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NEW

State of Maine



Master Agreement

Effective Date: 04/01/23

Expiration Date: 03/31/26

Master Agreement Description: Preventive Maintenance and Services

Buyer Information

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

Issuer Information

Nancy Tan 207-458-6050 ext. nancy.tan@maine.gov

Requestor Information

Nancy Tan 207-458-6050 ext. nancy.tan@maine.gov

Agreement Reporting Categories

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor ID

VC0000261069

Vendor Name

SANTECH POWER INC

Alias/DBA

Vendor Address Information

651 S SUTTON RD #293

STREAMWOOD, IL 60107

US

Vendor Contact Information

JASON JORDAN
224-330-9548 ext. 102
JASON.JORDAN@SANTECHPOWER.COM

Commodity Information

Vendor Line #: 1

Vendor Name: SANTECH POWER INC

Commodity Line #: 1

Commodity Code: 93639

Commodity Description: Uninterruptible Power Supplies and Main Distribution Frames

Commodity Specifications:

Commodity Extended Description: As per the specifications attached and made part of this master agreement.

Quantity	UOM	Unit Price
0.00000		0.000000
Delivery Days	Free On Board	
0	FOB Dest, Freight Prepaid	
Contract Amount	Service Start Date	Service End Date
0.00	04/01/23	03/31/26
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Please see authorized signatures displayed on the next page

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.

State of Maine - Department of Administrative and Financial Services

DocuSigned by:
David Morris 3/31/2023
24644AE5691E482

Signature Date

David Morris, Acting Chief Procurement

Officer

DocuSigned by:
Vendor
Jason Jordan 3/30/2023
8452DF069DBD4A0

Signature Date

Jason Jordan Owner

Print Representative Name and Title

DocuSigned by:
Nicholas Marquis 3/31/2023
A29C99359A37464...

Nicholas Marquis Interim CIO

RIDERS

<input checked="" type="checkbox"/>	The following riders are hereby incorporated into this Contract and made part of it by reference: (check all that apply)
<input checked="" type="checkbox"/>	Rider A – Scope of Work and/or Specifications
<input checked="" type="checkbox"/>	Rider B – Terms and Conditions
<input type="checkbox"/>	Rider C - Exceptions
<input type="checkbox"/>	Bid Cover Page and Debarment Form
<input checked="" type="checkbox"/>	Debarment, Performance, and Non-Collusion Certification
<input checked="" type="checkbox"/>	Price sheet
<input type="checkbox"/>	Other – Included at Department's Discretion

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
Agreement to Purchase Services

THIS AGREEMENT made this 30th day of March 2023, is by and between the State of Maine, Department of Administrative and Financial Services, hereinafter called "Department," and Santech Power Inc. located at 651 S Sutton Road #293, Streamwood, IL 60107 thereafter called "Provider", for the period of April 1, 2023 to March 31, 2026. There are two potential renewal periods in 2-year increments thereafter ending potentially on 3/31/2030.

The AdvantageME Vendor/Customer number of the Provider is VC0000261069

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B-IT - Payment and Other Provisions
- Rider E – Price Sheet
- Rider F – Current State of UPSs
- Rider G – Identification of Country in Which Contracted Work will be Performed

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one original copy.

Provider: **Santech Power Inc**

DocuSigned by:
By: Jason Jordan
8452DF069DBD4A0...
Jason Jordan, owner
Date: 3/30/2023

**Department of Administrative and Financial Services
Office of Information Technology**

DocuSigned by:
By: Nicholas Marquis
A29C99359A37464...
Nicholas Marquis, Interim Chief Information Officer
Date: 3/31/2023

And

Department of Administrative and Financial Services

DocuSigned by:
By: David Morris
2A644AF6684F482...
David Morris, Acting Chief Procurement Officer
Date: 3/31/2023

Total Agreement Amount \$ 12,322

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

I. DEFINITIONS AND THEIR ACRONYMS

1. End of Life (EoL) Equipment or Components that are no longer manufactured, produced, or sold by the Equipment or Component's manufacturing company.
2. End of Support (EoS) Equipment where software, security patching, component level issues are no longer supported by the equipment manufacturing company. State of Maine does not allow vendor supported patching to be a substitute for the manufacturing company's support.
3. Main Distribution Frame (MDF) is a signal distribution frame or cable rack used in telephony to interconnect and manage telecommunication wiring between itself and any number of intermediate distribution frames and cabling from the telephony network it supports.
4. Outage means a time during which Service performance parameters do not meet the "An acceptable level of the Service".
 - a. Planned Maintenance Outage: An outage caused as a planned event by Provider or their subcontractors to repair, update, change or replace network components resulting in an outage to SOM services within the Provider workmanship.
 - b. Emergency Maintenance Outage: A planned event by Provider to repair, update or replace network components resulting in an outage to SOM services.
 - i. Scheduled Maintenance: See Planned Maintenance Outage
 - ii. Chronic Outage means an outage on any Service within the Provider workmanship on same UPS which occurs on three (3) or more separate occasions quarterly totaling more than twelve (24) hours on one (1) occasion.
 1. Provider will evaluate, and report to the STATE, the cause(s) of such failure(s) with the ability to take necessary actions to restore the UPS.
 2. Provider will provide an after actions report within 10 business days.
5. Preventative Maintenance (PM) is maintenance that is proactively performed on an asset with the goal of lessening the likelihood of failure, reducing unexpected downtime, and prolonging its useful life.
6. Purchase Order Number (PON) – a tracking number utilized by the State of Maine in doing business with Provider to track orders and charges associated with the service work request.
7. Service Interruption: See "Outage"
8. Service Availability is determined by metrics associated with the availability of the UPS elements managed through Provider
9. Specifications (Specs) is a standard of workmanship, materials, etc., required to be met in a piece of work.
10. Terms and Conditions (T&Cs) is a document that outlines the legal obligations of both the service's supplier and its user.
11. Uninterruptible Power Supply (UPS) is a hardware device that provides a backup power source in case of a power outage (blackout), brownout or a surge in power. A UPS provides enough power to prevent unsaved work from being lost with a power failure by allowing the user to save work and shut down. If the outage is short, the device remains running during the outage.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

II. INTRODUCTION/OVERVIEW

The Department of Administrative and Financial Services, Office of Information Technology (Department) is seeking maintenance and support of our UPSs and batteries in the (2) data centers and MDFs located in Augusta, Maine.

Uninterruptible Power Supply (UPS) is a critical component in maintaining operations and services throughout the State due to the nature of the Data Center and the Main Distribution Frame (MDF) being the core of our services offerings. The UPSs provide up time during power outages to all the State of Maine critical devices (servers, network switches, modems, etc.). Preventative maintenance services are essential to ensuring these systems function properly and provide the opportunity for consistent government functionality. Provider will track the contract termination dates and all services whether provided directly or by a subcontractor. These Preventative UPS Maintenance and Service for Data Centers and MDFs Services will be configured as designed and manufactured in accordance with their standards. The Data Centers and MDFs are critical to the operations of the State of Maine and must be addressed immediately when required. Provider will provide minor and major preventative maintenance twice a year (6) month apart.

III. DELIVERABLES

The Provider shall perform all services and maintain all standards and requirements for services provided under this Contract in accordance with the manufacturer's recommendation and the below:

A. Required services include:

1. The Provider must adhere to the [OIT Data Center Access Control Procedure](#).
2. All Provider/contractor Staff working in State of Maine facilities must sign an Office of Information Technology and Maine Revenue Services non-disclosure agreement.
3. The State of Maine monitors and receives equipment alarms and will call the awarded Provider(s) when emergency service is required.
 - a. 24/7 priority emergency services response, maximum 30-minute call back time.
4. 24/7 unlimited technical support, providing all required services and on-site support.
5. 24/7 call center phone support
6. Preventative maintenance inspection on all UPS and battery systems including:
 - a. Functional verification
 - b. Thermal heat scan and cooling verification
 - c. Mechanical and visual inspection
 - d. Metering and calibration verification
7. On-site emergency service response time of within 2 calendar days.
8. Replacements parts must be Original Equipment Manufacturer (OEM) on UPS electronics preferred (T&M) for UPS(s) based brands. Batteries may be any manufacturer that meets UPS specifications.
9. Remedial maintenance and corrective repair. This must include a comprehensive escalation and correction action process. Following a corrective action, a report may be requested by the Department.
10. Electronic summary report of findings from equipment, environment, and site analysis.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

11. Follow manufacturer recommendations when conducting maintenance and repairs. These recommendations include:

- a. Check all connections for proper torque and/or discoloration.
- b. Check fuses on the DC capacitors deck for continuity.
- c. Calibrate and record all electronics to system specifications.
- d. Review system performance with Department to address any question and to schedule any repairs.
- e. Check air filters for cleanliness, replace as needed.
- f. Perform a temperature check on all breakers, connections and associated controls, repair and/or report all high temperatures areas to OIT Facilities Manager.
- g. Perform a complete visual inspection of the equipment including subassemblies, wiring harnesses, contacts, cables, and major components.
- h. Check module(s) completely for the following:
 - i. Rectifier and inverter snubber boards for discoloration.
 - ii. Power capacitors for swelling or leakage.
 - iii. DC Capacitor vent caps that have extruded more than 1/8"
- i. Record all voltage and current meter readings on the module control cabinet or the system control cabinet-input and output phase A, B, & C.
- j. Measure and record harmonic trap filter currents.
- k. Environmental Parameters
 - i. UPS and ambient temperature and condition of ventilating equipment.
 - ii. General cleanliness of UPS Power Module.
 - iii. General cleanliness of UPS area.
- l. Battery Cabinet Checks
 - i. General appearance of battery system.
 - ii. General cleanliness of battery system area.
 - iii. Inspect cells for physical abnormalities.
 - iv. Inspect all DC connection for abnormalities.
 - v. Battery system area ambient temperature and condition of ventilating equipment.
- m. VRLA battery system PM services. This includes:
 - i. Measure and record the following:
 - 1) Individual cell/battery float voltages and overall float voltages.
 - 2) Charger output current and voltage.
 - 3) AC ripple current and voltage imposed on the battery.
 - 4) Internal ohmic values of each cell/battery or perform a continuity of test of each cell/battery.
 - 5) Connection resistance of 10% of the inter cell/battery connection.
 - 6) Ambient temperature.
 - 7) Negative terminal temperature of one cell/battery per battery cabinet shelf or rack tier.
 - ii. Visually inspect conditions and appearance of the following:
 - 1) Connection terminals inter cell/battery connectors, cables, and associated hardware.
 - 2) Cell/battery covers, containers and post seals.
 - 3) Battery rack or cabinets and associated components and hardware.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- 4) Cell/battery jar or cover, noting any excessive distortion.
- iii. Perform cleaning of all accessible surfaces as required.
- iv. Perform once per calendar year.
 - 1) The yearly maintenance procedure includes all the above with the addition of the following:
 - a) Measure and record the connection resistance of 100% of the inter cell/battery connections.
 - b) Retorque any connection where the resistance is above 20% of the average.
- n. Power Protection Services
 - i. Site Data
 - 1) Record data on a copy of the Power Protection Audit Datasheet.
 - 2) Record site information (Department name, Site Contact, Street Address, Product: Name, Model and Serial Number).
 - ii. General UPS Room Environment
 - 1) Verify clear access to UPS unit. Note any improper conditions.
 - 2) Verify clear access to Battery Cabinet or room. Note any improper conditions.
 - 3) Using temperature probe, verify UPS room temperature.
 - 4) Verify or note cleanliness of UPS equipment room.
 - 5) Verify or note cleanliness of Battery equipment room.
 - 6) Using appropriate Battery vendor information, record battery date codes.
 - 7) Verify Battery room has proper ventilation.
 - 8) Locate and verify clear access to external UPS feeder breakers.
 - 9) Verify UPS feeder breakers for proper size and labeling. Record breaker ratings.
 - 10) Locate and verify clear access to Battery feeder breakers.
 - 11) Verify Battery feeder breakers for proper size and labeling. Record breaker ratings.
 - 12) Verify access to Battery Safety equipment.
 - 13) Verify if UPS and Battery rooms are secure, and if key or card is required to enter.

<https://gcc02.safelinks.protection.outlook.com/?url=https://www.maine.gov/oit/sites/maine.gov/oit/files/inline-files/DataCenterAccessControlProcedure.pdf&data=05|01|Brigid.Palmer@maine.gov|0b530d5c1372438833f908da8611674e|413fa8ab207d4b629bcdea1a8f2f864e|0|0|637969706549322679|Unknown|TWFpbGZsb3d8eyJWljoimC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ikk1haWwiLCJXVCi6Mn0=|3000|||&sdata=kRedtP73TrPZL7CGLLnukPaXmpm7T5iIYSuqy gx+XP4=&reserved=0>

B. Reports

1. The Provider understands that the reports are due within the timeframes established and that the Department will not make subsequent payment installments under this Contract until such reports are received, reviewed and accepted.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

2. The Provider further agrees to submit such other data and reports as may be requested by the Agreement Administrator. The Provider shall submit all data and reports to the Agreement Administrator listed in section “DEPARTMENT AND PROVIDER POINTS OF CONTACT” of this Agreement.
3. Following the Preventative Maintenance inspections, an electronic report will be provided detailing the results of the inspection and making specific recommendations toward future remedial action, or upgrades.
4. The State will use Provider maintenance reports to identify and track periods of Service outages at each Service location as well as EOL/EOS of current UPS equipment, parts, and supply availability. The report will include, at a minimum: the affected Service location, equipment type, manufacturer, model #, serial number, Purchase Order Number (PON) and total calculated uptime/downtime, compared against the uptime.

C. Conditions

1. The following conditions will be effective as of the date of the last signature (the “Effective Date”). Provider:
 - a. Shall adhere to the OIT Data Center Access Control Procedure.
 - b. Will adhere to the State’s requirement of passing Department of Public Safety’s fingerprint-background checks for their employees or subcontractors.
 - c. Will sign non-disclosure agreement from Office of Information Technology and Maine Review Services.
 - d. Will respond to emergency service requests 24/7, maximum 30-minute call back time.
 - e. Will provide 24/7 call center phone support and unlimited technical support, providing all required services and be on site when requested within 2 calendar days.
2. Scope of Work
 - a. The Department operates two (2) data centers and two (2) critical MDFs, located within six (6) miles of each other in Augusta, Maine. The Provider must support, maintain, and execute the necessary repairs on the data centers and Main Distribution Frame (MDF)’s Uninterruptible Power Supply (UPS) equipment. The Provider will be required to supply or purchase the needed parts to maintain and repair the equipment. Parts that are pre-purchased by Santech Power, will be invoiced accordingly to State of Maine per Rider E attachment 1 pricing page. The (2) data centers and MDFs require to be operational 24/7/365 including nights, weekends, and holidays.
 - b. The Department anticipates (2) scheduled preventive maintenance visits per year/site (Data Centers and Main Distribution Frames) in addition to any repair visit required. Visits will consist of:
 - c. Minor and major UPS equipment preventative maintenance, including visual inspection and the measurement, checking, recording and adjustment of all necessary components.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- d. The Provider must provide all tools necessary to perform the work. Documentation of inspection on both minor and major UPS equipment, with recommendations for any corrective action deemed necessary. UPS's include Emerson Liebert 610 and NX, as well as Schneider APC Galaxy VL and VS. Batteries are also included in the equipment to be serviced as part of the resulting contract, Rider F (Current State of UPS) outlines the current state of UPS requiring maintenance and/or emergency services.
- e. The UPS types and locations are as follows:
 - i. Maintain and service current 8 UPSs per Appendix F of RFP # 202209153 Preventative UPS Maintenance and Service for Data Center and MDFs
 - ii. Emerson Liebert (various models) at two data centers (2- Sewall Street Data Center and 1-Central Maine Commerce Center)
 - iii. Schneider APC Galaxy (model VL with VRLA batteries) at one data center (Central Maine Commerce Center).
 - iv. Schneider APC Galaxy (model VS with integrated battery cartridges) at 2 separate geographic locations at MDFs (Central Maine Commerce Center x 2 and Cross Office Bldg x 2)

3. UPS Preventative Maintenance and Service

a. Implementation

- i. If additional UPSs is required, implementation of the equipment will be done within 10 business days of receipt of Department's PON.
- ii. Implementation of equipment will be based on vendors knowledge of equipment through certification acknowledgement from vendor's manufacturer for UPS that requires implementation within the Data Centers and MDFs.

b. Removal

- i. If removal of UPSs is required, the removal of the equipment will be done within 10 business days of receipt of Department's PON.
- ii. Removal of equipment will be based on the vendors knowledge of equipment through certification acknowledgement from vendor's manufacturer for the specific UPS that requires removal from the Data Centers and/or MDFs.

c. Relocation

- i. If relocation of UPSs is required, the relocation of the equipment will be done within 10 business days of receipt of Department's PON.
- ii. Relocation of equipment will be based on the vendors knowledge of equipment through certification acknowledgement from vendor's manufacturer for the specific UPS that requires relocation from one location at a Data Center or MDF to another location.
 - 1) Santech Power, Inc. shall assist in powering down the UPS at the Department's request, but the physical relocation of UPS cabinets will be completed by State of Maine electrical contractors or riggers.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- d. Preventative Maintenance Inspection for all UPS and battery systems will include:
- i. Follow manufacturer's recommendation when conducting maintenance and repair including the State's RFP requested requirements.
 - ii. Provide documentation (audit findings, etc.) and/or reports showing levels of acceptable workings vs recommended changes presented by the manufacturer of the UPS or after-action report on an incident that took place.
 - iii. Provider is responsible for all maintenance of all the UPS in the locations identified in RFP 202209153. This includes but is not limited to, routine preventative maintenance, repairs, troubleshooting, problem resolution, and resolution fix(es).
 - iv. Provider will fix any repair or replace any part that results in not meeting manufacturer specs.
 - v. Provider must provide 7x24 hour response and restoration services. This includes a response to trouble reports within 2 hours and complete restoration within 24 hours. The initial response will include an overview of the problem, estimated time to repair, and point of contact. After initial response, vendor will provide updates no less than every 2 hours, until full restoration. If requested, an incident report is to be provided to OIT within five (5) working days of service restoration
 - vi. Provider will identify a twenty-four (24) hour, seven (7) days a week procedure for reporting troubles. The procedure must include a toll-free trouble reporting number.
 - vii. Provider will notify OIT of service affecting maintenance no less than 72 hours in advance of a planned outage.

4. Maintenance Types

- a. Emergency Maintenance – during the term of this agreement, Provider shall perform maintenance and repair on all eight (8) UPS in the 3 locations within Augusta, ME to correct any failure, interruption, or impairment. When a trouble is encountered on the UPS(s), Department shall provide assistance, diagnostic or otherwise, as may be reasonably necessary to assist Provider in its maintenance and repair activities, including without limitation the locating of any fault within the UPS(s). During the Term of this Agreement, the parties agree to the following Emergency maintenance standards: (a) Provider shall respond to any failure, interruption or impairment in the operation of the UPS(s) within two (2) hours after Provider has actual knowledge, whether by means of receiving a report from Department, of any such failure, interruption or impairment and (b) Provider shall use commercially reasonable efforts to have the UPS(s) restored to proper working order within twenty-four (24) hours of any such failure, interruption or impairment.
- b. Ordinary Maintenance. During the Term of this Agreement, Provider will schedule from time to time and perform specific periodic maintenance, repairs, and services of the UPS(s) yearly during the Term of the Master Agreement. To the extent such work shall involve any interruption in Department's use of the UPS(s), Provider shall: (a) provide notice to Department of such schedule prior to performing any such maintenance and repair; and (b) use commercially reasonable efforts to schedule the same to minimize the impact on Department's use of the UPS(s).

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- c. Maintenance of Department's Equipment and Accessories. Provider shall have no maintenance or repair responsibility with respect to any portion of Department's network on Department's side of equipment of UPS(s). Nothing contained in this Agreement shall be construed to obligate Provider to operate, maintain or repair any of Department's Equipment and Accessories. Department shall periodically inspect Department's Equipment and Accessories and shall be obligated, at its sole cost and expense, to keep, operate, maintain, and repair Department's Equipment and Accessories in accordance with the Codes and Provider's Underlying Rights.

5. Repairs

- a. Replacement parts must be Original Equipment Manufacturer (OEM) parts on UPS electronics based on specific UPS based brands.
 - i. Some repairs will require OEM proprietary software and parts only available to the State of Maine. The State of Maine will purchase and will not be provided by Santech Power, Inc. as third party servicer providers may not have access to these.
- b. Batteries required to meet UPS based brands specifications.

6. Damage to Facilities

- a. Damage to UPSs. Department shall exercise due care to avoid damaging the UPSs, batteries, and any other equipment, facilities or Third Parties equipment attached to, or making use of, the UPSs or batteries. Department assumes all responsibility for loss from any damage to such facilities caused by Department's employees, agents, or contractors. Department shall make an immediate report to Provider and any other user of the occurrence of any such damage and agrees to reimburse the respective parties for all costs and losses incurred in making repairs. In addition to the foregoing indemnities and without limiting the application or effect thereof, Department hereby agrees and acknowledges that it shall be liable to Provider for any and all damages to Provider's tools resulting from or caused by the use of the UPSs and its batteries by Department, its agents or employees or assigns, including without limitation, the operation and maintenance of Department's Equipment and Accessories.
- b. Damage to Department's Equipment and Accessories. Provider shall exercise due care to avoid damaging Department's Equipment and Accessories. Except as provided in Section 5.1, Provider assumes all responsibility for loss from any damage to such facilities caused by Provider's employees, agents, or contractors. Provider shall make an immediate report to Department and any other user of the occurrence of any such damage and agrees to reimburse Department for all costs and losses incurred in making repairs. Except as provided in Section 5.1 hereof, in addition to the foregoing indemnities and without limiting the application or effect thereof, Provider hereby agrees and acknowledges that it shall be liable to Department, for any and all damages to Department's Equipment and Accessories resulting from or caused by Provider's maintenance of the UPSs and its associated batteries.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

7. Clean up

- a. Debris: Will remove any debris from the worksite that Provider has created with proper disposal of waste.

8. Service Requests (PONs)

a. New Services

- i. The State will provide, in the form of a PON, written request to start, change or terminate service(s).
 - 1) Provider when facilities exist at the new service location, will deliver the new service within 10 business days.
 - 2) The STATE reserves the right to alter or cancel any order based on cost analysis at no cost to the STATE.
 - 3) Upon acceptance of Provider's installation proposal, the STATE may choose to cancel installation of the Service at any time during construction.
 - 4) Provider may submit to the STATE an itemized invoice of costs incurred up to the point of notification of cancellation of the STATE's Service order.
 - 5) The STATE will not be charged termination fees or cancellation fees beyond the notice of cancellation.
- ii. Upon completion and STATE's acceptance of the new installation the service will be considered part of the State of Maine's maintenance and service.
- iii. Provider billing of the service will commence on the earlier of (i) the date of the State's acceptance or (ii) that day which is 14 days following Provider's written or electronic notice to the State that the UPS is up and running unless the State has not otherwise notified Provider the service provided was not acceptable.

9. Upgrade or Downgrade of Service

- a. The State reserves the right to change the Service level of the service, in part or in whole, without penalty, fee, or administrative fee, or any other charges other than changed Service level.
- b. The State will submit, in the form of a PON, orders to increase or decrease the servicing of existing UPS services.
- c. Provider when facilities exist at the new service location, will deliver the new service within 10 business days.
- d. The STATE reserves the right to alter or cancel any order based on cost analysis at no cost to the STATE.
- e. Upon acceptance of Provider's installation proposal, the STATE may choose to cancel installation of the Service at any time during construction.
- f. Provider may submit to the STATE an itemized invoice of costs incurred up to the point of notification of cancellation of the STATE's Service order.
- g. In the case of a reduction in UPS to a Service location, Provider will charge no more than the maximum scheduled rate, according to the rate schedule Rider E, Attachment 2 – Cost Proposal, for Service at the time work is being requested to be completed.

10. Cancellation and Termination

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- a. The State will submit, in the form of a PON, orders to discontinue services at any time.
- b. Provider will cease billing of services effective the termination date contained within the subject PON.
- c. Errors in billing will result in credit to the STATE originating to the termination date of the subject PON.

11. Service Order Fees

Provider will not charge the State administrative fees for processing Service Requests

IV. RATES

A. Standard Rates as provided in Cost Proposal for RFP #202209153 in Preventative UPS Maintenance & Service for Data Center and MDFs.

1. Rates for UPS services will be charged pursuant to Rider E, Attachment 1 – Cost Proposal.
2. New Services not covered within Rider F, Attachment 1 – Current State of UPS will be charged at no more than the maximum rate for UPS service level as defined under Rider E, Attachment 1 – Cost Proposal pricing.

B. Non-Standard or Special Rates

Provider shall charge the scheduled rate on all new UPS services, locations, or upgrades to existing service in accordance with Rider E, Attachment 2 – Cost Proposal pricing.

V. SECURITY

A. Security

1. Background Check

- a. Only preauthorized and approved Provider employees or personnel will be allowed on STATE premises.
- b. Provider shall provide employee professional picture ID for State of Maine badges including the company name and company contact telephone number for each employee servicing the State account. The ID shall be worn by all Provider personnel and subcontractors while servicing the State. The State shall retain the right to disallow service and site access to any personnel not displaying an ID badge. All costs of acquiring badges shall be solely borne by the Vendor. All Provider personnel will only utilize the State of Maine badge for State of Maine requested and authorized work.
- c. Provider will at no time use STATE provided access to perform work that is not related to the STATE business.
- d. Provider technicians will provide a SOM work order upon written or verbal request while accessing STATE properties to perform work on behalf or under this contract. Provider will notify the STATE within 24 hours (1 calendar day) when any employee is removed or should be removed from authorized access whether it be termination of employment or disciplinary action.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- i. All technicians working on behalf of Provider who are granted authorize access will be subject to required training, badging and documentation as defined by the STATE at no cost to the STATE.
- e. The STATE reserves the right to bar any Provider employee, vendors, contractors, and all other technical staff attempting to enter in a premise or in the process of performing work on the STATE premise(s).
- f. Provider will ensure State of Maine will adhere to State of Maine policy on physical access which requires:
 - i. CJIS security training, certification, background, and fingerprint checks at Provider's expense.
 - ii. Upon approval of each Provider's technician, a badge will be provided to Provider's technician(s) to always wear when on State of Maine agency's site.
 - iii. Provider is required to notify State of Maine OIT when an employee terminates so badge access can be deactivated immediately.
- g. Modernization and equipment management
 - i. Provider will ensure schedule preventive maintenance events are accomplished on their equipment or installed by their affiliates, contractors, vendors, and subcontractors.

RIDER B-IT
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ 12,322
2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:
- A. Invoices should include the State of Maine Agreement number which will be generated upon the receipt of a quote.
 - B. When the invoice has been generated it should be sent to OIT.Invoices@maine.gov
 - C. All invoicing should match Rider E, Attachment 1 – Cost Proposal
 - D. Credits are to be provided to the State by Provider for an outage under this Agreement. Such credits will be applied to the next invoice. In some cases, a check may be requested.
 - E. Annual cost to be billed at start of contract under NET 30 terms. First Preventative Maintenance inspection to be completed withing 30 days of contract start or mutually agreed date with State of Maine. All other services to include emergency service response visits and parts replacement to be billed separately per occurrence.

3. **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.

4. **AGREEMENT ADMINISTRATOR** The Agreement Administrator is the Department’s representative for this Agreement. S/he is the single authority to act on behalf of the Department for this Agreement. S/he shall approve all invoices for payment. S/he shall make decisions on all claims of the Provider. The Provider shall address all contract correspondence and invoices to the Agreement Administrator. The following person is the Agreement Administrator for this Agreement:

Name: Brian Oliver _____
Title: Deputy Director, Network Services _____
Address: 45 Commerce Drive, Augusta, ME 04330 _____
Telephone: (207) 592-1776
E-mail address: Brian.K.Oliver@maine.gov

The following individual is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement. All project status reports, day to day operational issues and project program material and issues shall be directed to this individual.

Name: Andrew Bonner
Title: Systems Section Manager _____
Address: 45 Commerce Drive, Augusta, ME 04330 _____
Telephone: (207) 624-8845
E-mail address: Andrew.Bonner@maine.gov

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.

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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 16, 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.

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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. Contractors and Subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

7. 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 any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Provider shall not engage on a full-time, part-time, or any other basis, during the period of this Agreement, any personnel who are, or have been, at any time during the period of this Agreement, in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time, or any other basis, during the period of this Agreement, any retired employee of the Department, who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. 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.

10. STATE EMPLOYEES NOT TO BENEFIT No individual employed by the State at the time this Agreement is executed, or any time, thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed, or any time, thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, due to his employment by, or financial interest in, the Provider, or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. 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.

11. 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.

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12. 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

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requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

13. 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 affected 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.

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

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15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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**

1. Errors & Omissions, or Professional Liability Insurance, or Insurance by any other name, covering the following:

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- 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 (*see NOTE below and insert the appropriate limit based upon the number of Personally Identifiable Information records*) \$ 0 , 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.

NOTE: *Personally-Identifiable Information (PII) is information that can be used to identify a single person, such as name, social security number, date and place of birth, mother's maiden name, driver's license, biometrics, etc. Maine State law also has a more specific definition in 10 M.R.S. §1347(6).*

The Data Breach component of the Insurance (per occurrence) is pegged to the number of PII records that are the subject of this Agreement.

<i>Number of PII Records</i>	<i>Insurance per Occurrence</i>
<i>1 through 3,000</i>	<i>\$400,000</i>
<i>3,001 through 100,000</i>	<i>\$1,000,000</i>
<i>100,001 through 1,000,000</i>	<i>\$5,000,000</i>
<i>Greater than 1,000,000</i>	<i>\$10,000,000</i>

- 2. Workers' Compensation and employer's liability, as required by law;
- 3. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
- 4. Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;

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5. Crime, in an amount not less than \$ 0 (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and

6. 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:

1. 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.

2. 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.

3. 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.

4. 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.

5. 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".

21. **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, then the State is not obligated to make payment under this Agreement.

22. **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.

23. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B-IT (except for expressed exceptions to Rider B-IT included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

24. **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,

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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.

25. 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.

26. 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.

27. 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.

28. 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.

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29. 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.

30. 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.

31. 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.

32. 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.

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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.

4. 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.

33. 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.

34. 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.

35. 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.

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36. 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 13, Termination.

37. 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.

38. 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/policies/DigitalAccessibilityPolicy.pdf>). All IT applications and content delivered through web browsers must comply with the State Web Standards (<https://www.maine.gov/oit/sites/maine.gov/oit/files/inline-files/WebStandards.pdf>) and the Digital Accessibility Policy.

39. STATE IT POLICIES All IT products and services delivered as part of this Agreement must conform to the State IT Policies, Standards, and Procedures (Maine.Gov/oit/policies) effective at the time this Agreement is executed

40. 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 Maine Public Law, Title 10, Chapter 210-B (Notice of Risk to Personal Data Act).

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41. 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.

42. 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.

43. 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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

44. 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 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.

45. PRICE PROTECTION

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1. The Provider shall ensure that all prices, terms, and warranties included in this Agreement are comparable to, or better than, the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements as the Department. If, during the term of this Agreement, the Provider enters into agreement(s) that provide more favorable terms to other comparable customer(s), the Provider shall provide the same terms to the Department.
2. If Federal funding is used for the acquisition of products and/or services under this Agreement, interest cannot be paid under any installment purchase or lease-purchase agreement entered into as a part of this Agreement.

46. 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.

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RIDER E

Rider E, Attachment 1 – Price Sheet

Preventive UPS Maintenance & Service for Data Center and MDFs

Services	Annual Cost
Total fixed price of two (2) preventive maintenance visits over <u>one</u> year.	\$ 9,122.00
Total Fixed price of three (3) call-out emergency service UPS technician visits. The visits in this scenario are each five (5) hours in duration – three (3) hours during Working Hours, two (2) hours during Off Hours. Total fixed price will therefore be calculated using the following formula: <i>(Rate M-F 8 a.m. to 5 p.m. x 3) + (Rate M-F 5 p.m. – 8 a.m. x 2) x 3 = Cost</i>	\$6,000.00 \$2000.00/ E visit
Provide price of \$1,000 of parts, discounted or marked up as applied. <i>(\$1,000 x discount rate)</i>	\$1100.00
Total Cost (sum of costs in this table)	\$12,322.00

Electronic Systems Technician	Prefixed Hourly or Unit Rate
Monday-Friday 8:00 a.m. – 5:00 p.m.	\$120.00
Monday-Friday 5:00 p.m. – 8:00 a.m.	\$140.00
Saturday/Sunday 24 hours	\$150.00
Holiday 24 hours	\$200.00
Minimum number of hours charged for call- out/emergency service, if any.	4 hour min

Battery Systems Technician	Prefixed Hourly or Unit Rate
Monday-Friday 8:00 a.m. – 5:00 p.m.	\$120.00
Monday-Friday 5:00 p.m. – 8:00 a.m.	\$140.00
Saturday/Sunday 24 hours	\$150.00
Holiday 24 hours	\$200.00
Mileage rate charged, if any, when technician responding.	\$1.25
Minimum number of hours charged for call- out/emergency service, if any.	4 hour min

Parts	
Quote discount or markup to be charged for repair parts used when performing repair or emergency services on units. <i>(this percentage will be used in the Services calculation below)</i>	10%

Other Fees	Rate
Present other fees which may apply. Describe fee type and list the applicable rate for each.	
Travel/flight and lodging fees	TBD

RIDER FRider F, Attachment 1
CURRENT STATE OF UPS**Preventive UPS Maintenance & Service for Data Center and MDFs**

LOC	QTY	EQUIPMENT TYPE	MANUFACTURER	MODEL NO#	S/N#
Data Center - CMCC	1	Emerson Liebert 610 (500 KVA UPS) with (80) sealed batteries GNB Sprinter S12v550	Liebert/Emerson	Model #: UDA63500A36A932 Battery Cabinet- Model#: UDA63500A36A932 Battery Cabinet- Model#: UDA63500A36A932	S/N#: 06557671-L1-05873 Battery Cabinet S/N#: 3T00002052 Battery Cabinet S/N#: 3T00002043
Data Center - SSDC	1	Emerson Liebert NX 225 KVA UPS with (80) sealed batteries DataSafe 12Hx330fr	Liebert	Unit #1 Model #: 38sn225A0AGS014 Battery Cabinet- Model#: 38BP225XRX2BL1A Battery Cabinet- Model#: 38BP225XRX2BL2A	Unit #1 S/N#: D12J230001 Battery Cabinet S/N#: D12j4s0002 Battery Cabinet S/N#: D12j4s0003
Data Center - SSDC	1	Emerson Liebert NX 225 KVA UPS with (80) sealed batteries DataSafe 12Hx330fr	Liebert	Unit #2 Model #: 38sn225A0AGS014 Battery Cabinet- Model#: 38BP225XRX2BL1A Battery Cabinet- Model#: 38BP225XRX2BL2A	Unit #2 S/N#: D12J230002 Battery Cabinets S/N#: D12j4s0001 Battery Cabinets S/N#: D12j4s0004
Data Center- CMCC	1	Schneider APC Galaxy VL w/ VRLA batteries quantity TBD	APC	APC Galaxy VL GVL200K500DS	QD2132180411
CMCC-MDF	1	Schneider APC Galaxy VS w/ integrated battery cartridges	APC	GVSUPS50KB4D	QS2029181350
CMCC-MDF	1	Schneider APC Galaxy VS w/ integrated battery cartridges	APC	GVSUPS50KB4D	Q02132188411
Cross-MDF	1	Schneider APC Galaxy VS w/ integrated battery cartridges	APC	GVSUPS50KB4D	QS2031180009
Cross-MDF	1	Schneider APC Galaxy VS w/ integrated battery cartridges	APC	GVSUPS50KB4D	QS2025182048

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: _____

Other. Please identify country: _____

Notification of Changes to the Information

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

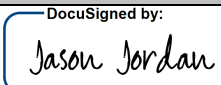
Debarment, Performance, and Non-Collusion Certification

By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals, and any subcontractors named in this proposal:

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
- b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
 - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.*
 - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;*
 - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and*
 - iv. have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.*
- c. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

- Failure to provide this certification may result in the disqualification of the Bidder’s proposal, at the discretion of the Department.**

To the best of my knowledge all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.

Name: Jason Jordan	Title: owner
Authorized Signature: 	Date: 3/30/2023

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