling services related to bottle redemption as required by 38 MRS §3102 (16-A). The services shall include the pick up of empty beverage containers at Agency Liquor Stores, licensed redemption centers, on premises accounts and military installations.
 - b. Provide pick up services with a frequency that avoids a backlog of containers at the place of pick up.
 - c. Reimburse redemption centers the statutory deposit fee in accordance with 38 MRS §3103 (4).
 - d. Reimburse redemption centers the statutory handling fee in accordance with 38 MRS §3106(7)(A) and (B).
 - e. Charge Agency Liquor Stores the statutory deposit fee in accordance with 38 MRS §3103 (4). This item shall be itemized on each invoice.
 - f. Maintain a separate account for all transactions related to deposit fees, which shall not be commingled with other funds. The Provider shall report to BABLO quarterly concerning the activities of this fund. The report shall be submitted to BABLO on the 20th day of the month following the end of the quarter in a format approved by BABLO.
 - g. Transfer all unclaimed deposits to BABLO on a quarterly basis, subject to 38 MRS §3108-A (1). Unclaimed deposits are the property of BABLO.
 - h. Ensure redemption stickers are affixed to all Product prior to distribution to Agency Liquor Stores. The Provider may charge suppliers a fee for affixing redemption stickers subject to the terms in Exhibit C.
 - i. Ensure that empty boxes are provided to Agency Liquor Stores and redemption centers for collection of empty beverage containers.

3. After the Cooperative implements an approved Plan, the Provider and the Bureau may renegotiate the terms of this section of the Agreement, in consideration of the approved Plan, the requirements of the RFP and the proposed services included in the Bidder's Proposed Services form.
4. If the Cooperative does not implement an approved Plan, the Provider shall continue to perform the duties as outlined in sections 1 and 2 above, until such time as an approved Plan is in place.

MM. Spirits Trade Marketing Funding

The Provider, at the Provider's sole expense except with respect to items reimbursable pursuant to Section NN, shall be responsible for performing Spirits Trade Marketing functions as part of the Services, as outlined in Exhibit D.

NN. Cost Reimbursement

1. In addition to the compensation for Services paid to Provider during the Term, the Department shall reimburse Provider for the following items on the specified frequencies:

Frequency	Type
Weekly	Bottle deposits. This may change upon formation of a Commingling Cooperative and the implementation a plan approved by the Department of Environmental Protection, pursuant to <u>38 MRS, ch. 33.</u>
Twice per month	Supplier COGS
As incurred	Full reimbursement for actual cost of certain third party marketing spends (but only to the extent that the same are not included in those that Provider must fund as listed in Exhibit [D]), including but not limited to: <ul style="list-style-type: none"> - General agency fees - Consumer website - Spirits mobile application

	<ul style="list-style-type: none"> - Hired talent - Media spends - Print expenses - signage - Racking & shelf tags - Postage - Tradeshows including deposits, rentals, food, etc.
As Incurred	All other chargebacks in each case as approved by BABLO (example closed account credit)

OO. Agency Store Increases

As of the Effective Date, there are 645 active Agency Liquor Stores (the "Store Count"). The Store Count may increase over the life of the Agreement to 745 Agency Liquor Stores without any increase in the Service Fee. Once the licensed Store Count has increased to 746 stores, the Provider shall be entitled to a Service Fee increase equal to three tenths of a percent (.30). For each additional increase in the Store Count of 50 Agency Liquor Stores (each, a "Supplemental Increase"), the Provider and BABLO will promptly and in good faith negotiate an amendment to this Agreement limited to accounting for additional Provider costs resulting from the Supplemental Increase.

PP. Confirmation of Compliance

1. BABLO confirms that the following activities are in compliance with all applicable Maine laws and regulations regarding the warehousing, transportation and delivery of Spirits in place as of the Effective Date:
 - a. Short term storage and transfer of Product at Provider's warehouses in Bangor and Gardiner.
 - b. Transportation and delivery of Product on vehicles also carrying inventory owned by Provider.
 - c. Subcontracting transportation and delivery of Product to Aroostook County Agency Liquor Stores.

QQ. Budget Management for Spirits Trade Marketing Activities

1. BABLO and the Provider shall develop a budget for trade marketing expenses under this Agreement. BABLO and the Provider may budget additional Spirits Trade Marketing expenses not covered under this Agreement, and for funds to be provided by BABLO related to such activities. With approval from BABLO, the Provider may

directly pay invoices for such additional Spirits Trade Marketing expenses, in which case Provider may submit an invoice to the Department for reimbursement.

2. The Provider shall provide BABLO an annual report on all Spirits Trade Marketing expenditures and activities.

RR. On-going Performance Standard

1. The Provider shall endeavor to achieve revenue growth comparable to or exceeding the average growth rate of other states that control the sale and distribution of Spirits.
2. The Provider's performance standard is defined as the lesser of:
 - a. Wholesale revenue for a rolling fifty-two (52) week period plus three percent (3%); or
 - b. The Control State Average annual revenue growth rate.
3. The initial performance standard will be established whenever an agreement is executed between the Provider and BABLO using the formula above. The performance standard will be reset by BABLO each year for each subsequent year of the life of the Agreement. Failure to reach the performance standard for two (2) consecutive years may result in amendments to the Agreement.

SS. Annual Disclosure of Sales Activities in any other State

On or prior to August 1 of each year during the Term, Provider shall submit to BABLO an updated disclosure of its Spirits Trade Marketing activities in any other state for the twelve (12) month period ended April 30 of each year. Sales data in such disclosure must be based upon NABCA information. The Provider agrees to disclose annually or otherwise upon BABLO's request through the Term any new arrangements to conduct spirit trade marketing activities in any other State where such activities would have the potential of creating a direct and substantial conflict of interest with the State's financial interest.

TT. Role of the Provider on Spirits Trade Marketing

1. The Provider shall create and execute an annual Spirits Trade Marketing business plan (plan), subject to the approval of BABLO. The plan shall adhere to all federal and state laws and administrative rules. The Provider's business plan and marketing strategies shall include, but is not limited to:
 - a. Analyzing the category.
 - b. Analyzing the Products that are sold in Maine.
 - c. Monitoring the pricing formula to maximize profit for the State.
 - d. Ensuring consumers see the category to fully consider a purchase.
 - e. Social responsibility initiatives.

- f. Specific sales growth tactical programs which are sustainable and socially responsible. These programs must motivate both consumers and Agency Liquor Stores.
- g. Specific social responsibility programs that educate Maine citizens in the areas of illegal or excessive consumption and prohibition of sales to minors. These programs must build and sustain community solutions that responsibly support Agency Liquor Stores and preserve the category.
- h. An internal communication plan and process to ensure seamless coordination with Industry and BABLO.
- i. An external communication plan focused on consumers that drive category and brand visibility, awareness, and purchase consideration. This must include but is not limited to off-shelf secondary displays at retail, print media, websites, mobile applications, social media, television and radio.

UU. On-Going Business Intelligence

1. The Provider, dependent upon BABLO providing the Provider access to NABCA data, shall use available business data and analytics to regularly identify and update Spirits category sales and profit growth drivers.
2. The Provider shall provide and share business analytics with BABLO and, to the extent appropriate, Agency Liquor Stores. The financial return to the State, with careful consideration of the law and BABLO, the State's and the Provider's social responsibility commitment, is the priority outcome. On-going business intelligence includes, but is not limited to:
 - a. The retail price relationship between Maine and other Control States as manifested in everyday and monthly special pricing.
 - b. Retail brand assortment/distribution for both off-premises and for Product which is both promoted and non-promoted.
 - c. The quality of and investment in brand visibility programs provided by the Suppliers, Agency Liquor Stores and BABLO.
 - d. The quality of and investment in brand consideration programs provided by the Suppliers, Agency Liquor Stores and BABLO.
 - e. Analysis of trends and market conditions.
 - f. The effectiveness of marketing activities and sales promotions.
 - g. Opportunities for future growth, including new promotional recommendations.

VV. Category Management

1. The Provider shall provide Agency Liquor Stores with data-driven capability that will assist them to improve their sales, working capital productivity, and return on investment (ROI). This discipline is commonly referred to as Category Management (CATMAN) and it brings state-of-the-art information technology to procurement, sales, and marketing decisions.

2. The Provider shall develop a CATMAN system in conjunction with BABLO, that will meet the requirements under this Section. Areas to be included but not limited to are:
 - a. New item acceptance and delisting criteria for BABLO and the Commission.
 - b. Segment/Brand SKU selection by Agency Liquor Store account.
 - c. Segment/Brand SKU shelf space allocation by Agency Liquor Store account.
 - d. Brand/SKU selection for monthly special pricing.
 - e. Brand/SKU selection for Agency Liquor Store off-shelf display or advertising inclusion.
 - f. Criteria for Agency Liquor Stores to remove or discount Product from their inventory.
 - g. Physical support for Agency Liquor Store Spirits section resets.
 - h. Identification of fixture innovations and possible segment "signpost branding" (visibility) opportunities for Agency Liquor Stores.

WW. Managing Retail Price

1. BABLO uses a mathematical pricing formula to establish retail price. The Provider shall provide BABLO with regular, on-going advice on retail pricing strategy that optimizes gross profit in a socially responsible manner. Pricing strategies shall be grounded analytically for all brands and pack sizes and defined in regular price and monthly special pricing terms, as appropriate. The source of funding (Supplier and BABLO) shall be considered in pricing strategies. Pricing strategy input is proprietary and confidential.
2. The Provider shall maintain a web-based pricing calculator that is readily available to Suppliers, Brokers, and the public to provide transparency in pricing. The Provider shall communicate all pricing changes and decisions to Agency Liquor Stores on behalf of the Department. The Provider shall assist BABLO in managing and regularly reviewing the pricing formula.

XX. Managing Spirits Visibility to Consumers

1. The Provider shall manage Spirits visibility to consumers, including the management and promotion of the "Maine Spirits" brand. Programs to increase Spirits visibility must be approved by BABLO.
2. The Provider shall manage Spirits visibility in the following areas:
 - a. Creating permanent and temporary point of sale (POS) programs. The Provider shall propose program concepts, processes to manage, and financial mechanisms to encourage participation.
 - b. Creating temporary off-shelf display programs for Agency Liquor Stores. The Provider shall propose program concepts, processes to manage, and financial mechanisms to motivate participation.
 - c. Maintaining and managing the Maine Spirits website.

- d. Maintaining and managing the Maine Spirits mobile application.
 - e. Creating and managing content and communications through social media.
 - f. Creating and managing video, photographic, radio and television advertisements, and other marketing materials.
 - g. Creating and managing lotteries for rare or allocated Products.
 - h. Creating programs to incorporate Spirits into Agency Liquor Store ads, flyers or circulars. The Provider may propose program concepts, processes to manage, and financial mechanisms to encourage participation.
 - i. Creating and using Agency Liquor Store fixture innovations, permanent secondary display devices, and signpost branding.
3. The Provider shall manage the existing customizable racks (owned by BABLO) to display Spirits and point of sale materials. The Provider shall propose and manage marketing themes for the racks.

YY. Enhancing the Likelihood that Consumers Consider a Purchase

1. The Provider shall provide services in the area of consumer consideration (trial or repeat purchase) driven by high visibility, value-added incentives other than off-premises retail price that include, but is not limited to:
 - a. Creative concepts that position Maine Spirits marketing in a compelling and memorable fashion.
 - b. Creative themes are fixed, or that can vary by month, season, holiday or event-driven, or other opportunities.
 - c. Propose and implement tie-in campaigns with other Agency Liquor Store representatives.
 - d. Propose and implement trainings in Spirits Products to Agency Liquor Store representatives.
 - e. Propose and implement trade show type activities.
 - f. Suggest and implement consumer promotions.
 - g. Suggest, design and implement social responsibility campaigns.

ZZ. Social Responsibility Initiatives

The Provider shall develop a "social responsibility" initiative that is integrated into marketing and advertising initiatives of the Provider when appropriate, including a "Responsible Drinking" campaign for selected seasonal or holiday times. The Provider shall propose a process for this planning interaction and source of funding of the programs under this section.

AAA. Agency Liquor Stores Contact

1. The Provider shall use the System as defined in the Agreement to:
 - a. Notify Agency Liquor Stores of new Products listings, price changes, monthly special pricing and promotions.

- b. Design, with the approval of BABLO, and provide pricing tags for all listed Product to each Agency Liquor Store.
 - c. The shelf tags shall include:
 - i. The name of the Product item;
 - ii. The Product code; and
 - iii. The retail price.
2. Provide two (2) full sets of shelf pricing tags for everyday retail price of each stock keeping unit (SKU) in inventory at each Agency Liquor Store. Agency Liquor Stores can request additional sets as needed, but no more than two (2) additional full sets twice per year.
3. Provide two (2) full sets of shelf pricing tags for each SKU in inventory for monthly special pricing.
4. Provide UPC codes to all Agency Liquor Stores as requested.
5. Deliver all point of sale selling, marketing and advertising materials as approved by BABLO or as provided by Suppliers or Suppliers' representatives.
6. Inform Agency stores of Product sales and trends specific to their geography.
7. Provide recommendations to Agency Liquor Stores on shelf design and optimal mix and quantity of Product.
8. Provide business reviews for Agency stores.
9. The Provider's sales team staff shall visit at least once per year every Agency store identified on an annually agreed upon list by BABLO and the Provider. The Provider shall report to BABLO quarterly on the number of visits to Agency Liquor Stores and locations visited. Agency stores under common ownership may be visited at corporate offices or in a single location, and Agency stores on islands may be visited virtually.

BBB. Supplier or Supplier's Representative Contact

The Provider shall abide by all applicable laws and regulations regarding equitable treatment of Suppliers. Unless approved by BABLO, the Provider must not engage in marketing or promotional activity that results in a preference for a Product based on the identity of the Supplier or Suppliers' representatives of the Product.

CCC. Consumer Contact

1. The Provider shall maintain a consumer facing website that:
 - a. Provides information about Product selection.
 - b. Provides regular and special pricing.
 - c. Allows prices and Product to be searchable by the consumer.
 - d. Provides information regarding ways to use the Product in a fun and responsible manner.
2. The website created under this section shall meet requirements as described in the Department's Office of Information Technology Web Standards Policy, located at <https://www.maine.gov/oit/sites/maine.gov/oit/files/inline-files/WebStandards.pdf>.

3. The Provider shall maintain and manage the Maine Spirits mobile application. The application shall work on IOS and Android platforms and provide interactive information on Product selection, pricing, and recipes for using the Product.
4. The Provider shall use social media to communicate with consumers. The Provider shall identify social media platforms, subject to approval by BABLO. Social media used for State Business must meet requirements as described in the Department's Office of Information Technology Social Media for State Business Policy, located at <https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/SocialMediaStateBusiness.pdf>

DDD. End of Contract Conversion

Upon expiration of this Agreement, the Provider shall cooperate fully and in good faith in the conversion to a new contract or awardee. Cooperation includes, but is not limited to, sharing of data, materials and business knowledge. The Provider shall be entitled to reasonable compensation for conversion assistance provided after expiration of this Agreement. Failure on the part of the Provider to cooperate fully and in good faith may result in the assessment of liquidated damages. The Provider understands and agrees that all data, information, Products and services required under this Agreement, including but not limited to pricing, sales, trade marketing and related data is the sole property of BABLO and the State.

EEE. Contract Extension

The DAFS Commissioner and the Provider may agree in their respective sole and absolute discretion to a single extension of the existing terms of the Agreement for a period of no more than three (3) years following the end of the original ten (10) year Agreement term.

FFF. Revenue Maximization for the State of Maine

The Provider shall propose new opportunities to maximize revenues in Maine. Areas to be considered may include normal bailment income, new promotional services and offers, partnership opportunities with Suppliers, and marketing to Agency Liquor Stores.

GGG. Technical Support Services

1. The Provider shall:
 - a. Ensure timely and committed fulfillment of BABLO requests for Category Management (CATMAN) support.
 - b. Have systems and software support for CATMAN management as outlined below:
 - i. Software Support. The Provider shall provide software and systems engineering support for CATMAN changes. The Provider shall supply upgrades on at least a semi-annual basis or as needed to comply with a

- specific request by BABLO and the periodic releases must be capable of including multiple administrative improvements to CATMAN.
- ii. Quality Assurance and Acceptance Testing. The Provider shall provide a Quality Assurance capability and support for the BABLO's internal acceptance testing.
- iii. Shared Records for Change Management for the System. In fulfillment of joint responsibilities between the Provider and BABLO to make CATMAN changes in a timely and correct manner, the Provider shall provide shared access to change requests and change tracking.

HHH. Operations Security and Business Continuity Plans

1. The Provider shall:
 - a. Ensure that the CATMAN and associated operations comply with industry standards for security and integrity.
 - b. Work with BABLO to maintain a high-level security environment.
 - c. Staff must be organized, assigned and operate under procedures and with system controls that mitigate security issues.
 - d. Implement and maintain a business continuity plan to meet contractual obligations in the event of a disaster.
 - e. Provide BABLO with an outline for Operations Security and Business Continuity Plans.
 - f. Update and submit revised plans to BABLO reflecting any process changes to be deployed concurrently with the next periodic software release.

IV. TECHNICAL REQUIREMENTS:

- A. ACCESSIBILITY: All IT products must be accessible to persons with disabilities and must comply with State Accessibility Policy and Standards and the Americans with Disabilities Act. All IT applications must comply with the Digital Accessibility Policy (<https://www.maine.gov/oit/sites/maine.gov/oit/files/inline-files/DigitalAccessibilityPolicy.pdf>).
- B. STATE IT POLICIES: All IT products and services delivered as part of this Agreement must conform to the State IT Policies, Standards, and Procedures (<https://www.maine.gov/oit/policies-standards>) effective at the time this Agreement is executed.

RIDER B-IT: METHOD OF PAYMENT AND OTHER PROVISIONS**1. AGREEMENT AMOUNT:**

1. In consideration of the provision of the Services during the Term, the Department agrees to pay the Provider, on a monthly basis, at the rate of seven and fifty-five hundredths' percent (7.55%) (the "Services Fee") of the total net sales and bailment revenue for the preceding month from the sales and warehousing of spirits in the State. For the purposes of this Agreement, total net sales shall mean the wholesale cost of spirits to Agency Liquor Stores, which includes premium tax and bottle deposit. Total net sales does not include depletion allowances.
2. Starting on December 1, 2024, and on the first business day of each month thereafter, Provider must submit an electronic reconciliation report of the previous month's sales, accounts receivable and accounts payable to the Department for review. The Department will initiate payment of the Services Fee within ten (10) calendar days of the receipt of such invoice, subject to the remaining provisions of this Agreement.

2. INVOICES AND PAYMENTS: The Department will pay the Provider as follows:

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Agreement Administrator. All invoices require the following:

- A. All invoices must include the Vendor Code number assigned when registering as a vendor with the State of Maine. This number appears on all Contracts and Purchase Orders and can be acquired from the agency contact.
- B. All invoices must include the vendor's Federal ID Number.
- C. All invoices must include either the Purchase Order number or the Contract number relating to the commodities/services provided.
- D. In cases where hourly rates of contracted resources are concerned, invoices must contain a copy or copies of time sheets associated with that invoice. Time sheets will need to be reviewed and approved by the State's contract administrator.

Payments are subject to the Provider's compliance with all items set forth in this Agreement. The Department will pay the Provider within ten (10) calendar days following the receipt of an approved invoice.

The Department will withhold a retainage in the following manner:

- The allowable payment amount from each Services Fee payment will be multiplied by ten (10) percent, giving the amount that will be withheld from payment (the "Retainage"). Ninety (90) percent of the allowable Services Fee payment amount will be paid to the Provider.
- The Retainage will be held by the Department:
 - 1) Beginning on January 31, 2025, if the Provider has failed to remediate all critical, high, and medium findings identified, with the exception of "medium Finding E," in the March 2023 Comprehensive External Penetration Test performed on the Provider by Tyler Technologies, with such Retainage held until this deliverable as identified in Rider A, Section III.Q is fully satisfied, at which time (subject to any continuing Retainage obligations under subpart (2), below) such Retainage will be paid in full to Provider;
 - 2) Beginning on December 31, 2025, if the Provider has failed to remediate all critical and high findings identified by the initial SOC 2 Type II audit for the period covering January 1, 2024 to December 31, 2024, with such Retainage held until this deliverable as identified in Rider A, Section III.Q is fully satisfied, at which time (subject to any continuing Retainage obligations under subpart (1), above) such Retainage will be paid in full to Provider.

The charges described in this Agreement are the only charges to be levied by the Provider for the products and services to be delivered by it, except as otherwise specifically set forth in Rider A. There are no other charges to be made by the Provider to the Department, unless they are performed in accordance with the provisions of Section 5, Changes in the Work. The Provider shall maintain documentation for all charges against the Department under this Agreement. Notwithstanding the foregoing, the Provider shall be entitled to reimbursement for all elements for which reimbursement is contemplated under Rider A.

3. **BENEFITS AND DEDUCTIONS:** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of

Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY:** In the performance of this Agreement, the Provider shall act in the capacity of an independent contractor and not as an employee or agent of the State.
5. **CHANGES IN THE WORK:** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to the execution of the changed work.
6. **SUBCONTRACTORS:** The Provider may not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees.

The Provider is solely responsible for the performance of work under this Agreement. The approval of the Department for the Provider to subcontract for work under this Agreement shall not relieve the Provider in any way of its responsibility for performance of the work.

All Subcontractors shall be bound by the terms and conditions set forth in this Agreement. The Provider shall give the State immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement. The Provider shall indemnify and hold harmless the Department from and against any such claim, loss, damage, or liability as set forth in Section 15, State Held Harmless.

7. **SUBLETTING, ASSIGNMENT OR TRANSFER:** The Provider shall not sublet, sell, transfer, assign, or otherwise dispose of this Agreement, or any portion thereof, or of its right, title, or interest therein, without the written approval of the Department. Such approval shall not in any case relieve the Provider of its responsibility for performance of work under this Agreement.
8. **EQUAL EMPLOYMENT OPPORTUNITY:** During the performance of this Agreement, the Provider certifies as follows:

1. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a *bona fide* occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race,

color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Provider shall, in all solicitations or advertising for employees placed by, or on behalf of, the Provider, relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
3. The Provider shall send to each labor union, or representative of the workers, with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section, and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.
4. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against itself by any individual, as well as any lawsuit regarding alleged discriminatory practice.
5. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment, and in the provision of service, to include accessibility and reasonable accommodations for employees and clients.
6. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
9. **EMPLOYMENT AND PERSONNEL:** The Provider shall not engage on a full-time, part-time or other basis during the period of this Contract, any executive employee who participated in any way in the solicitation, award or administration of this Agreement according to 5 MRS §18-A, (2) and in harmony with 17 MRS §3104. Any contract made in violation of these sections is void.

10. NO SOLICITATION: The Provider certifies that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from, the award of this Agreement. For breach or violation of this provision, the Department shall have the right to terminate this Agreement without liability or, at its discretion, to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. ACCOUNTING, RECORDS, AND AUDIT:

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.
2. Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.
3. Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.
4. Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.
5. The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.
6. Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under

this Agreement are being performed, to inspect, monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

7. **ACCESS TO PUBLIC RECORDS** - As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

- 12. TERMINATION:** The performance of work under this Agreement may be terminated by the Department in whole or in part, whenever, for any reason the Agreement Administrator shall determine that such termination is in the best interests of the Department. Any such termination shall be effected by the delivery to the Provider of a Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated, and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

Upon receipt of the Notice of Termination, the Provider shall:

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;
2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;

3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval of the Agreement Administrator, settle all outstanding liabilities and claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement;
6. Transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Agreement Administrator, equipment and products purchased pursuant to this Agreement, and all files, source code, data manuals, or other documentation, in any form, that relate to all the work completed, or in progress, prior to the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

Notwithstanding the above, nothing herein shall limit the right of the Department to pursue any other legal remedies against the Provider.

13. GOVERNMENTAL REQUIREMENTS: The Provider shall comply with all applicable governmental ordinances, laws, and regulations.

14. GOVERNING LAW: This Agreement shall be governed by, interpreted, and enforced in accordance with the laws, statutes, and regulations of the State of Maine, without regard to conflicts of law provisions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and of the Uniform Computer Information Transactions Act shall not apply to this Agreement. Any legal proceeding against the Department regarding this Agreement shall be brought in the State of Maine in a court of competent jurisdiction.

15. STATE HELD HARMLESS: The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of

intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.

- 16. LIMITATION OF LIABILITY:** The Provider's liability to the Department, for damages sustained by the Department, as the result of Provider's default, or acts, or omissions, in the performance of work under this Agreement, whether such damages arise out of breach, negligence, misrepresentation, or otherwise, shall be the greater of any actual direct damages, up to the limits of the insurance required herein, or three times the value of the Product or Service that is the subject of this Agreement, up to a maximum of \$25,000,000, but not less than \$400,000.

For instance, if this Agreement is valued at \$15,000,000, then the Provider's liability is up to \$25,000,000. But if this Agreement is valued at \$100,000, then the Provider's liability is no greater than \$400,000.

Notwithstanding the above, Provider shall not be liable to the Department for any indirect or consequential damages not covered by any of the insurances required herein.

- 17. NOTICE OF CLAIMS:** The Provider shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed related in any way to this Agreement, or which may affect the performance of duties under this Agreement, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement.

- 18. APPROVAL:** This Agreement must be approved by the State Controller and the State Purchases Review Committee before it can be considered a valid enforceable document.

- 19. INSURANCE REQUIREMENTS:** The Provider shall procure and maintain insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection to, the fulfillment of this Agreement, by the Provider, its agents, representatives, employees, or Subcontractors. The insurance shall be secured by the Provider, at the Provider's expense, and maintained in force, at all times during the term of this Agreement, and, for any claims-made (as opposed to occurrence-based) policy(ies), for a period of not less than two (2) years thereafter.

1. Minimum Coverage

- a) Errors & Omissions, or Professional Liability Insurance, or Insurance by any other name, covering the following:

- A. All acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
- B. Network security and privacy risks, including, but not limited to, unauthorized access, failure of security, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of confidential information, related regulatory defense, and penalties in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
- C. Data breach expenses, in an amount not less than \$1,000,000, and payable, whether incurred by the Department or the Provider; for and on behalf of the Department, including, but not limited to:
 - C.1) Consumer notification, whether or not required by law;
 - C.2) Forensic investigations;
 - C.3) Public relations and crisis management fees; and
 - C.4) Credit or identity monitoring, or similar remediation services.

The policy shall affirm coverage for contingent bodily injury and property damage arising from the failure of the Provider's technology services, or an error, or omission, in the content of, and information from, the Provider. If a sub-limit applies to any element of the coverage, the certificate of insurance must specify the coverage section and the amount of the sub-limit.

- b) Workers' Compensation and employer's liability, as required by law;
- c) Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
- d) Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
- e) Crime, in an amount not less than \$5,000,000 (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and
- f) Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.

2. Other Provisions - Unless explicitly waived by the Department, the insurance policies shall contain, or be endorsed to contain, the following provisions:

- a) The Provider's insurance coverage shall be the primary and contributory. Any insurance or self-insurance maintained by the Department for its

officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.

- b) The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c) The Provider shall furnish the Department with certificates of insurance, and with those endorsements, if any, affecting coverage, required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.
- d) All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason, including nonpayment.
- e) The Department will not grant the Provider, or any sub-contractor of the Provider, "Additional Insured" status and the Department will not grant any Provider a "Waiver of Subrogation".

20. NON-APPROPRIATION: Notwithstanding any other provision of this Agreement, if the Department does not receive sufficient funds to pay for the work to be performed under this Agreement, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, or the federal government (if applicable), then the State is not obligated to make payment under this Agreement.

21. SEVERABILITY: The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the remainder of said provision, or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

22. INTEGRATION: In the event of a conflict between the documents comprising this Agreement, the Order of Precedence shall be:

Rider C Exceptions

Rider B-IT Terms and Conditions

Rider A Scope of Work

Funding Rider

Rider G Identification of Country in which contracted work will be performed

ATTACHMENT A: Confidentiality and Non-Disclosure Agreement

Other – Exhibits A-D

23. FORCE MAJEURE: Either party may be excused from the performance of an obligation under this Agreement in the event that performance of that obligation by a

party is prevented by an act of God, act of war, riot, fire, explosion, flood, or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, strike or labor dispute, provided that any such event, and the delay caused thereby, is beyond the control of, and could not reasonably be avoided by that party. Upon the occurrence of an event of force majeure, the time period for performance of the obligation excused under this section shall be extended by the period of the excused delay, together with a reasonable period, to reinstate compliance with the terms of this Agreement.

24. SET-OFF RIGHTS: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement, up to any amounts due and owing to the State with regard to this Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

25. INTERPRETATION OF THE AGREEMENT:

1. Reliance on Policy Determinations - The Department shall determine all program policy. The Provider may, from time to time, request the Department to make policy determinations, or to issue operating guidelines required for the proper performance of this Agreement, and the Agreement Administrator shall respond in writing in a timely manner. The Provider shall be entitled to rely upon, and act in accordance with, such written policy determinations and operating guidelines, unless subsequently amended, modified, or changed in writing by the Department, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Agreement, or in any agreement, determination, operating guideline, or other communication from the Department shall relieve the Provider of its obligation to keep itself informed of applicable State and Federal laws, regulations, policies, procedure, and guidelines, to be in complete compliance and conformity therewith.
2. Titles Not Controlling - Titles of sections and paragraphs used in this Agreement are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of the language.
3. No Rule of Construction - This is a negotiated Agreement and no rule of construction shall apply that construes ambiguous or unclear language in favor of or against any party.

26. PERIOD OF WORK: Work under this Agreement shall begin no sooner than the date on which this Agreement has been fully executed by the parties and approved by the Controller and the State Purchases Review Committee. Unless terminated earlier, this Agreement shall expire on the date set out on the first page of this Agreement, or at the completion and acceptance of all specified tasks, and delivery of all contracted products and services as defined in this Agreement, including performance of any warranty and/or maintenance agreements, whichever is the later date.

27. NOTICES: All notices under this Agreement shall be deemed duly given: 1) upon delivery, if delivered by hand against receipt, or 2) five (5) business days following posting, if sent by registered or certified mail, return receipt requested. Either party may change its address for notification purposes by giving written notice of the change and setting forth the new address and an effective date.

28. ADVERTISING AND PUBLICATIONS: The Provider shall not publish any statement, news release, or advertisement pertaining to this Agreement without the prior written approval of the Agreement Administrator. Should this Agreement be funded, in whole or in part, by Federal funds, then in compliance with the Steven's Amendment, it will be clearly stated when issuing statements, press releases, requests for proposals, bid solicitations, and other documents: (1) the percentage of the total cost that was financed with Federal moneys; and (2) the dollar amount of Federal funds.

29. CONFLICT OF INTEREST: The Provider certifies that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of its services hereunder. The Provider further certifies that in the performance of this Agreement, no person having any such known interests shall be employed.

30. LOBBYING:

1. Public Funds - No Federal or State-appropriated funds shall be expended by the Provider for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress or State Legislature, an officer or employee of Congress or State Legislature, or an employee of a member of Congress or State Legislature, in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. Signing this Agreement fulfills the requirement that Providers receiving over \$100,000 in Federal or State funds file with the Department on this provision.
2. Federal Certification - Section 1352 of Title 31 of the US Code requires that funds appropriated to a Federal agency be subject to a requirement that any

Federal Provider or grantee (such as the Department) certifies that no Federal funds will be used to lobby or influence a Federal officer or member of Congress.

The certification the Department has been required to sign provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Provider understands and agrees to the Federal requirements for certification and disclosure.

3. Other Funds - If any non-Federal or State funds have been or will be paid to any person in connection with any of the covered actions in this section, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form to the Department.

31. PROVIDER PERSONNEL:

1. The parties recognize that the primary value of the Provider to the Department derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals whose résumés were offered by the Provider in the Proposal. Therefore, the parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.
2. The Department shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Department's judgment, are not appropriate for the performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Department shall act reasonably and in good faith.
4. During the course of this Agreement, the Department reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Department. In considering the Provider's employees' acceptability, the Department shall act reasonably and in good faith. In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Agreement, including any Subcontractors, including persons or corporations who have critical influence on or control over this Agreement, are not presently debarred,

suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal or State department or agency.

5. During the course of this Agreement, the Department reserves the right to require a background check on any of the Provider's personnel (employees and Subcontractors) that are in any way involved in the performance of this Agreement.

32. STATE PROPERTY: The Provider shall be responsible for the proper custody and care of any Department or State-owned property furnished for the Provider's use in connection with the performance of this Agreement, and the Provider will reimburse the Department for its loss or damage, normal wear and tear excepted.

33. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS:

1. The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider, at its expense, shall defend, indemnify, and hold harmless the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees.
2. The Provider may not publish or copyright any data without the prior approval of the Department. The State and the Federal Government, if applicable, shall have the right to publish, duplicate, use, and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

34. PRODUCT WARRANTY: The Provider expressly warrants its products and services for one full year from their final written acceptance by the Department. The responsibility of the Provider with respect to this warranty is limited to correcting deficiencies in any deliverable using all the diligence and dispatch at its command, at no additional cost to the Department. The Provider is also responsible for correcting and/or updating any documentation affected by any operational support performed under this warranty provision.

35. OPPORTUNITY TO CURE: The Agreement Administrator may notify the Provider in writing about the Department's concerns regarding the quality or timeliness of a deliverable. Within five (5) business days of receipt of such a notice, the Provider shall submit a corrective action plan, which may include the commitment of additional Provider resources, to remedy the deliverable to the satisfaction of the Agreement Administrator, without affecting other project schedules. The Department's exercise of its rights under this provision shall not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 12, Termination.

36. COVER: If, in the reasonable judgment of the Agreement Administrator, a breach or default by the Provider is not so substantial as to require termination, and reasonable efforts to induce the Provider to cure the breach or default are unavailing, and the breach or default is capable of being cured by the Department or by another contractor without unduly interfering with the continued performance by the Provider, then the Department may provide or procure the services necessary to cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

37. CONFIDENTIALITY:

1. All materials and information given to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information.
2. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and the Department shall take all necessary steps to protect confidential information regarding all persons served by the Department, including the proper care, custody, use, and preservation of records, papers, files, communications, and any such items that may reveal confidential information about persons served by the Department, or whose information is utilized in order to accomplish the purposes of this Agreement.
3. In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately.
4. The Provider shall comply with the 10 MRS, ch. 210-B (Notice of Risk to Personal Data Act).

38. OWNERSHIP:

1. All data (including Geographical Information Systems data), notebooks, plans, working papers and other works produced, and equipment and products purchased in the performance of this Agreement are the property of the Department, or the joint property of the Department and the Federal Government, if Federal funds are involved. The State (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement, or equipment and products purchased pursuant to this Agreement. The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable Federal and State laws.

2. Upon termination of this Agreement for any reason, or upon request of the Department, the Provider agrees to convey to the Department good titles to purchased items free and clear of all liens, pledges, mortgages, encumbrances, or other security interests

39. CUSTOM SOFTWARE: For all custom software furnished by the Provider as part of this agreement, the following terms and conditions shall apply:

1. The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.
2. A fundamental obligation of the Provider is the delivery to the Department of all ownership rights to the complete system, free of any claim or retention of rights thereto by the Provider. The Provider acknowledges that this system shall henceforth remain the sole and exclusive property of the Department, and the Provider shall not use or describe such software and materials without the written permission of the Department. This obligation to transfer all ownership rights to the Department on the part of the Provider is not subject to any limitation in any respect.

40. OFF-THE-SHELF (OTS) SOFTWARE: For all OTS software purchased by the Provider as part of this Agreement, the following terms and conditions shall apply.

1. This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the OTS software supplied by the Provider, installed at the Department's site, at mutually agreed upon times. In the event that a separate license agreement accompanies the OTS software, then the terms of that separate license agreement supersede the above license granted for that OTS software.
2. This Agreement does not transfer to the Department the title to any intellectual property contained in any OTS software. The Department will not decompile or disassemble any OTS software provided under this Agreement, or modify any OTS software that bears the copyright notice of a third party. The Department will make and maintain no more than one archival copy (for back-up purpose) of each OTS software, and each copy will contain all legends and notices, and will be subject to the same conditions and restrictions as the original.

3. If the CPU on which any OTS software is licensed becomes temporarily unavailable, use of such OTS software may be temporarily transferred to an alternative CPU until the original CPU becomes available.

41. SOFTWARE AS SERVICE: When the software is fully owned, hosted, and operated by the Provider, and the Department uses said software remotely over the Internet, the following terms and conditions shall apply:

1. The Provider, as depositor, shall enter into an escrow contract, upon terms acceptable to the Department, with a recognized software Escrow Agent. The escrow contract must provide for the Department to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of the Department's data, and all updates thereof (the "Deposit Materials"), in electronic format. Deposits will occur no less frequently than once a month.
2. The escrow contract shall provide for the retention, administration, and controlled access of the Deposit Materials, and the release of the Deposit Materials to the Department, upon receipt of a joint written instruction from the Department and the Provider, or upon receipt of written notice from the Department that:
 - a) The Provider has failed to carry out its obligations set forth in the this Agreement; or
 - b) A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or
 - c) The Provider has filed a voluntary petition in bankruptcy, or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or becomes subject to an involuntary petition in bankruptcy, which petition or proceeding is not dismissed or unstayed within sixty (60) days from the date of filing; or
 - d) The Provider is in material breach of its maintenance and support obligations and has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or
 - e) A condition has occurred that materially and adversely impacts the Provider's ability to support the software and the Provider has failed to cure such condition within thirty (30) days from the date of receipt by the Provider of written notice of such condition.
3. The Provider is responsible for all fees to be paid to the Escrow Agent.
4. The Escrow Agent may resign by providing advance written notice to both the Department and the Provider at least thirty (30) calendar days prior to the date

of resignation. In such an event, it is the obligation of the Provider to establish a new escrow account with a new Escrow Agent.

42. THIS ITEM IS INTENTIONALLY LEFT BLANK

43. THIS ITEM IS INTENTIONALLY LEFT BLANK

44. ENTIRE AGREEMENT: This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to this Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise an option or election under this Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, but the same shall continue in full force and effect. Use of one remedy shall not waive the Department's right to use other remedies. Failure of the Department to use a particular remedy for any breach shall not be deemed as a waiver for any subsequent breach. No waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies under this Agreement.

45. CYBERSECURITY AND PROHIBITED TECHNOLOGIES: Through the execution of this Contract, the Provider certifies that the aforementioned organization, its principals and any subcontractors named in this Contract:

- a. is not a foreign adversary business entity, <https://www.maine.gov/oit/prohibited-technologies>, 5 MRS §2021 (3); and
- b. is not on the list of prohibited companies or does not obtain or purchase any information or communications technology or services included on the list of prohibited information and communications technology and services <https://www.maine.gov/oit/prohibited-technologies>, 5 MRS §2030-B.

A person who knowingly signs this contract, in violation of this section, commits a civil violation for which a fine may be adjudged in an amount that is twice the amount of this contract or \$250,000, whichever is greater, (5 MRS §2030-A).

RIDER C: EXCEPTIONS TO RIDER B-IT

Rider B-IT Item 4 – INDEPENDENT CAPACITY is struck in full:

- 4. INDEPENDENT CAPACITY:** ~~In the performance of this Agreement, the Provider shall act in the capacity of an independent contractor and not as an employee or agent of the State.~~

Rider B-IT Item 11 – ACCOUNTING, RECORDS, AND AUDIT is amended to read as follows:

11. ACCOUNTING, RECORDS, AND AUDIT:

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.
2. Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.
3. Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.
4. Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.
5. The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to provide a corrective action plan addressing the exception and ninety (90) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.

6. Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under this Agreement are being performed, to inspect, monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.
7. **ACCESS TO PUBLIC RECORDS** - As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

Rider B-IT Item 12 – TERMINATION is amended to read as follows:

- 12. TERMINATION:** The performance of work under this Agreement may be terminated by the Department in whole or in part, whenever, for any reason the Agreement Administrator shall determine that such termination is in the best interests of the Department. Any such termination shall be effected by the delivery to the Provider of a Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated, and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

Upon receipt of the Notice of Termination, the Provider shall:

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;

2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval of the Agreement Administrator, settle all outstanding liabilities and claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement;
6. Transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Agreement Administrator, ~~equipment and products purchased pursuant to this Agreement, and all files, source code, data manuals, or other~~ documentation, in any form, that relate to all the work completed, or in progress, prior to the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

Notwithstanding the above, nothing herein shall limit the right of the Department to pursue any other legal remedies against the Provider.

Rider B-IT Item 31 – PROVIDER PERSONNEL is amended to read as follows:

31. PROVIDER PERSONNEL:

- ~~1. The parties recognize that the primary value of the Provider to the Department derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals whose résumés were offered by the Provider in the Proposal. Therefore, the parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed upon project schedule and work~~

~~plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.~~

- ~~2. The Department shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Department's judgment, are not appropriate for the performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Department shall act reasonably and in good faith.~~
- ~~3. During the course of this Agreement, the Department reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Department. In considering the Provider's employees' acceptability, the Department shall act reasonably and in good faith.~~
1. In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Agreement, including any Subcontractors, including persons or corporations who have critical influence on or control over this Agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal or State department or agency.
2. During the course of this Agreement, the Department reserves the right to require a background check on any of the Provider's personnel (employees and Subcontractors) that are in any way involved in the performance of this Agreement.

Rider B-IT Item 38 – OWNERSHIP is amended to read as follows:

38. OWNERSHIP:

1. All data (including Geographical Information Systems data), notebooks, plans, working papers and other works produced, ~~and equipment and products purchased~~ in the performance of this Agreement are the property of the Department, or the joint property of the Department and the Federal Government, if Federal funds are involved. The State (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement, ~~or equipment and products purchased pursuant to this Agreement.~~ The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable Federal and State laws.

- ~~2. Upon termination of this Agreement for any reason, or upon request of the Department, the Provider agrees to convey to the Department good titles to purchased items free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.~~

Rider B-IT Item 39 – CUSTOM SOFTWARE is amended to read as follows:

39. CUSTOM SOFTWARE: For all custom software furnished by the Provider as part of this agreement, the following terms and conditions shall apply:

1. The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.
2. A fundamental obligation of the Provider is the delivery to the Department of all ownership rights to the ~~complete system~~ custom software, free of any claim or retention of rights thereto by the Provider. The Provider acknowledges that ~~this system~~ custom software shall henceforth remain the sole and exclusive property of the Department, and the Provider shall not use or describe such software and materials without the written permission of the Department. This obligation to transfer all ownership rights to the Department on the part of the Provider is not subject to any limitation in any respect.

Rider B-IT Item 40 – OFF-THE-SHELF (OTS) SOFTWARE is amended to read as follows:

40. OFF-THE-SHELF (OTS) SOFTWARE: For all OTS software purchased by or licensed to the Provider as part of this Agreement, the following terms and conditions shall apply.

1. This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the OTS software supplied by the Provider, installed at the Department's site, at mutually agreed upon times. In the event that a separate license agreement accompanies the OTS software, then the terms of that separate license agreement supersede the above license granted for that OTS software.

2. This Agreement does not transfer to the Department the title to any intellectual property contained in any OTS software. The Department will not decompile or disassemble any OTS software provided under this Agreement, or modify any OTS software that bears the copyright notice of a third party. The Department will make and maintain no more than one archival copy (for back-up purpose) of each OTS software, and each copy will contain all legends and notices, and will be subject to the same conditions and restrictions as the original.
3. If the CPU on which any OTS software is licensed becomes temporarily unavailable, use of such OTS software may be temporarily transferred to an alternative CPU until the original CPU becomes available.

**RIDER G: IDENTIFICATION OF COUNTRY IN WHICH CONTRACTED WORK
WILL BE PERFORMED**

Please identify the country in which the services purchased through this contract will be performed:

☒ **United States. Please identify state: Maine**

☐ **Other. Please identify country: Enter Country**

Notification of Changes to the Information:

The Provider agrees to notify the Office of State Procurement Services of any changes to the information provided above.



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

ATTACHMENT A: CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

RFP / CONTRACT #: CT 18L 20241113000000001221

THIS AGREEMENT is hereby executed between the State of Maine ("State"), acting by and through the Maine Office of Information Technology ("OIT") and Pine State Trading Co. having a principal place of business at 100 Enterprise Ave, Gardiner, ME 04345 ("Vendor"), in relation to services and/or products to be provided by the vendor pursuant to CT 18L 20241113000000001221 ("Contract") as of November 26, 2024 ("Effective Date").

1. Definitions

A. Authorized Person

"Authorized Person" is defined as a person authorized by OIT as having a need to receive, possess, store, access, view and/or use Confidential Information for an Authorized Use.

B. Authorized Use

"Authorized Use" is defined as the use of Confidential Information by the Vendor or Authorized Persons, solely for the purpose of performing the Contract. Disclosure, display, use, duplication, storage or transmittal of Confidential Information, in any form, for any purpose other than that set forth in the Contract, including extrapolation or retention of summary information, data or business processes, even if without specific identifiers, shall be deemed an "unauthorized use."

C. Confidential Information

"Confidential Information" shall mean any information that OIT or the State, regardless of form or medium of disclosure (e.g., verbal, observed, hard copy, or electronic) or source of information (e.g., OIT, other state agencies, state employees, electronic systems, or third-party contractors) provides to Vendor, or which Vendor obtains, discovers, derives or otherwise becomes aware of as a result of Vendor's performance of the Contract. It includes any sensitive information that may be protected from disclosure pursuant to a federal or state statutory or regulatory scheme intended to protect that information, or pursuant to an order, resolution or determination of a court or administrative board or other administrative body. In addition, information concerning OIT's information technology infrastructure, systems and software and procedures will be considered Confidential Information. It also includes a Vendor's Service Organization Control audit report (SOC 2 Type 2) when submitted upon request to OIT and labeled as confidential.

Confidential Information shall not include information which the Vendor can clearly demonstrate to OIT's reasonable satisfaction is:

- (a) information that is previously rightfully known to the Vendor on a non-confidential basis without restriction on disclosure;
- (b) information that is or becomes, from no act or failure to act on the part of the Vendor, generally known in the relevant industry or in the public domain; and
- (c) information that is independently developed by Vendor without the use of Confidential Information.



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

At all times the State shall be the owner of any and all Confidential Information.

D. Services

"Services" is defined as the services to be performed by the Vendor in connection with the operation or management of the Contract.

E. Vendor

"Vendor" is defined to include the Vendor and the Vendor's respective employees, agents and subcontractors assigned by Vendor and approved by the State to perform obligations under the Contract (all of the foregoing collectively referred to as "Representatives").

2. Duty to Protect Confidential Information; Reporting Requirements

In consideration for the ability to perform the Services, the Vendor shall hold all Confidential Information in confidence and protect that Confidential Information with the same standard of care required to keep its own similar information confidential. The Vendor must abide by all commercially reasonable administrative, physical, and technical standards for maintaining this information confidential, which must be in accordance with standards established by the National Institute of Standards and Technology ("NIST"). In addition, the Vendor must safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. The Vendor may not, without prior consent from OIT, disclose any Confidential Information to any person for any reason at any time; provided, however it is understood that the Vendor may disclose Confidential Information to its Representatives and its business, financial and legal advisors who require the Confidential Information for the purpose of evaluating or performing the Services on the condition that, prior to such disclosure, the Representatives and advisers have been advised of the confidential and non-public nature of the Confidential Information and are subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Agreement. The Vendor shall be responsible for any breach of this Agreement by any of the Vendor's Representatives or advisors.

The Vendor shall promptly report any activities by any individual or entity that the Vendor suspects may compromise the availability, integrity, security, or privacy of any Confidential Information. The Vendor shall notify OIT immediately upon becoming aware that Confidential Information is in the possession of, or has been disclosed to, an unauthorized person or entity.

3. Discovery and Notification of Breach of Confidential Information

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of a breach of security or suspected security incident, intrusion, unauthorized use or disclosure involving Confidential Information, the Vendor shall notify OIT by telephone call (207-624-7700) and email to the OIT information security team (Security.Infrastructure@maine.gov) within the following timeframes:

- A. Upon the discovery of a breach of security or suspected security incident involving Confidential Information in electronic, or any other medium if the information was, or is reasonably believed to have been, acquired by an unauthorized person; or
- B. Within twenty-four (24) hours of the discovery of any suspected security incident, intrusion, unauthorized use or disclosure of Confidential Information in violation of this Agreement, or



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

potential loss of Confidential Information affecting this Agreement.

Notification shall also be provided to the OIT Contract Manager and the OIT Information Security Officer. The Vendor shall provide a written report of all information known at the time. The Vendor shall take:

- A. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- B. Any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

4. Written Report

In addition to the report required above, the Vendor shall provide a written report of the investigation to the OIT Chief Information Security Officer within ten (10) working days of the discovery of the breach of security or suspected security incident, or unauthorized use or disclosure involving Confidential Information. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

5. Notification to individuals.

The Vendor shall notify individuals of the breach or unauthorized use or disclosure of Confidential Information when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. Any notification provided must first be approved by the OIT Chief Information Security Officer, who shall approve the time, manner and content of any such notifications prior to their release.

6. Use Restriction

Vendor shall not receive, possess, store, access, view and/or use Confidential Information for any purpose other than an Authorized Use. Vendor shall not permit unauthorized persons or entities to gain access to Confidential Information and shall not divulge methods of accessing Confidential Information to unauthorized persons.

7. Security Obligations

The Vendor agrees to comply with the following security obligations as well as any other such obligations specified in the contract, including requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, or conveyed to him/her during the course of the Agreement. The Vendor agrees to comply with the following security obligations:

- A. Implement administrative, physical and technical safeguards in accordance with NIST standards that reasonably and appropriately protect the confidentiality, integrity and availability of any Confidential Information that is created, received, maintained, used, possessed, stored, accessed, viewed and/or transmitted on behalf of OIT or through OIT or any agency, instrumentality or political subdivision of the State of Maine Government;
- B. Unless otherwise authorized by OIT, Confidential Information may NOT be stored on personal (non-State) computing or other electronic or mobile storage devices or taken or removed in any form from OIT or the State;
- C. Vendor shall comply with all applicable federal and state laws governing confidentiality and/or privacy of information;
- D. Vendor shall comply with all applicable OIT policies and procedures including but not limited to



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

- those that provide for accessing, protecting, and preserving State assets;
- E. Access to any and all Confidential Information will be limited to only those authorized persons who need the Information to perform the services required under the Contract;
- F. Obtain fingerprint-based criminal history record checks for all Vendor's employees, agents and subcontractors when requested by OIT pursuant to federal and state statutory and regulatory directives, at the expense of the Vendor;
- G. Vendor shall instruct all personnel having access to Confidential Information about the confidential nature of the Information, the safeguards required to protect the Information, and the sanctions specified in federal and state law for unauthorized disclosure of said Information; and
- H. Vendor shall use only those access rights granted by OIT.

8. Certification by Vendor of Return of Confidential Information, Electronic Information and Tangible Property

Promptly following the written request of OIT, and immediately upon termination of the Services, the Vendor shall return all Confidential Information stored in any format to OIT, or destroy any Confidential Information that Vendor possesses in a format that cannot be returned. Further, Vendor agrees to submit to OIT on Vendor's letterhead a "CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION, ELECTRONIC INFORMATION, AND TANGIBLE PROPERTY" certifying that all copies of Confidential Information, electronic property and tangible property belonging to the State or OIT have been returned, or if necessary, destroyed using the form provided in Appendix A.

9. Termination

Vendor's Authorized Use of Confidential Information shall terminate automatically upon: (a) breach of this Agreement as determined solely by OIT, (b) completion or termination of Vendor's Services, or, (c) termination of Vendor's Contract, whichever occurs first. Vendor's indemnification, confidentiality, and related assurances and obligations hereunder shall survive termination of the Agreement.

10. Compliance

If Vendor breaches or threatens to breach this Agreement, the State shall have all equitable and legal rights (including the right to obtain injunctive relief and specific performance) to prevent such breach and/or to be fully compensated (including litigation costs and reasonable attorney's fees) for losses or damages resulting from such breach. Vendor acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the Confidential Information. Vendor shall hold OIT harmless from, and indemnify OIT for any claims, losses, expenses and/or damages arising out of the unauthorized disclosure by the Vendor, its Representatives, or third party partners, of Confidential Information or other unauthorized use of the Confidential Information, including but not limited to, paying the State any costs of enforcing this Agreement, securing appropriate corrective action, returning Information furnished hereunder, as well as any other costs reasonably incurred by the State in enforcing the terms of this Agreement.

11. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. The place of this Agreement, its situs and forum, shall be Kennebec County, Maine, where



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)


all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation, and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of Maine, and stipulates that the State Courts in Kennebec County shall be the proper venue for all matters. If any provision of the Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

12. Entire Agreement

This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives effective as of the Effective Date set forth above.

Pine State Trading Co.:

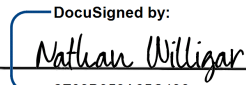
By: 

Printed: P. Nicholas Alberding

Title: Chief Executive Officer

Date: 11/26/2024

State of Maine / Office of Information Technology:

By: 
2F03B059A65C496...

Printed: Nathan Willigar

Title: Chief Information Security Officer

Date: 11/26/2024

APPENDIX A TO CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION, ELECTRONIC INFORMATION, AND TANGIBLE PROPERTY BY VENDOR PURSUANT TO VENDOR CONFIDENTIALITY & NONDISCLOSURE AGREEMENT DATED _

Pursuant to the Vendor Confidentiality and Non-Disclosure Agreement between the State of Maine, acting by and through the Office of Information Technology ("OIT") and Pine State Trading Co. ("Vendor") dated November 26, 2024, Vendor acknowledges his/her responsibility to return or destroy all Confidential Information upon termination of the Vendor's services to OIT. This document certifies that all copies of Confidential Information, electronic property and tangible property belonging to the State of Maine or OIT have been returned, or if necessary, destroyed, as described below:

Description of *returned* Confidential Information, electronic information or tangible property:

Description of *destroyed* Confidential Information, electronic information or tangible property:



Vendor Signature

P. Nicholas Alberding, CEO

Vendor Name

Pine State Trading, Co.

Date: 11/26/2024

RIDER: EXHIBITS A-D

Exhibit A Spirits Business System (System) Minimum Requirements

1. The System shall at a minimum meet these requirements:

a. System Permissions

- i. BABLO;
- ii. Provider;
- iii. Broker;
 - a) By Supplier; and
 - b) By Product
- iv. Supplier;
 - 1) By Broker; and
 - 2) By Product
- v. Agency Liquor Store.

b. Agency Liquor Store Accounts;

- i. New;
- ii. Changes;
- iii. Closures;
- iv. Access to pricing, shelf tags, digital assets and other point of sale materials;
- v. Standard gross profit/incentive programs for all agents;
- vi. Incentive programs for individual agents, if there are future changes in rule or statute; and
- vii. Invoicing.

c. Agent Ordering;

- i. Method(s) of ordering:
 - a) E-Commerce website;
 - b) iOS and Android compatible mobile application;
 - c) EDI;
 - d) FTP;
 - e) Telephone (in emergency situations); and
 - f) Any other method of order with prior approval from BABLO.
- ii. Order status;
- iii. Order restriction capability;
- iv. Product allocation;
- v. Out of stock notification;
- vi. Out of stock ordering alternative; and
- vii. Notification of out of stock replenishment.

d. Inventory Management;

- i. Product status:
 - a) From Supplier to warehouse;
 - b) In warehouse;
 - c) From warehouse to Agency Liquor Store;
 - d) Ordered and pending;
 - e) Ordered, but out of stock; and
 - f) Out of stock;



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

- ii. Inventory forecasting together with Brokers/Suppliers to prevent out of stocks.
- e. **Product Management;**
 - i. New Product Listing, which must have the capability to interface with the electronic Price Quote Reporting System (PQRS);
 - ii. Product Description, which must use a minimum of 40 characters;
 - iii. Pricing calculator based on BABLO's pricing formula;
 - iv. Product Delisting;
 - v. Product Status and Maintenance; and
 - vi. Product Changes, with corresponding history, for:
 - 1) Code changes;
 - 2) Pack changes;
 - 3) UPC changes;
 - 4) Name changes;
 - 5) Proof changes; and
 - 6) Any other changes made on standard quote sheet.
- f. **Pricing Management;**
 - i. New Product listing which includes initial total invoice cost, retail cost, agent cost, and calculated premium tax;
 - ii. Quarterly price changes, which must interface with PQRS, to include total invoice cost, retail cost and agent cost;
 - iii. Monthly special pricing to include Supplier offers, state matching offers, retail and agent sale price amounts and state profit;
 - iv. Management of Supplier depletion allowances;
 - v. Product changes that impact the premium tax calculation throughout the life of each SKU; and
 - vi. Any other changes that impact Product pricing and the pricing formula.
- g. **Agent Charges; and**
 - i. Agent cost calculation;
 - ii. New;
 - iii. Quarterly retail price changes;
 - iv. Monthly retail price specials; and
 - v. Monthly Bottle Transfer Reporting for Maine Distillers for sales from retail area.
- h. **Standard Reporting and Analysis**
 - i. All reports must be able to be displayed in actual cases, converted to 9 liter cases and/or wholesale revenue.
 - ii. The Provider will be required to be proficient in the use of the NABCA reporting system subject to access provided by BABLO.
 - iii. Ad hoc reporting on all data elements must be available and described. Data elements and necessary reports are as follows:
 - a) Product information (data from quote sheets, etc.);
 - b) Sales;
 - c) Sales by brand;
 - d) Sales by SKU;
 - e) Sales by category;
 - f) Sale trends;
 - g) Sales by Agency Liquor Store;



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

- h) Sales by county
- i) Sales by Broker;
- j) Sales by Supplier;
- k) Sales comparisons by date, range of date, SKU, category or brand;
- l) Current year sales comparisons against previous year;
- m) Promotional retail prices for current and past time periods and the effect on state profit;
- n) Contingent upon BABLO providing the necessary data and/or access to NABCA information, quarterly comparisons to other control jurisdictions for pricing and COGS;
- o) Standard Gross profit/Incentive programs for individual agents;
- p) Product distributed from warehouse by Supplier;
- q) Order fill rate;
- r) Financial reports provided monthly, quarterly, annually or as needed by BABLO that include:
 - 1. Schedule of Spirits Reconciliation;
 - 2. Factors contributing to growth or decline;
 - 3. Cost of goods sold with details of all elements of this cost;
 - 4. Reconciliation report for sales, accounts receivables and accounts payable from the previous month on the first business day on each month after the start of the Contract awarded;
 - 5. A detailed, subsidiary listing of accounts receivable and related aging report monthly;
 - 6. Sales before any discounts;
 - 7. Sales after discounts with details showing Supplier depletions offers and state matching offers;
 - 8. Promotion pricing impacts and comparison to State spend;
 - 9. Premium tax collection;
 - 10. Gross profit to the State by case and bottle;
 - 11. Bailment;
 - 12. By total bailment costs charged to Suppliers; and
 - 13) By Supplier including the cost of each bailment service.
 - 14) Bottle redemption; and
 - 15) Fiscal and/or operational impact of legislative proposals affecting the Spirits business.
- s) Inventory;
 - 1) In transit from Supplier;
 - 2) In warehouse;
 - 3) Orders committed;
 - 4) In transit to agents;
 - 5) Forecasting of inventory for Brokers/Suppliers;
 - 6) Out of stock by SKU;
 - 7) Out of stock trends; and
 - 8) Daily warehouse activity reports to NABCA.

Exhibit B



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

Financial Administration System
Minimum Requirements

The Provider is responsible for all financial aspects of the Spirits Business. The Provider shall provide a financial management system that includes, but is not limited to:

1. Accounts receivable and payable for Agency Liquor Stores, including but not limited to:
 - a. Purchases at everyday wholesale prices;
 - b. Purchases at monthly special wholesale prices;
 - c. Bottle redemption;
 - d. Errors;
 - e. Credits for recalled Products;
 - f. Credits for damaged Product in shipping from warehouse; and
 - g. Any incentive program approved by BABLO.
2. Accounts receivable and payable for Suppliers, including but not limited to:
 - a. Sales at regular FOB;
 - b. Management of depletion allowances;
 - c. Net sales after Supplier discounts;
 - d. Small Maine distiller sales from distillery retail spaces/tasting rooms, as reported monthly;
 - e. Errors;
 - f. Charges for recalled Products including any costs associated with picking up recalled Products at retail, destruction of Product and credit given to Agency Liquor Stores;
 - g. Charges for damaged Products delivered to the warehouse;
 - h. Charges for transfer of Products from the warehouse;
 - i. Charges for destruction of Products;
 - j. Charges for warehouse charges, other than bailment;
 - k. Credits, generally; and
 - l. Bailment charges.
3. Accounts receivable and payable for bottle redemption services.
4. Accounts receivable and payable for premium taxes collection.



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

Exhibit C
Maine Bailment Rates
Effective April 1, 2016

Bailment Charges

1. Handling

Covers the ordinary labor and duties incident to the unitized (slipsheet or pallet) unloading of cases, verifying case quantities against a proper packing slip and carrier bill of lading; placing into storage, administrative receiving; case or unitized picking; and the unitized loading of outbound orders. Handling is charged upon receipt of goods and calculated on a "per code per receipt" basis.

Codes of	1-180 Cases	\$1.10 per case
Codes of	181 – 299 cases	\$.95 per case
Codes of	300-669 cases	\$.85 per case
Codes of	670+	\$.75 per case
Codes received as bottles (returns)		\$.15 per bottle
Codes received uncoded or other unsaleable status		\$5.00 per line item surcharge

2. Storage

Storage is calculated on an anniversary basis and initially charged upon receipt. For each 14-calendar day from date of receipt, the number of cases in storage is charged according to the table below on a "per code per receipt" basis.

Upon Receipt		\$0.11 per case for 14 days
Cases in inventory	15 – 84 days from receipt	\$0.11 per case for 14 days
Cases in inventory	85 – 182 days from receipt	\$0.23 per case per 14 days
Cases in inventory	183 – 365 days from receipt	\$0.65 per case per 14 days



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

Cases in inventory	366+ days from receipt	\$1.14 per case per 14 days
Any cases on an unsaleable status (e.g.: uncoded)		\$0.65 per case per 145 days

3. Manual Supplier Orders

Manually processing supplier/broker generated orders as samples or for transfer out-of-state.

Orders received manually (e.g.: facsimile)	\$0.13 per case/\$25.00 min
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4. Multi-Packs (Codes listed as Full Pallet In – Full Pallet Out):

A. Handling: \$4.65 per pallet

B. Storage: Storage is calculated on an anniversary basis and initially charged upon receipt.

For each 14- calendar day from date of receipt, the number of pallets in storage is charged according to the table below on a “per code per receipt” basis.

Upon receipt		\$ 3.60 per pallet for 14 days
Pallets in inventory	15 – 84 days from receipt	\$ 3.60 per pallet per 14 days
Pallets in inventory	85 – 182 days from receipt	\$ 9.35 per pallet per 14 days
Pallets in inventory	183 – 365 days from receipt	\$23.38 per pallet per 14 days
Pallets in inventory	366+ days from receipt	\$28.06 per pallet per 14 days
Any pallet on an unsaleable status (e.g.: uncoded)		\$28.06 per pallet per 14 days

5. Accessorial Service Charges

Annual Physical Inventory	\$ 0.13 per case	
	\$ 0.09 per bottle	
Blankets	Handling	\$23.00 per blanket
	Storage	\$5.75 per blanket per month
Destruction of Inventory	Minimum charge invoked for immediate destruction of small lots. The minimum will be waived if we are	



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

	allowed to accumulate product until we have a full load. Rate subject to change based on disposal fees.	
	<56 cases per code	\$ 6.20 per case
	56+ cases per code	\$ 5.30 per case
	Minimum	\$100.00 per order
Extra Office Service Charge	Labor used for office services and other unusual office or data information services not included in the normal administration of receipts, shipments or inventory	
	Regular Time	\$32.50 per person per hour
	Overtime	\$48.60 per person per hour
	Sunday/Holiday	\$60.00 per person per hour
Extra Warehouse Labor	Labor used for handling services not included in the normal processing of a receipt or shipment nor listed separately below.	
	Regular Time	\$32.50 per person per hour
	Overtime	\$48.60 per person per hour
	Sunday/Holiday	\$60.00 per person per hour
Extra Warehouse Labor & Equipment	Labor and equipment used for handling services not included in the normal processing of a receipt or shipment, nor listed separately below.	
	Regular Time	\$61.65 per person per hour
	Overtime	\$75.50 per person per hour
	Sunday/Holiday	\$87.00 per person per hour
Lack of Advance Shipping Notice	Any delivery received from a supplier that arrives without a detailed advance shipping notice indicating quantities and product descriptions 48 hours prior to delivery.	
	\$100.00 per order	
Facsimile Charge	\$1.00 per page	



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

Labeling	Labor and materials used to apply product code labels to uncoded cases.	
	< 56 cases per code	\$ 5.20 per case
	56 – 99 cases per code	\$ 4.20 per case
	100 – 299 cases per code	\$ 2.60 per case
	Minimum per code	\$15.00
Labeling – Bottle Bill Stickers	Labor and materials to apply Bottle bill stickers to bottles.	
	\$4.00 per case Minimum: \$15.00	
Relabeling	Labor and materials to apply product code labels to improperly coded cases.	
	\$4.00 per case Minimum: \$15.00	
Duplicate Labels	Labor and materials to create labels that were not needed	
	\$ 0.30 per label	
Pallet Purchase Charge	\$10.00 per pallet	
Special Documentation Runs (e.g.: extra inventories, invoices, shipping orders)	\$25.00 per run	
Minimum Invoice Charge	\$25.00 per monthly invoice	



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

Exhibit D
Spirits Trade Marketing Funded by Provider

The following Trade Marketing activities shall be funded by Provider:

Planograms	Color printed planograms for business resets
Point of Sale Materials	Signage, postcards, placards, invites, and other small-scale point of sale materials currently used on racking and at tradeshow that are printed in-house by the Provider
Printing & Postage	Printing and postage of: <ul style="list-style-type: none"> • monthly specials book with sale pricing • monthly sale shelf tags • quarterly price books • quarterly price shelf tags
Value pack Informational brochure (VAP)	Internally created and electronically delivered value added catalog produced annually
Tradeshows	50/50 cost sharing between the Provider and the Department on tradeshow expenses that have mutual agreement on participation from the Department and Provider. Tradeshow expenses include: <ul style="list-style-type: none"> • Venue fees • Food/Catering fees • Table and equipment rentals • Entertainment • Externally printed materials (invites, banners, signage)

The Provider may submit for reimbursement trade marketing expenses that are outside the scope and level outlined in Exhibit D that have been pre-approved by the Department. Reimbursements may be invoiced to the Department as occurred and payable within 10 calendar days.

For the avoidance of doubt, the following items are not the Provider's funding responsibility:

- Content production including but not limited to videography, photography, pre-production, post-production, hired talent, location fees, production stipends, licensing fees
- Expenses for media placements (TV, Radio, Newspaper, Facebook, Instagram, Pinterest, etc.)



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

- Media Takeovers
- Lotteries
- Store Ads
- Flyers, circulars, and electronic flyer templates for Agency Liquor Stores
- Fixtures and signposts including but not limited to racking or shelf tag holders/glides
- All Consumer Website expenses, including:
 - routine and customary updates to website design, development, tech support, and website reporting for MaineSpirits.com
 - Posting new or updated information including:
 - Product updates
 - Pricing updates
 - New recipes
 - Changing imagery
 - Uploading videos
 - Seasonal theme/coloring changes
 - Contests
 - Blog Content
- Spirits Mobile Application expenses, including routine and customary updates to app design, development, and oversight of digital advertising including creation of ads, managing targeted audience(s), and media buying and placement.