



IT CONTRACT AMENDMENT

DATE: 9/26/2025	AMENDMENT AMOUNT: \$ 250,000.00
ADVANTAGE CONTRACT #: MA 18P 21012000000000000067	ITP#: ITP-255622
DEPARTMENT AGREEMENT #: OMS-21-901G	

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

STATE OF MAINE DEPARTMENT		
DEPARTMENT NAME: Health and Human Services		
ADDRESS: 109 Capitol St		
CITY: Augusta	STATE: ME	ZIP CODE: 04333-0011

PROVIDER		
PROVIDER NAME: GAINWELL TECHNOLOGIES LLC		
DBA:		
ADDRESS: 225 EAST JOHN CARPENTER FREEWAY, SUITE 500		
CITY: IRVING	STATE: TX	ZIP CODE: 75062
VENDOR CUSTOMER #: VS0000009788	FEDERAL UEI#: R5J6HERC6MJ4	

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

Department Representative:

Todd Haber 10/15/2025

BY: **Todd Haber** Date
Acting Deputy Commissioner of Finance

Provider Representative:

Signed by: *Mark Knickrehm* 11/19/2025
4EE68BD6856646D

BY: **Signature Mark Knickrehm** Date
President and Chief Executive Officer

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

DocuSigned by: *Nicholas Marquis* 11/3/2025
A29C99359A37464...

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

The contract amendment is fully executed when all parties sign and funds have been encumbered. Upon final approval by the Office of State Procurement Services, a case details page will be made part of this contract amendment.

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STATE OF MAINE | IT CONTRACT AMENDMENT

AMENDMENT

The contract is hereby amended as follows: (Check and complete all that apply)

<input type="checkbox"/>	Amended Period	Original Start Date: 9/1/2020	Amendment Start Date: 9/1/2025
		Current End Date: 9/30/2026	New End Date: N/A
		Reason: N/A	
<input checked="" type="checkbox"/>	Amended Contract Amount	Adjustment Amount: \$250,000.00	New Contract Amount: \$22,668,715.00
		Reason: Add funding needed to update the Department's system to comply with the Medicaid Statistical Information System (T-MSIS).	
<input type="checkbox"/>	Amended Scope of Work	The Scope of Work in Rider A is amended as follows: N/A	
<input checked="" type="checkbox"/>	Other	<p>Describe the Changes:</p> <p>Rider B-IT, Sections 1 and 2 are updated to add funding. Rider B-IT Section 21 (Non-Appropriation) is updated to include the previously approved rider exception. Rider B-IT Section 48 (Cybersecurity) language is also updated.</p> <p>Any policy references in the original contract and any subsequent amendment(s) are hereby amended to include the latest policy portfolio, and versions, effective on the date of execution of this Amendment.</p>	
Agreement Amendment Summary		Original Agreement	\$ 10,000,000.00
		Amendment A	\$ 0.00
		Amendment B	\$ 0.00
		Amendment C	\$ 5,000,000.00
		Amendment D	\$ 4,000,000.00
		Amendment E	\$ 0.00
		Amendment F	\$ 3,418,715.00
		Amendment G	\$ 250,000.00
		Revised Total	\$ 22,668,715.00

All other terms and conditions of the original contract and subsequent contract amendments remain in full force and effect.

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Changes to Agreement Terms and Conditions

Rider B-IT, Section 1 is deleted and replaced in its entirety with the following:

1. AGREEMENT AMOUNT ~~\$22,418,715.00~~ \$22,668,715.00

Rider B-IT, Section 2 is deleted and replaced in its entirety with the following:

2. INVOICES AND PAYMENTS The Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Those projects designated by the Department as a separate project conducted under an agreed DO are separate from and not incorporated into the not to exceed annual and total budgeted amounts. Excluding separate projects as set forth herein, annual costs are not to exceed the budgeted amounts listed below:

Change Requests Fee Schedule (not to exceed \$11,500,000.00)				
	FY2021	FY2022	FY2023	FY2024
Change Requests	\$2,000,000.00	\$2,000,000.00	\$2,000,000.00	\$2,000,000.00
	FY2025	FY2026	FY2027	Total
Change Requests	\$2,000,000.00	\$1,153,846.21	\$346,153.79	\$11,500,000.00

The Level of Effort (LOE) for CRs shall be calculated based on both onshore and offshore positions and hourly rates as follows.

Contract Classification	Onshore Fixed Hourly Rate FY2021 - 2025	Offshore Fixed Hourly Rate FY2024 - 2025
Database Administrator	\$195.00	\$70.41
Senior Web Developer	\$200.00	\$41.94
Web Developer	\$160.00	\$27.52
Task Manager	\$195.00	\$61.14
Lead Analyst	\$150.00	\$40.30
Senior Programmer/Analyst	\$165.00	\$44.08
Programmer/Analyst	\$120.00	\$31.96

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Documentation Manager	\$115.00	\$56.12
Sr. Architect	\$185.00	\$56.39
Release Manager	\$150.00	\$56.67
Claims Operations Supervisor	\$75.00	\$40.80
Documentation Specialist	\$90.00	\$28.09
Provider Communications Supervisor	\$75.00	\$39.97
Provider Enrollment Representative	\$50.00	\$10.86
Senior Pharmacy Consultant	\$190.00	N/A
Pharmacy Consultant	\$160.00	N/A
Executive MIS Consultant	\$375.00	N/A
Senior MIS Consultant	\$255.00	N/A
MIS Consultant	\$225.00	N/A
Provider Representative	\$60.00	\$20.69
Claims/Reference Representative	\$55.00	\$12.50
Mailroom Clerk	\$45.00	N/A
Resolution Clerk (Operations Clerk)	\$50.00	\$22.57
Call Center Representative	\$50.00	\$10.86
Provider Trainer	\$77.00	\$41.28
Senior Medical Consultant	\$300.00	N/A
Nurse (RN)	\$125.00	N/A

For the T-MSIS project described in Rider A Section IV.B.13, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

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T-MSIS Project Change Requests Fee Schedule				
	Not To Exceed FY2022	Not To Exceed FY2023	Not To Exceed FY2024	Not To Exceed Total
Change Requests	\$2,291,666.67	\$2,500,000.00	\$208,333.33	\$5,000,000.00

For the T-MSIS project described in Rider A Section IV.B.13, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

T-MSIS Project Change Requests Fee Schedule					
	<u>Not To Exceed FY2024</u>	<u>Not To Exceed FY2025</u>	<u>Not To Exceed FY2026</u>	<u>Not To Exceed FY2027</u>	<u>Not To Exceed Total</u>
Change Requests	\$1,666,667.00	\$2,000,000.00	\$333,333.00 \$525,641.00	\$57,692.00	\$4,000,000.00 \$4,250,000.00

For the E-Noticing project described in Rider A Section IV.B.14, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CR) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

E-Noticing Change Request Fee Schedule			
	Not To Exceed FY2025	Not To Exceed FY2026	Not To Exceed Total
Change Requests	\$42,105.00	\$326,725.00	\$368,830.00

For the CCBHC project described in Rider A Section IV.B.14, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for a completed and approved LOE and deliverables (CR) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

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CCBHC Change Requests Fee Schedule			
	Not To Exceed FY2025	Not To Exceed FY2026	Not To Exceed Total
Change Requests	\$ 753,933.30	\$ 545,951.70	\$1,299,885.00

For the Program Integrity outbound data interface project described in Rider A Section IV.B.14, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for a completed and approved LOE and deliverables (CR) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

Program Integrity Data Analytics Integration Change Request Fee Schedule			
	Not To Exceed FY2025	Not To Exceed FY2026	Not To Exceed Total
Change Requests		\$250,000.00	\$250,000.00

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail in accordance with the Delivery Order and the Rate Card to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Department, which approval will not be unreasonably withheld or delayed. Payment will be made within 30 days of approval of a proper invoice. Payment for operations will be made within 30 days of approval of a proper invoice. All invoices require the following:

- Provider letterhead with Provider name and payment address;
- A unique invoice number;
- The DHHS Agreement number for this Agreement;
- The invoice date and the total amount of the invoice; and
- The deliverable with the appropriate cost as outlined in the Deliverables and Costs table shown above.

All invoices, including the final invoice, must be submitted no later than forty-five (45) days after the last day of the month for which the service being billed for was performed. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. No payment will be made if the Provider does not comply with these terms.

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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. 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.

Rider B-IT Section 21 is deleted and replaced in its entirety with the following:

21. NON-APPROPRIATION Notwithstanding any other provision of this ~~Agreement Contract~~, if the ~~Department State~~ does not receive sufficient ~~State, Federal, or other sources of~~ funds to ~~pay for the work to be performed under~~ fund this ~~Agreement Contract and other obligations of the State~~, 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~~ ~~Federal legislative, executive or judicial bodies~~, then the State is not obligated to make payment under this ~~Agreement. Contract~~ and Provider shall be relieved of its continued performance under this Agreement as of the date of non-appropriation except for those obligations which by their nature are intended to survive a termination or otherwise end to this Agreement. The Department shall promptly advise Provider if it does not receive sufficient funds to pay for work to be performed under this Agreement, if funds are de-appropriated, or if the State does not receive legal authority to expend funds. Subject to the other terms and conditions of this Agreement, the Department shall pay for all work performed by Provider up to the date it does not receive sufficient funds to pay for work to be performed under this Agreement, funds are de-appropriated, or the State does not receive legal authority to expend funds. Provider shall not be required to provide any work for which payment will not be provided as a result of any of the foregoing. Where funds are insufficient to pay for the work to be performed, the Department in its sole discretion shall determine which aspects of the work, if any, shall proceed and which Services shall be performed, with Contractor's costs related to such Services and Deliverables determined in accordance with those in the Price Components in Appendix C.

Rider B-IT, Section 48 is deleted and replaced in its entirety with the following:

48. 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>, [Title 5 M.R.S. §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>, [Title 5 M.R.S. §2030-B](#).

~~Contracts entered into by a state agency in violation of Title 5 M.R.S. §2030-B are void.~~ A person who ~~knowingly signs~~ ~~executes~~ 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, ([Title 5 M.R.S., §2030-A](#)).







IT CONTRACT AMENDMENT

DATE: 6/5/2025	AMENDMENT AMOUNT: \$3,418,715.00
ADVANTAGE CONTRACT #: MA 18P 21012000000000000067	
DEPARTMENT AGREEMENT #: OMS-21-901F	
START DATE: 9/1/2020	END DATE: 9/30/2026

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

STATE OF MAINE DEPARTMENT		
DEPARTMENT NAME: Health and Human Services		
ADDRESS: 109 Capitol St		
CITY: Augusta	STATE: ME	ZIP CODE: 04333-0011
PROVIDER		
PROVIDER NAME: GAINWELL TECHNOLOGIES LLC		
DBA:		
ADDRESS: 5615 High Point Drive		
CITY: Irving	STATE: TX	ZIP CODE: 75038
VENDOR CUSTOMER #: VS0000009788	FEDERAL UEI #: R5J6HERC6MJ4	

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.

<p>Department Representative:</p>  <p>BY: Todd Haber Date Acting Deputy Commissioner of Finance</p>	<p>Provider Representative:</p> <p><small>Signed by:</small>  9/18/2025</p> <p>BY: Mark Knickrehm Date President and Chief Executive Officer</p>
<p>DAFS – Office of Information Technology:</p> <p><small>DocuSigned by:</small>  7/28/2025</p> <p>BY: Nicholas Marquis Date CIO</p>	<p>DAFS – Office of State Procurement Services:</p> <p><small>DocuSigned by:</small>  7/28/2025</p> <p>BY: David Morris Date CPO</p>

The contract amendment is fully executed when all parties sign and funds have been encumbered. Upon final approval by the Office of State Procurement Services, a case details page will be made part of this contract amendment.

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AMENDMENT

The contract is hereby amended as follows: (Check and complete all that apply)

<input checked="" type="checkbox"/>	Amended Period	Original Start Date: 9/1/2020	Amendment Start Date: 3/1/2025
		Current End Date: 8/31/2025	New End Date: 9/30/2026
		Reason: Extend the agreement to coincide with the end of the MIHMS Modernization/HealthPAS Upgrade project under OMS-25-150.	
<input checked="" type="checkbox"/>	Amended Contract Amount	Adjustment Amount: \$3,418,715.00	New Contract Amount: \$22,418,715.00
		Reason: Extend the agreement to coincide with the end of the MIHMS Modernization/HealthPAS Upgrade project under OMS-25-150.	
<input checked="" type="checkbox"/>	Amended Scope of Work	The Scope of Work in Rider A is amended as follows: Annual OIT policy update language added (See Attachment).	
<input checked="" type="checkbox"/>	Other	Describe the Changes: Revised Rider B-IT Sections 1 & 2. Non-Appropriation language is revised and Tariff language is added to the amendment (see Attachment).	
Agreement Amendment Summary		Original Agreement	\$ 10,000,000.00
		Amendment A	\$ 0.00
		Amendment B	\$ 0.00
		Amendment C	\$ 5,000,000.00
		Amendment D	\$ 4,000,000.00
		Amendment E	\$ 0.00
		Amendment F	\$ 3,418,715.00
		Revised Total	\$ 22,418,715.00

All other terms and conditions of the original contract and subsequent contract amendments remain in full force and effect.

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Changes to Agreement Terms and Conditions

Rider A is deleted in its entirety and replaced with the following:

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II. DEFINITIONS

BASIC ACRONYMS (Commonly-known acronyms and Government Agency abbreviations)	
CMS	Federal Centers for Medicare and Medicaid
Department	Maine Department of Health and Human Services
MaineCare	The Department’s Medicaid Program
LOE	Level of Effort
OMS	The Department’s Office of MaineCare Services

- A. **Change Control Board (CCB):** A group of senior Department managers that reviews and approves Change Requests.
- B. **Change Request (CR):** Request to make a change to the system used in tracking, reporting, and resolving an issue with the system through the change management process.
- C. **Medicaid Management Information System (MMIS):** State mechanized claims processing and information retrieval system.
- D. **RQMS:** A web-based application that facilitates the entry, tracking and reporting of Change Requests.

III. INTRODUCTION/OVERVIEW

The purpose of this Agreement is to procure Medicaid Management Information System (MMIS) Change Request (CR) services that meet the informational, operational, and administrative needs necessary to support the day-to-day management of the MaineCare (Medicaid) program and other State health care programs as detailed in this Agreement.

The Provider shall provide an ongoing MMIS system Change Requests in accordance with the requirements of this Agreement.

IV. DELIVERABLES

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The Provider shall perform all services and maintain all standards and requirements for services provided under this Agreement in accordance with the below:

A. General Requirements

1. Comply with the following policies, standards and procedures:
 - a. Hosting-Customization Policy (see: <https://www.maine.gov/oit/policies/HostingCustomizationPolicy.pdf>);
 - b. Remote Hosting Policy (see: <https://www.maine.gov/oit/policies/RemoteHostingPolicy.pdf>);
 - c. Application Deployment Certification Policy (see: <https://www.maine.gov/oit/policies/Application-Deployment-Certification.pdf>); and
 - d. Information Security Policy (see: <https://www.maine.gov/oit/policies/SecurityPolicy.pdf>).
2. Respond in writing to notices of problems identified by the Department with a Corrective Action Plan (CAP), which will include a timeframe for completion, within five (5) calendar days of receipt of the notice. The Provider must initiate the CAP within twenty-four (24) hours after receiving Department approval.
3. Provide a quarterly summary compliance report demonstrating the timeframes and criteria specified in Rider A Section IV. A are met.
4. Ensure that there is no disruption of services at the termination of this Agreement, in whole or in part, and during the transition to a new vendor, as applicable, and ensure compliance with SLAs during any transition period.
 - a. Provide a turnover plan to the Department within one (1) year of the signing of the Agreement and update the plan annually. The turnover plan shall include at a minimum:
 - i. Proposed approach to turnover;
 - ii. Approach to providing post-turnover services; and
 - iii. Turnover task deliverables description.
 - b. Provide a final turnover plan at least six (6) months before the end of the final renewal period or upon notice of termination
 - c. Transition all State-owned data and artifacts to a location to be determined by the Department three (3) months prior to the end of the final renewal period on upon notice of termination.
 - d. Collaborate with any new vendor selected by the Department during turnover.
 - e. Provide a turnover results report at the conclusion of the transition.

B. Change Request (CR) Process

1. Provide MMIS system changes and modifications. All system changes shall be tracked via a Change Request (CR) within RQMS. CRs shall be approved before the Provider starts work by a Department-authorized representative as listed below:
 - a. MaineCare Director
 - b. MaineCare Chief Operating Officer
 - c. MaineCare Contract Director
 - d. MaineCare Change Management Director
 - e. MaineCare MMIS Project Manager

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2. Comply with the CR governance process established by the Department, which shall include a Change Control Board (CCB) that meets to review CRs in accordance with the Department-defined criteria. The Provider shall assign appropriate staff to attend CCB meetings.
3. Advise when all CR efforts exceed the annual CR fixed budget for system changes developed by the Department (see Rider B). The Provider shall invoice the Department once a CR has been closed.
4. Provide a level of effort estimate (LOE) for each CR. The LOE will reflect the hours required to complete and shall be based on the rates from the current rate card to establish a fixed price for each CR (see Rider B Section 2). Subcontractor costs are not subject to the current rate card and will be quoted and invoiced at fixed costs. No work shall begin until the scope of work, project plan, and project budget are approved by the Department. Once the Department has approved the CR, the Department will create a Delivery Order (DO) with LOE as approved in the CR. The DO will route to the State's Division of Procurement Services for final approval. Once approved the Provider will receive a copy of the DO via email and shall reference this DO when submitting and invoice for the CR. The email is generated from the procurement contact information in the Provider's Vendor file.
5. Track the costs expended over the course of the state fiscal year as CRs are closed and provide a monthly report showing valuation of CRs closed vs. annual budget for CRs.
6. Meet with the Department monthly to review the status and costs of the CR work under this Agreement.
7. Accept authorization to begin any CR designated as an emergency from any of the Department-authorized individuals listed in Rider A.IV.B.1. An emergency CR is defined as a CR that, in the determination of the Department, must be expedited to meet business requirements. In these cases, the Provider shall be authorized to begin work before the CR is fully scoped and approved by the Department. The Provider shall submit an LOE to the Department within five (5) business days of the date of completed requirements definition.
8. Follow the process outlined below for any CR that is designated a Federal/State initiative by the Department:
 - a. Any System change or bundle of related changes that exceeds \$250,000 in scope may, at the discretion of the Department, be contracted as a separate project outside this Agreement. These projects are typically associated with Federal or State initiatives, and involve multiple phases, interim payments, and defined deliverables.
 - b. If the work performed by the Provider to develop the scope of work for an initiative exceeds \$15,000, the following steps will occur:
 - i. The Provider shall prepare an estimated cost (including the \$15,000 expended) and timeline to complete the work necessary to present the Department with a proposal for the entire project.
 - ii. Work on the initiative proposal shall cease until the Department has approved the estimated cost and timeline for completing the proposal, which will be attached to a separate CR within RQMS.
 - iii. If the CR for the estimated cost and timeline for completing the proposal is not approved, no further work on the initiative will be performed, and the Provider will not invoice the Department for any work performed on the initiative.

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- iv. If the CR for the estimated cost and timeline for completing the proposal is approved, work shall continue until the proposal is completed and submitted to the Department. The proposal will include all work to be performed by the Provider.
 - v. If the project proposal is approved, the CR for the work needed to complete the proposal will be withdrawn, as those hours and costs are incorporated into the project proposal.
 - vi. If the project proposal is not approved, the CR for the work needed to complete the proposal will be Closed and the LOE hours/dollars will be counted as actual hours/dollars spent under the Fixed Operations CR annual budget.
9. Work with the Department to develop and approve a monthly thirty (30) day CR baseline plan for closure of CRs, twelve (12) days prior to the start of the plan month beginning September 1, 2020. The lead time prior to the start of the plan month will step up two (2) days each year effective September 1, 2021, as shown in the table below:

Sep-2020	Sep-2021	Sep-2022	Sep-2023	Sep-2024
12 days	14 days	16 days	18 days	20 days

10. The metrics for measuring the performance to the plan will be based on 85% of the CRs closed that are included in the 30-day baseline plan. The Provider may request a waiver to re-baseline the monthly plan if circumstances arise that change the basis for the previous baseline. The 85% of CRs closed to baseline will step up between 1% to 1.5% per year effective September 1, 2021 as shown in the table below:

Sep-2020	Sep-2021	Sep-2022	Sep-2023	Sep-2024
85%	86%	87.50%	88.50%	90%

11. Follow the process outlined below for any CR that is designated as critical by the Department.
- a. The Department has determined that the CR is required to achieve statutory or regulatory compliance.
 - b. The Department and Provider shall establish a due date for the critical CR, with at least ninety (90) days' notice prior to the CR due date given to the Provider.
 - c. Critical CRs must be completed within the thirty (30) day baseline plan for the month that the CR is due. Failure to deliver the Critical CR on schedule in accordance with the baseline plan will be considered a failure to meet the SLA for that month.
 - d. Penalty will be assessed after failure to meet the SLA after two consecutive quarters.
 - e. The Provider may request a waiver to re-baseline the monthly plan if circumstances arise that change the basis for the previous baseline.

12. Pursuant to Subsection 8.a. above, for any system change that is designated by the Department as a separate project, the Department will issue a mutually agreed upon DO which shall include Provider's written approval and which will have its own funding specific to that project separate from the Original Agreement as set forth above. The parties will further agree upon and execute a CR for each DO finalizing the agreed scope and setting forth the LOE and deliverables for the DO, and the Provider shall clearly designate in the invoice for each CR that such CR is part of the separate project where separate funding is being utilized.

13. Pursuant to Subsection 8.a. above, the Provider shall process Department Approved CRs that

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are necessary to comply with CMS T-MSIS data submission requirements. These T-MSIS CRs are designated by the Department as a separate project, and the Department will issue a mutually agreed upon DO which shall include Provider’s written approval and which will have its own funding specific to this project separate from the Original Agreement as set forth above. The parties will further agree upon and execute a CR for each DO finalizing the agreed scope and setting forth the LOE and deliverables for the DO, and the Provider shall clearly designate in the invoice for each CR that such CR is part of this separate T-MSIS project where separate funding is being utilized.

14. Pursuant to Subsection 8.a. above, the Provider shall process Department Approved CRs that are necessary to implement E-Noticing functionality, the Certified Community Behavioral Health Clinic (CCBHC) program, and the development of an outbound data interface and associated work to support the implementation of a new Program Integrity data analytics solution. These changes are designated by the Department as three separate projects, and the Department will issue mutually agreed upon DOs which shall include the Provider’s written approval and which will have its own funding specific to these projects separate from the Original Agreement as set forth above. The parties will further agree upon and execute a CR for each DO finalizing the agreed scope and setting forth the LOE and deliverables for the DO, and the Provider shall clearly designate in the invoice for each CR that such CR is part of these three separate projects for which separate funding is being utilized.

V. PERFORMANCE MEASURES

A. In performing all services under this Agreement, the Provider shall achieve all Performance Measures listed within the Service Level Agreements (SLAs) table directly below. Failure to achieve such SLAs may result in the reduction of Agreement payment(s) to the Provider, at the discretion of the Department, as specified below. The Provider shall provide supportive documentation for Department validation of the summary data submitted within the Performance Measures Report.

SERVICE LEVEL AGREEMENTS			
<u>SLA Letter:</u>	<u>SLA</u>	<u>Assessment Cycle</u>	<u>Penalty</u>
A.	A (30) day CR baseline plan for closure of CRs will be developed prior to the start of the plan month according to the timeline specified in Rider A Section IV.C.7	Quarterly	The penalty will be calculated at 1% of the monthly reconciled payment total invoiced for the six-month period of failure. Penalty will be assessed when the SLA is not met for two (2) months of each quarter.
B.	The percentage of CRs closed that are included in the 30-day baseline plan will meet the requirements specified in Rider A Section IV.C.8.	Quarterly	The penalty will be calculated at 1% of the monthly reconciled payment total invoiced for the six-month period of failure.

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			Penalty will be assessed when the SLA is not met for two (2) months of each quarter.
C.	Provider shall achieve a 90% quality percentage of baseline CRs post 30-day deployment. For CRs in the 30-day baseline plan that were completed, <90% post production will have a TR that is directly attributable to that CR.	Quarterly	The penalty will be calculated at 1% of the monthly reconciled payment total invoiced for the six-month period of failure. Penalty will be assessed when the SLA is not met for two (2) months of each quarter.
D.	Critical CRs must be completed within the thirty (30) day baseline plan for the month that the CR is due according to the requirements specified in Rider A Section IV.C.9.	Monthly	The penalty will be calculated at 3% of the value of the critical CR that did not meet the SLA. Penalty will be assessed for each occurrence.

VI. REPORTS

A. Required Reports

The Provider shall track and record all data/information necessary to complete the reports listed in the table below:

	<u>Name of Report:</u>	<u>Description or Appendix #:</u>
1.	Quarterly Summary Compliance Report	Rider A Section IV.A.3
2.	Performance Measures Report	Rider A Sections V.A
3.	CR Monthly Report	Rider A Section IV.B.5

B. Reporting Schedule

The Provider shall submit all of the reports listed in the table below to the Department in accordance with the deadlines established within the table:

<u>Name of Report:</u>	<u>Period Captured by Report:</u>	<u>Due Date:</u>	<u>Submit reports in accordance with Rider B, Section 4 of this Agreement to:</u>

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1.	Quarterly Summary Compliance Report	Each quarter	Thirty (30) days after each quarter	Program Administrator
2.	Performance Measures Report	Each quarter	Thirty (30) days after each quarter	Program Administrator
3.	CR Monthly Report	Each month	Fifteen (15) days after each month	Program Administrator

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

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 Department in accordance with Section 4 of Rider B-IT of this Agreement.

VII. TECHNICAL REQUIREMENTS

State of Maine Compliance and Policy

The Provider will comply with all State of Maine IT Policies, Standards, and Procedures

<https://www.maine.gov/oit/policies-standards>, including not limited to:

- 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](#)

Confirm annually that they are in compliance with current State IT Policies. The policy check shall be performed each September. In the event there is a substantive change to a specific State IT Policies the Provider is required to follow, the Provider shall have until the end of that same month to negotiate a window within which to implement the substantive change.

In addition to the documents listed above, the vendor is further required to demonstrate re: how the product/solution will achieve the NIST 800-53 Rev 5 for the remaining security and privacy control families:

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1. Physical and Environmental Protection;
2. Awareness and Training;
3. Planning;
4. Audit and Accountability;
5. Assessment, Authorization, and Monitoring;
6. Personnel Security;
7. Configuration Management;
8. PII Processing and Transparency;
9. Contingency Planning;
10. Vulnerability Management;
11. Identification and Authentication;
12. System and Services Acquisition;
13. Incident Response;
14. System and Communications Protection;
15. Maintenance;
16. System and Information Integrity;
17. Media Protection;
18. Supply Chain Risk Management to a security baseline appropriate to the impact level of the data as determined by the agency.

Rider B-IT, Sections 1 & 2 is deleted and replaced in its entirety with the following:

1. AGREEMENT AMOUNT ~~\$19,000,000.00~~ \$22,418,715.00

2. INVOICES AND PAYMENTS The Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Those projects designated by the Department as a separate project conducted under an agreed DO are separate from and not incorporated into the not to exceed

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annual and total budgeted amounts. Excluding separate projects as set forth herein, annual costs are not to exceed the budgeted amounts listed below:

Change Requests Fee Schedule (not to exceed \$11,500,000)								
	FY2021	FY2022	FY2023	FY2024	FY2025	<u>FY2026</u>	<u>FY2027</u>	Total
Change Requests	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	<u>\$1,153,846.21</u>	<u>\$346,153.79</u>	<u>\$10,000,000</u> <u>\$11,500,000</u>

The Level of Effort (LOE) for CRs shall be calculated based on both onshore and offshore positions and hourly rates as follows.

Contract Classification	Onshore Fixed Hourly Rate FY2021 - 2025	Offshore Fixed Hourly Rate FY2024 - 2025
Database Administrator	\$195.00	\$70.41
Senior Web Developer	\$200.00	\$41.94
Web Developer	\$160.00	\$27.52
Task Manager	\$195.00	\$61.14
Lead Analyst	\$150.00	\$40.30
Senior Programmer/Analyst	\$165.00	\$44.08
Programmer/Analyst	\$120.00	\$31.96
Documentation Manager	\$115.00	\$56.12
Sr. Architect	\$185.00	\$56.39
Release Manager	\$150.00	\$56.67
Claims Operations Supervisor	\$75.00	\$40.80
Documentation Specialist	\$90.00	\$28.09
Provider Communications Supervisor	\$75.00	\$39.97
Provider Enrollment Representative	\$50.00	\$10.86
Senior Pharmacy Consultant	\$190.00	N/A
Pharmacy Consultant	\$160.00	N/A

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Executive MIS Consultant	\$375.00	N/A
Senior MIS Consultant	\$255.00	N/A
MIS Consultant	\$225.00	N/A
Provider Representative	\$60.00	\$20.69
Claims/Reference Representative	\$55.00	\$12.50
Mailroom Clerk	\$45.00	N/A
Resolution Clerk (Operations Clerk)	\$50.00	\$22.57
Call Center Representative	\$50.00	\$10.86
Provider Trainer	\$77.00	\$41.28
Senior Medical Consultant	\$300.00	N/A
Nurse (RN)	\$125.00	N/A

For the T-MSIS project described in Rider A Section IV.B.13, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

T-MSIS Project Change Requests Fee Schedule				
	Not To Exceed FY2022	Not To Exceed FY2023	Not To Exceed FY2024	Not To Exceed Total
Change Requests	\$2,291,666.67	\$2,500,000.00	\$208,333.33	\$5,000,000

For the T-MSIS project described in Rider A Section IV.B.13, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

T-MSIS Project Change Requests Fee Schedule				
	Not To Exceed FY2024	Not To Exceed FY2025	Not To Exceed FY2026	Not To Exceed Total
Change Requests	\$1,666,667	\$2,000,000.00	\$333,333	\$4,000,000

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For the E-Noticing project described in Rider A Section IV.B.14, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CR) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

<u>E-Noticing Change Request Fee Schedule</u>			
	<u>Not To Exceed FY2025</u>	<u>Not To Exceed FY2026</u>	<u>Not To Exceed Total</u>
<u>Change Requests</u>	<u>\$42,105</u>	<u>\$326,725</u>	<u>\$368,830</u>

For the CCBHC project described in Rider A Section IV.B.14, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for a completed and approved LOE and deliverables (CR) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

<u>CCBHC Change Requests Fee Schedule</u>			
	<u>Not To Exceed FY2025</u>	<u>Not To Exceed FY2026</u>	<u>Not To Exceed Total</u>
<u>Change Requests</u>	<u>\$ 753,933.30</u>	<u>\$ 545,951.70</u>	<u>\$1,299,885</u>

For the Program Integrity outbound data interface project described in Rider A Section IV.B.14, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for a completed and approved LOE and deliverables (CR) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

<u>Program Integrity Data Analytics Integration Change Request Fee Schedule</u>			
	<u>Not To Exceed FY2025</u>	<u>Not To Exceed FY2026</u>	<u>Not To Exceed Total</u>
<u>Change Requests</u>		<u>\$250,000</u>	<u>\$250,000</u>

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail in accordance with the Delivery Order and the Rate Card to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Department, which approval will not be unreasonably withheld or delayed. Payment will be made within 30 days of approval of a proper invoice. Payment for operations will be made within 30 days of approval of a proper invoice. All invoices require the following:

- Provider letterhead with Provider name and payment address;

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- A unique invoice number;
- The DHHS Agreement number for this Agreement;
- The invoice date and the total amount of the invoice; and
- The deliverable with the appropriate cost as outlined in the Deliverables and Costs table shown above.

All invoices, including the final invoice, must be submitted no later than forty-five (45) days after the last day of the month for which the service being billed for was performed. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. No payment will be made if the Provider does not comply with these terms.

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. 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.

Rider B-IT Section 21 is deleted and replaced in its entirety with the following:

21. NON-APPROPRIATION. Notwithstanding any other provision of this ~~Agreement~~ Contract, if the ~~Department~~ State does not receive sufficient State, Federal, or other sources of funds to ~~pay for the work to be performed under fund~~ this ~~Agreement~~ Contract and other obligations of the State, 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~~ Federal legislative, executive or judicial bodies, then the State is not obligated to make payment under this ~~Agreement.~~ Contract.

Rider B-IT Section 49 is added to the agreement:

49. TARIFFS. Any price increases implemented by the provider due to the imposition of tariffs shall remain in effect only for the duration that such tariffs are in place. In the event of the repeal or reduction of any applicable tariff(s), the provider shall immediately return to the original price list or make a proportional reduction in the price to reflect the decrease in tariff(s). Price adjustments under this clause shall be made in good faith and without undue delay upon confirmation via documents reflecting tariff changes.



IT CONTRACT AMENDMENT

DATE: 7/30/2024	AMENDMENT AMOUNT: \$0.00
ADVANTAGE CONTRACT #: MA 18P 21012000000000000067	
DEPARTMENT AGREEMENT #: OMS-21-901 E	
START DATE: 9/1/2020	END DATE: 8/31/2025

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

STATE OF MAINE DEPARTMENT		
DEPARTMENT NAME: Health and Human Services		
ADDRESS: 109 Capitol St		
CITY: Augusta	STATE: ME	ZIP CODE: 04333-0011
PROVIDER		
PROVIDER NAME: GAINWELL TECHNOLOGIES LLC		
DBA:		
ADDRESS: PO BOX 825407		
CITY: PHILADELPHIA	STATE: PA	ZIP CODE: 19182-5407
VENDOR CUSTOMER #: VS0000009788	FEDERAL UEI #: R5J6HERC6MJ4	

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:

8/6/24

BY: Benjamin Mann

Date

Deputy Commissioner of Finance

Provider Representative:

1/16/2025

BY: Mark Knickrehm

Date

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

8/13/2024

BY: Nicholas Marquis, Chief Information Officer

Date

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

AMENDMENT

The contract is hereby amended as follows: (Check and complete all that apply)

<input checked="" type="checkbox"/>	Amended Period	Original Start Date: 9/1/2020	Amendment Start Date: 6/1/2024
		Current End Date: 8/31/2025	New End Date: N/A
		Reason: Update the contract language to include the rate card for offshore resources	
<input type="checkbox"/>	Amended Contract Amount	Adjustment Amount: \$ N/A	New Contract Amount: \$ N/A
		Reason: N/A	
<input type="checkbox"/>	Amended Scope of Work	The Scope of Work in Rider A is amended as follows: N/A	
<input checked="" type="checkbox"/>	Other	Describe the Changes: Rider B-IT, Section 2 is revised. Rider B-IT Section 48 is amended by adding language. Rider G is revised. See attached.	
Agreement Amendment Summary		Original Agreement	\$ 10,000,000.00
		Amendment A	\$ 0.00
		Amendment B	\$ 0.00
		Amendment C	\$ 5,000,000.00
		Amendment D	\$ 4,000,000.00
		Amendment E	\$ 0.00
		Revised Total	\$ 19,000,000.00

All other terms and conditions of the original contract and subsequent contract amendments remain in full force and effect.

Changes to Agreement Terms and Conditions

Rider B-IT, Section 2 is deleted and replaced in its entirety with the following:

2. INVOICES AND PAYMENTS The Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Those projects designated by the Department as a separate project conducted under an agreed DO are separate from and not incorporated into the not to exceed annual and total budgeted amounts. Excluding separate projects as set forth herein, annual costs are not to exceed the budgeted amounts listed below:

Change Requests Fee Schedule (not to exceed \$10,000,000)						
	FY2021	FY2022	FY2023	FY2024	FY2025	Total
Change Requests	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$10,000,000

LOE estimates for CRs shall be based on the Rate Card below: The Level of Effort (LOE) for CRs shall be calculated based on both onshore and offshore positions and hourly rates as follows.

Contract Classification	<u>Onshore Fixed Hourly Rate</u> FY2021 - 2025	<u>Offshore Fixed Hourly Rate</u> FY2024 - 2025
<u>DBA Database Administrator</u>	\$195.00	<u>\$70.41</u>
Senior Web Developer	\$200.00	<u>\$41.94</u>
Web Developer	\$160.00	<u>\$27.52</u>
Task Manager	\$195.00	<u>\$61.14</u>
Lead Analyst	\$150.00	<u>\$40.30</u>
Senior Programmer/Analyst	\$165.00	<u>\$44.08</u>
Programmer/Analyst	\$120.00	<u>\$31.96</u>
Documentation Manager	\$115.00	<u>\$56.12</u>
Sr. Architect	\$185.00	<u>\$56.39</u>
Release Manager	\$150.00	<u>\$56.67</u>
Claims Operations Supervisor	\$75.00	<u>\$40.80</u>
Documentation Specialist	\$90.00	<u>\$28.09</u>

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Provider Communications Supervisor	\$75.00	<u>\$39.97</u>
Provider Enrollment Representative	\$50.00	<u>\$10.86</u>
Senior Pharmacy Consultant	\$190.00	<u>N/A</u>
Pharmacy Consultant	\$160.00	<u>N/A</u>
Executive MIS Consultant	\$375.00	<u>N/A</u>
Senior MIS Consultant	\$255.00	<u>N/A</u>
MIS Consultant	\$225.00	<u>N/A</u>
Provider Representative	\$60.00	<u>\$20.69</u>
Claims/Reference Representative	\$55.00	<u>\$12.50</u>
Mailroom Clerk	\$45.00	<u>N/A</u>
Resolution Clerk (Operations Clerk)	\$50.00	<u>\$22.57</u>
Call Center Representative	\$50.00	<u>\$10.86</u>
Provider Trainer	\$77.00	<u>\$41.28</u>
Senior Medical Consultant	\$300.00	<u>N/A</u>
Nurse (RN)	\$125.00	<u>N/A</u>

For the T-MSIS project described in Rider A Section IV.B.13, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

T-MSIS Project Change Requests Fee Schedule				
	Not To Exceed FY2022	Not To Exceed FY2023	Not To Exceed FY2024	Not To Exceed Total
Change Requests	\$2,291,666.67	\$2,500,000.00	\$208,333.33	\$5,000,000

For the T-MSIS project described in Rider A Section IV.B.13, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

T-MSIS Project Change Requests Fee Schedule

	Not To Exceed FY2024	Not To Exceed FY2025	Not To Exceed FY2026	Not To Exceed Total
Change Requests	\$1,666,667	\$2,000,000.00	\$333,333	\$4,000,000

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail in accordance with the Delivery Order and the Rate Card to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Department, which approval will not be unreasonably withheld or delayed. Payment will be made within 30 days of approval of a proper invoice. Payment for operations will be made within 30 days of approval of a proper invoice. All invoices require the following:

- Provider letterhead with Provider name and payment address;
- A unique invoice number;
- The DHHS Agreement number for this Agreement;
- The invoice date and the total amount of the invoice; and
- The deliverable with the appropriate cost as outlined in the Deliverables and Costs table shown above.

All invoices, including the final invoice, must be submitted no later than forty-five (45) days after the last day of the month for which the service being billed for was performed. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. No payment will be made if the Provider does not comply with these terms.

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. 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.

RIDER B-IT METHOD OF PAYMENT AND OTHER PROVISIONS is amended by adding the following:

48. CYBERSECURITY AND PROHIBITED TECHNOLOGIES: The Provider certifies to the best of Provider's knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this Contract:

- is not a foreign adversary business entity, <https://www.maine.gov/oit/prohibited-technologies>, Title 5 MRSA §2021 (3); and
- 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>, Title 5 MRSA §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, (Title 5, §2030-A).

Rider G shall be deleted in its entirety and replaced with the following:

**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: India

Notification of Changes to the Information:

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



AMENDMENT

DATE: 6/15/2023

ADVANTAGE CONTRACT #: MA 18P 2101200000000000067

DEPARTMENT AGREEMENT #: OMS-21-901D

AMENDMENT AMOUNT: \$ 4,000,000.00

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

State of Maine DEPARTMENT

DEPARTMENT: Health and Human Services

Address: 109 Capitol Street

City: Augusta

State: ME

Zip Code: 04333-0011

PROVIDER

PROVIDER: Gainwell Technologies LLC

Address: PO Box 825407

City: Philadelphia

State: PA

Zip Code: 19182

Provider's Vendor Customer #: VS000009788

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

Department of Health and Human Services

Gainwell Technologies LLC

Signature Benjamin Mann, Deputy Commissioner of Finance

Date

8/29/23

DocuSigned by: Mark Knickrehm
Signature Mark Knickrehm, President and Chief Executive Officer

Date

1/19/2024

Department of Administrative and Financial Services, Office of Information Technology

DocuSigned by: Nicholas Marquis
Signature Nicholas Marquis
1/5/2024
Nicholas Marquis, Chief Information Officer Date

Amendment rev. May 2020

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

AMENDMENT

The contract is hereby amended as follows: (Check and complete all that apply)

<input checked="" type="checkbox"/>	Amended Contract Amount:	Amount of Adjustment: \$ 4,000,000 New Contract Amount: \$ 19,000,000	
		Reason: Add funding for CMS-approved T-MSIS system changes for Federal Fiscal Years 2024-2025.	
Agreement Amendment Summary:		Original Agreement	\$ 10,000,000.00
		Amendment A	\$ 0.00
		Amendment B	\$ 0.00
		Amendment C	\$ 5,000,000.00
		Amendment D	\$ 4,000,000.00
		Revised Total	\$ 19,000,000.00

All other terms and conditions of the original contract and subsequent contract amendments remain in full force and effect.

ATTACHMENT A

Changes to Agreement Terms and Conditions

Rider B-IT Section 2. Is amended by adding the following after the first table in Paragraph 1:

For the T-MSIS project described in Rider A Section IV.B.13, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

T-MSIS Project Change Requests Fee Schedule				
	Not To Exceed FY2024	Not To Exceed FY2025	Not To Exceed FY2026	Not To Exceed Total
Change Requests	\$1,666,667	\$2,000,000.00	\$333,333	\$4,000,000



AMENDMENT

DATE: 12/9/2021

ADVANTAGE CONTRACT #: MA 18P 21012000000000000067

DEPARTMENT AGREEMENT #: OMS-21-901C

AMENDMENT AMOUNT: \$ 5,000,000.00

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

State of Maine DEPARTMENT

DEPARTMENT: Health and Human Services

Address: 109 Capitol Street

City: Augusta

State: ME

Zip Code: 04333-0011

PROVIDER

PROVIDER: Gainwell Technologies LLC

Address: PO Box 825407

City: Philadelphia

State: PA

Zip Code: 19182

Provider's Vendor Customer #: VS0000009788

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

Department of Health and Human Services

Gainwell Technologies LLC

DocuSigned by:

Benjamin Mann

Apr-27-2022

2870DA6E0E76471...

Signature Benjamin Mann, Deputy Commissioner of Finance Date

DocuSigned by:

Paul Saleh

Apr-28-2022

C5B903FEA402401...

Signature Paul Saleh, CEO Date

Department of Administrative and Financial Services, Office of Information Technology

DocuSigned by:

Frederick Brittain

Apr-27-2022

052B9AC7F50A189...

Signature Frederick Brittain, Chief Information Officer Date

Amendment rev. May 2020

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

AMENDMENT

The contract is hereby amended as follows: (Check and complete all that apply)

<input checked="" type="checkbox"/>	Amended Scope of Work:	The Scope of work in Rider A and Method of Payment and Other Provisions in Rider B-IT are amended as follows (see Attachment A)	
Agreement Amendment Summary:		Original Agreement	\$ 10,000,000.00
		Amendment A	\$ 0.00
		Amendment B	\$ 0.00
		Amendment C	\$ 5,000,000.00
		Revised Total	\$ 15,000,000.00

All other terms and conditions of the original contract and subsequent contract amendments remain in full force and effect.

ATTACHMENT A**Changes to Agreement Terms and Conditions**

- I. **Rider A Section IV Deliverables B. is amended by adding the following language immediately after Subsection 12:**

13. Pursuant to Subsection 8.a. above, the Provider shall process Department Approved CRs that are necessary to comply with CMS T-MSIS data submission requirements. These T-MSIS CRs are designated by the Department as a separate project, and the Department will issue a mutually agreed upon DO which shall include Provider's written approval and which will have its own funding specific to this project separate from the Original Agreement as set forth above. The parties will further agree upon and execute a CR for each DO finalizing the agreed scope and setting forth the LOE and deliverables for the DO, and the Provider shall clearly designate in the invoice for each CR that such CR is part of this separate T-MSIS project where separate funding is being utilized.

- II. **Rider B-IT Section 2. Invoices and Payments is amended by adding the following immediately after the first table entitled "Change Requests Fee Schedule" in Paragraph 1:**

For the T-MSIS project described in Rider A Section IV.B.13, the Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

<u>T-MSIS Project Change Requests Fee Schedule</u>				
	<u>Not To Exceed FY2022</u>	<u>Not To Exceed FY2023</u>	<u>Not To Exceed FY2024</u>	<u>Not To Exceed Total</u>
<u>Change Requests</u>	<u>\$2,291,666.67</u>	<u>\$2,500,000.00</u>	<u>\$208,333.33</u>	<u>\$5,000,000</u>

Advantage MA #: MA 18P 20082600000000000018

DHHS Agreement #: OMS-21-901

Vendor/Customer #: VC0000233474

DUNS #: 080882045

STATE OF MAINE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
Agreement to Purchase Services

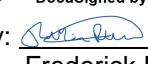
THIS AGREEMENT, made this 1st day of September, 2020, is by and between the State of Maine, Department of Health and Human Services, hereinafter called "Department," and DXC MS LLC, located at PO BOX 731164, Dallas, TX 75373-1164, hereinafter called "Provider", for the period of Start Date 09/01/2020 to End Date 08/31/2025.

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 C - Exceptions
- Rider D - Additional Requirements
- Rider G - Identification of Country In Which Contracted Work Will Be Performed
- BAA - Business Associate Agreement (Requires Signature)
- Attachment - Funding & Federal Award Allocation
- Appendix A - Office of Information Technology Confidentiality and Non-Disclosure Agreement

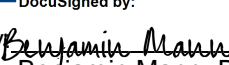
IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one original copy.

Department of Administrative and Financial Services Office of Information Technology

DocuSigned by:
By: 
Frederick Brittain, Chief Information Office
Date: 8/27/2020

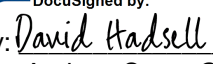
and

Department of Health and Human Services

DocuSigned by:
By: 
Benjamin Mann, Deputy Commissioner of Finance
Date: 8/27/2020

and

Provider: DXC MS LLC

DocuSigned by:
By: 
David Hadsell, General Manager Northeast
Date: 8/28/2020

Total Agreement Amount: **\$ Unencumbered – Work will be performed by Delivery Order**

The approval and encumbrance of this Agreement by the Chair of the State Procurement Review Committee and the State Controller is evidenced only by a stamp affixed to this page or by an Approval Cover Page from the Division of Purchases.

**State Services
RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED**

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II. DEFINITIONS

BASIC ACRONYMS (Commonly-known acronyms and Government Agency abbreviations)	
CMS	Federal Centers for Medicare and Medicaid
Department	Maine Department of Health and Human Services
MaineCare	The Department's Medicaid Program
LOE	Level of Effort
OMS	The Department's Office of MaineCare Services

- A. **Change Control Board (CCB):** A group of senior Department managers that reviews and approves Change Requests.
- B. **Change Request (CR):** Request to make a change to the system used in tracking, reporting, and resolving an issue with the system through the change management process.
- C. **Medicaid Management Information System (MMIS):** State mechanized claims processing and information retrieval system.
- D. **RQMS:** A web-based application that facilitates the entry, tracking and reporting of Change Requests.

III. INTRODUCTION/OVERVIEW

The purpose of this Agreement is to procure Medicaid Management Information System (MMIS) Change Request (CR) services that meet the informational, operational, and administrative needs necessary to support the day-to-day management of the MaineCare (Medicaid) program and other State health care programs as detailed in this Agreement.

The Provider shall provide an ongoing MMIS system Change Requests in accordance with the requirements of this Agreement.

IV. DELIVERABLES

The Provider shall perform all services and maintain all standards and requirements for services provided under this Agreement in accordance with the below:

- A. General Requirements
1. Comply with the following policies, standards and procedures:
 - a. Hosting-Customization Policy (see: <https://www.maine.gov/oit/policies/HostingCustomizationPolicy.pdf>);
 - b. Remote Hosting Policy (see: <https://www.maine.gov/oit/policies/RemoteHostingPolicy.pdf>);

- c. Application Deployment Certification Policy (see: <https://www.maine.gov/oit/policies/Application-Deployment-Certification.pdf>); and
 - d. Information Security Policy (see: <https://www.maine.gov/oit/policies/SecurityPolicy.pdf>).
2. Respond in writing to notices of problems identified by the Department with a Corrective Action Plan (CAP), which will include a timeframe for completion, within five (5) calendar days of receipt of the notice. The Provider must initiate the CAP within twenty-four (24) hours after receiving Department approval.
 3. Provide a quarterly summary compliance report demonstrating the timeframes and criteria specified in Rider A Section IV. A are met.
 4. Ensure that there is no disruption of services at the termination of this Agreement, in whole or in part, and during the transition to a new vendor, as applicable, and ensure compliance with SLAs during any transition period.
 - a. Provide a turnover plan to the Department within one (1) year of the signing of the Agreement and update the plan annually. The turnover plan shall include at a minimum:
 - i. Proposed approach to turnover;
 - ii. Approach to providing post-turnover services; and
 - iii. Turnover task deliverables description.
 - b. Provide a final turnover plan at least six (6) months before the end of the final renewal period or upon notice of termination
 - c. Transition all State-owned data and artifacts to a location to be determined by the Department three (3) months prior to the end of the final renewal period on upon notice of termination.
 - d. Collaborate with any new vendor selected by the Department during turnover.
 - e. Provide a turnover results report at the conclusion of the transition.

B. Change Request (CR) Process

1. Provide MMIS system changes and modifications. All system changes shall be tracked via a Change Request (CR) within RQMS. CRs shall be approved before the Provider starts work by a Department-authorized representative as listed below:
 - a. MaineCare Director
 - b. MaineCare Chief Operating Officer
 - c. MaineCare Contract Director
 - d. MaineCare Change Management Director
 - e. MaineCare MMIS Project Manager
2. Comply with the CR governance process established by the Department, which shall include a Change Control Board (CCB) that meets to review CRs in accordance with the Department-defined criteria. The Provider shall assign appropriate staff to attend CCB meetings.
3. Advise when all CR efforts exceed the annual CR fixed budget for system changes developed by the Department (see Rider B). The Provider shall invoice the Department once a CR has been closed.
4. Provide a level of effort estimate (LOE) for each CR. The LOE will reflect the hours required to complete and shall be based on the rates from the current rate card to establish a fixed price for each CR (see Rider B Section 2). Subcontractor costs are not subject to the current rate card and will be quoted and invoiced at fixed costs. No work shall begin until the scope of work, project plan, and project budget are approved by the Department. Once the Department has approved the CR, the Department will create a Delivery Order (DO) with LOE as approved in the CR. The DO will route to the State's Division of Procurement Services for final approval. Once approved the Provider will receive a copy of the DO via email and shall reference this DO when submitting and invoice for the CR. The email is generated from the procurement contact information in the Provider's Vendor file.
5. Track the costs expended over the course of the state fiscal year as CRs are closed and provide a monthly report showing valuation of CRs closed vs. annual budget for CRs.
6. Meet with the Department monthly to review the status and costs of the CR work under this Agreement.

7. Accept authorization to begin any CR designated as an emergency from any of the Department-authorized individuals listed in Rider A.IV.B.1. An emergency CR is defined as a CR that, in the determination of the Department, must be expedited to meet business requirements. In these cases, the Provider shall be authorized to begin work before the CR is fully scoped and approved by the Department. The Provider shall submit an LOE to the Department within five (5) business days of the date of completed requirements definition.
8. Follow the process outlined below for any CR that is designated a Federal/State initiative by the Department:
- a. Any System change or bundle of related changes that exceeds \$250,000 in scope may, at the discretion of the Department, be contracted as a separate project outside this Agreement. These projects are typically associated with Federal or State initiatives, and involve multiple phases, interim payments, and defined deliverables.
 - b. If the work performed by the Provider to develop the scope of work for an initiative exceeds \$15,000, the following steps will occur:
 - i. The Provider shall prepare an estimated cost (including the \$15,000 expended) and timeline to complete the work necessary to present the Department with a proposal for the entire project.
 - ii. Work on the initiative proposal shall cease until the Department has approved the estimated cost and timeline for completing the proposal, which will be attached to a separate CR within RQMS.
 - iii. If the CR for the estimated cost and timeline for completing the proposal is not approved, no further work on the initiative will be performed, and the Provider will not invoice the Department for any work performed on the initiative.
 - iv. If the CR for the estimated cost and timeline for completing the proposal is approved, work shall continue until the proposal is completed and submitted to the Department. The proposal will include all work to be performed by the Provider.
 - v. If the project proposal is approved, the CR for the work needed to complete the proposal will be withdrawn, as those hours and costs are incorporated into the project proposal.
 - vi. If the project proposal is not approved, the CR for the work needed to complete the proposal will be Closed and the LOE hours/dollars will be counted as actual hours/dollars spent under the Fixed Operations CR annual budget.
9. Work with the Department to develop and approve a monthly thirty (30) day CR baseline plan for closure of CRs, twelve (12) days prior to the start of the plan month beginning September 1, 2020. The lead time prior to the start of the plan month will step up two (2) days each year effective September 1, 2021, as shown in the table below:

Sep-2020	Sep-2021	Sep-2022	Sep-2023	Sep-2024
12 days	14 days	16 days	18 days	20 days

10. The metrics for measuring the performance to the plan will be based on 85% of the CRs closed that are included in the 30-day baseline plan. The Provider may request a waiver to re-baseline the monthly plan if circumstances arise that change the basis for the previous baseline. The 85% of CRs closed to baseline will step up between 1% to 1.5% per year effective September 1, 2021 as shown in the table below:

Sep-2020	Sep-2021	Sep-2022	Sep-2023	Sep-2024
85%	86%	87.50%	88.50%	90%

11. Follow the process outlined below for any CR that is designated as critical by the Department.
- a. The Department has determined that the CR is required to achieve statutory or regulatory compliance.
 - b. The Department and Provider shall establish a due date for the critical CR, with at least ninety (90) days' notice prior to the CR due date given to the Provider.
 - c. Critical CRs must be completed within the thirty (30) day baseline plan for the month that the CR is due. Failure to deliver the Critical CR on schedule in accordance with the baseline plan will be considered a failure to meet the SLA for that month.
 - d. Penalty will be assessed after failure to meet the SLA after two consecutive quarters.
 - e. The Provider may request a waiver to re-baseline the monthly plan if circumstances arise that change the basis for the previous baseline.

V. PERFORMANCE MEASURES

- A. In performing all services under this Agreement, the Provider shall achieve all Performance Measures listed within the Service Level Agreements (SLAs) table directly below. Failure to achieve such SLAs may result in the reduction of Agreement payment(s) to the Provider, at the discretion of the Department, as specified below. The Provider shall provide supportive documentation for Department validation of the summary data submitted within the Performance Measures Report.

SERVICE LEVEL AGREEMENTS			
<u>SLA Letter:</u>	<u>SLA</u>	<u>Assessment Cycle</u>	<u>Penalty</u>
A.	A (30) day CR baseline plan for closure of CRs will be developed prior to the start of the plan month according to the timeline specified in Rider A Section IV.C.7	Quarterly	The penalty will be calculated at 1% of the monthly reconciled payment total invoiced for the six-month period of failure. Penalty will be assessed when the SLA is not met for two (2) months of each quarter.
B.	The percentage of CRs closed that are included in the 30-day baseline plan will meet the requirements specified in Rider A Section IV.C.8.	Quarterly	The penalty will be calculated at 1% of the monthly reconciled payment total invoiced for the six-month period of failure. Penalty will be assessed when the SLA is not met for two (2) months of each quarter.
C.	Provider shall achieve a 90% quality percentage of baseline CRs post 30-day deployment. For CRs in the 30-day baseline plan that were completed, <90% post production will have a TR that is directly attributable to that CR.	Quarterly	The penalty will be calculated at 1% of the monthly reconciled payment total invoiced for the six-month period of failure. Penalty will be assessed when the SLA is not met for two (2) months of each quarter.
D.	Critical CRs must be completed within the thirty (30) day baseline plan for the month that the CR is due according to the requirements specified in Rider A Section IV.C.9.	Monthly	The penalty will be calculated at 3% of the value of the critical CR that did not meet the SLA. Penalty will be assessed for each occurrence.

VI. REPORTS**A. Required Reports**

The Provider shall track and record all data/information necessary to complete the reports listed in the table below:

	<u>Name of Report:</u>	<u>Description or Appendix #:</u>
1.	Quarterly Summary Compliance Report	Rider A Section IV.A.3
2.	Performance Measures Report	Rider A Sections V.A

3.	CR Monthly Report	Rider A Section IV.B.5
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B. Reporting Schedule

The Provider shall submit all of the reports listed in the table below to the Department in accordance with the deadlines established within the table:

	<u>Name of Report:</u>	<u>Period Captured by Report:</u>	<u>Due Date:</u>	<u>Submit reports in accordance with Rider B, Section 4 of this Agreement to:</u>
1.	Quarterly Summary Compliance Report	Each quarter	Thirty (30) days after each quarter	Program Administrator
2.	Performance Measures Report	Each quarter	Thirty (30) days after each quarter	Program Administrator
3.	CR Monthly Report	Each month	Fifteen (15) days after each month	Program Administrator

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

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 Department in accordance with Section 4 of Rider B-IT of this Agreement.

RIDER B-ITMETHOD OF PAYMENT AND OTHER PROVISIONS

1. AGREEMENT AMOUNT **\$ Unencumbered – Work will be performed by Delivery Order**
2. INVOICES AND PAYMENTS The Department will pay the Provider upon receipt and approval of a proper invoice. These payments will be for completed and approved LOE and deliverables (CRs) as described in Rider A. Annual costs are not to exceed the budgeted amounts listed below:

Change Requests Fee Schedule						
	Not To Exceed FY2021	Not To Exceed FY2022	Not To Exceed FY2023	Not To Exceed FY2024	Not To Exceed FY2025	Not To Exceed Total
Change Requests	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$10,000,000

LOE estimates for CRs shall be based on the Rate Card below:

Contract Classification	Fixed Hourly Rate FY2021 - 2025
DBA	\$195.00
Senior Web Developer	\$200.00
Web Developer	\$160.00
Task Manager	\$195.00
Lead Analyst	\$150.00
Senior Programmer/Analyst	\$165.00
Programmer/Analyst	\$120.00
Documentation Manager	\$115.00
Sr. Architect	\$185.00
Release Manager	\$150.00
Claims Operations Supervisor	\$75.00
Documentation Specialist	\$90.00
Provider Communications Supervisor	\$75.00
Provider Enrollment Representative	\$50.00
Senior Pharmacy Consultant	\$190.00
Pharmacy Consultant	\$160.00
Executive MIS Consultant	\$375.00
Senior MIS Consultant	\$255.00
MIS Consultant	\$225.00
Provider Representative	\$60.00
Claims/Reference Representative	\$55.00
Mailroom Clerk	\$45.00
Resolution Clerk (Operations Clerk)	\$50.00
Call Center Representative	\$50.00
Provider Trainer	\$77.00

Senior Medical Consultant	\$300.00
Nurse (RN)	\$125.00

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail in accordance with the Delivery Order and the Rate Card to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Department, which approval will not be unreasonably withheld or delayed. Payment will be made within 30 days of approval of a proper invoice. All invoices require the following:

- Provider letterhead with Provider name and payment address;
- A unique invoice number;
- The OMS Change Request Number
- The DHHS Agreement number for this Agreement;
- The Advantage DO number for this Agreement;
- The invoice date and the total amount of the invoice; and
- The deliverable with the appropriate cost as outlined in the Deliverables and Costs table shown above.

All invoices, including the final invoice, must be submitted no later than forty-five (45) days after the last day of the month for which the service being billed for was approved (or milestone for invoicing met, as applicable) except invoicing delays as may be agreed by the Parties. Payments are subject to the Provider's material compliance with all items set forth in this Agreement. Payment may be withheld until the Provider complies with these terms in material respects as determined in the State's reasonable discretion.

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. 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.

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: Elizabeth Heath
Title: Contract Administrator
Address: 11 SHS, 109 Capitol St, Augusta, ME 04333-0011
Telephone: 207-287-5073
E-mail address: elizabeth.heath@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: Stephen Turner
Title: OMS Director of Contract Management
Address: 11 SHS, 109 Capitol Street, Augusta, ME 04333-0011
Telephone: 207-287-3828
E-mail address: Stephen.Turner@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.

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.

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.

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 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 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.

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

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:

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) \$_____, 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;
- 5. Crime, in an amount not less than \$_____ (*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, 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.

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. 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.

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 be 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/policies/webstandards.html>) 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).

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 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 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.

45. PRICE PROTECTION

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. IRREVOCABLE LETTER OF CREDIT In order to assure the Provider's faithful adherence to the terms and conditions of this Agreement, the Provider shall submit an irrevocable letter of credit, acceptable to the Department, that is payable on demand. This letter of credit will be procured at the expense of the Provider, naming the Department as the beneficiary, in the entire Agreement amount. In lieu of this requirement, the Department will accept a commitment letter from a recognized financial institution or investment fund stating that the Provider has sufficient capital to fund the obligations, and has legally committed such capital to fund the obligations, in accordance with this Agreement. The letter of credit, or the equivalent commitment letter, shall specifically refer to this Agreement, and shall bind the parties to all the terms and conditions of this Agreement. The Provider shall have fifteen (15) calendar days from the date of execution of this Agreement to furnish the letter of credit or the equivalent commitment letter. Should the Provider fail to comply with this section, then the Department shall have the right to terminate this Agreement without liability.

47. 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.

RIDER C
EXCEPTIONS TO RIDER B-IT

Rider A, D, E and Appendix C shall be amended by deleting the words "Rider B" and replacing it with the words "Rider B-IT."

Rider B-IT Section 6 is deleted and replaced in its entirety with the following:

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; provided, no such approval will be required for a subcontractor that is an Affiliate of Provider; and subcontracts to perform support or other services provided directly to Provider and not directly performing Services for the State (e.g. security at Provider's facilities). "Affiliate" shall mean any entity controlled by, controlling, or under common control with the Provider. For this purpose, an entity is deemed to control another company or entity if it (a) owns, directly or indirectly, at least 50 percent of the capital of the other company, or (b) in the absence of such ownership interest, substantially has the power to direct or cause the direction of the management and set the policies of such company or entity. A list of previously approved Subcontractors is annexed as Exhibit A to this Rider B-IT. This provision shall not apply to contracts of employment between the Provider and its employees or with respect to services provided by Providers Affiliates and subcontracts to perform support or other services provided directly to Provider and not directly performing Services for the State.

Notwithstanding the foregoing, 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 all applicable terms and conditions with respect to the subcontractor's scope of services 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.

Rider B-IT Section 12 is deleted and replaced in its entirety with the following:

12. ACCOUNTING, RECORDS, AND AUDIT

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to the performance of 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; provided, Provider should have no obligation to make its payroll records of its employees available to the State (except as may be required by law pursuant to a regulatory audit). 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 fault or negligence by the Provider; provided that the Provider is given the opportunity to cure the cause of the

exceptions. If the Provider fails to remedy that exception, the Provider shall 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 or delay 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. The Provider shall maintain all books, documents, 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. 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 Section 13 is deleted and replaced in its entirety with the following:

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 by providing Provider with sixty (60) days' prior written notice with respect to termination for convenience. Either party may terminate for cause thirty (30) days' after written notice of material default in the event the party fails to cure such default within that time period. Upon notice of termination, the Parties will discuss and reach mutual agreement to the steps necessary for the orderly winddown of the Services. 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. The Provider shall be entitled to receive payment for all Services satisfactory performed through the effective date of termination. In the event of a termination for convenience, Provider may be entitled to recover commercially reasonable wind-down costs. The parties shall reasonably cooperate with each other to mitigate the occurrence of any such costs and expenses. The failure to agree on such costs shall be subject to the dispute resolution procedures set forth in Section 48. Notwithstanding the above, the Provider shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Provider.

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 Section 16 is deleted and replaced in its entirety with the following:

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 third-party claims, liabilities, and costs, including reasonable attorney fees, for (i) any or all bodily injuries to persons, including death, or damages to tangible or real property 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, (ii) claims for violation of intellectual property rights, (iii) Provider's failure to comply with its agreement with a subcontractor relating to this Agreement, (iv) claims by any employee, agent, or subcontractor of the Provider asserted against the Department but arising from such person's or entity's performance under this Agreement, and (v) any third-party claim, demand, charge, action, cause of action, or other proceeding, 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.

Rider B-IT Section 17 is deleted and replaced in its entirety with the following:

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 other liabilities hereunder, in the performance of its work under this Agreement, whether such damages arise out of breach, negligence, misrepresentation, or otherwise, shall be actual direct damages up to a maximum of \$45,000,000 ("General Cap").

Notwithstanding the foregoing, the Provider's liability to the Department, for damages sustained by the Department, arising out of or related to any breach of privacy law obligations, breach of security obligations, including under Office of Information Technology Confidentiality and Non-Disclosure Agreement, or loss of, damage to or corruption of Department data, whether such damages arising out of breach, negligence, misrepresentation, or otherwise, shall be actual damages which shall not exceed \$45,000,000 ("Data Cap").

Where damages may be recovered under both of the General Cap and the Data Cap, the caps apply in the alternative and not cumulatively such that the Department may recover under only a single applicable cap for a claim or series of claims but not under multiple caps.

The limits also apply to any of Provider's subcontractors. This is the maximum value for which Provider and its subcontracts are collectively responsible.

Notwithstanding the above, neither Provider nor its subcontractors shall not be liable to the Department for any special, incidental, or indirect or consequential damages, including loss of profits, revenue, goodwill, or anticipated savings. Provider shall have no liability for damages sustained by the Department to the extent such damages are a result of the negligence of the Department. Provider's obligations to hold the State harmless pursuant to Section 16(i)-(iv) of this Agreement, , Provider's fraudulent acts or omissions, or acts of intentional tortious conduct in performance or non-performance of its obligations under this Agreement is expressly excluded from this limitation of liability.

Rider B-IT Section 20 is deleted and replaced in its entirety with the following:

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:

- 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 incurred by the Department, in an amount not less \$10,000,000, and payable, 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.

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.

Number of PII Records	Insurance per Occurrence
<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): for the replacement value of the property;
- 4. Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
- 5. Crime, in an amount not less than \$0; and
- 6. Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.
- 7. Commercial General Liability with combined single limits of USD \$1,000,000 per occurrence and USD \$2,000,000 in the aggregate. 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.

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, . The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates are to be received and approved by the Department before this Agreement commences.
 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".

Rider B-IT Section 21 is deleted and replaced in its entirety with the following:

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 and Provider shall be relieved of its continued performance under this Agreement as of the date of non-appropriation except for those obligations which by their nature are intended to survive a termination or otherwise end to this Agreement. The Department shall promptly advise Provider if it does not receive sufficient funds to pay for work to be performed under this Agreement, if funds are de-appropriated, or if the State does not receive legal authority to expend funds. Subject to the other terms and conditions of this Agreement, the Department shall pay for all work performed by Provider up to the date it does not receive sufficient funds to pay for work to be performed under this Agreement, funds are de-appropriated, or the State does not receive legal authority to expend funds. Provider shall not be required to provide any work for which payment will not be provided as a result of any of the foregoing. Where funds are insufficient to pay for the work to be performed, the Department in its sole discretion shall determine which aspects of the work, if any, shall proceed and which Services shall be performed, with Contractor's costs related to such Services and Deliverables determined in accordance with those in the Price Components in Appendix C.

Rider B-IT Section 24 is deleted and replaced in its entirety with the following:

24. FORCE MAJEURE Any failure or delay by Provider to perform its obligations under this Agreement will be excused to the extent such failure or delay is due to: (i) any act or omission of the Department or its employees, agents or contractors, including any failure or delay by Department to perform an obligation under this Agreement; (ii) the reasonable reliance by Provider on the Department's instructions, authorizations, approvals, policy determinations, or operating guidelines; or (iii) any act or omission of a third party under the control of the Department. Provider will use reasonable commercial efforts to perform the Services in such circumstances, and Provider is entitled to additional time to perform its affected obligations reasonably necessary to overcome the effects of the delay or failure (provided that Provider, must as soon as reasonably practicable, recommence the performance of its affected obligations following completion of the delay or failure). 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, natural disasters, pandemic, epidemics, terrorism, 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, federal or state executive orders or ordinances adherence to which prevents performance of an obligation under the Agreement, failures or fluctuations in electrical power or telecommunications services, provided that any such event, and the delay caused thereby, is beyond the control of, and could not reasonably be avoided by that party, and such other similar causes. 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.

Rider B-IT Section 29 is deleted and replaced in its entirety with the following:

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, if applicable, 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.

Rider B-IT Section 32 is deleted and replaced in its entirety with the following:

32. PROVIDER PERSONNEL

1. Key Personnel are deemed to be those individuals identified in Rider A. 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 (not to be unreasonably withheld or delayed) unless by reason of his or her death, disability, extended leave of absence, promotion, resignation or termination for cause. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications, not to be unreasonably withheld or delayed. In the event of a removal of any Key Personnel, Provider shall provide the Department with a satisfactory plan for the transfer of work to the replacement Key Personnel.

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, a background check on Provider's personnel (employees and Subcontractors) shall be performed in accordance with the requirement set forth in Rider D. Such background check shall not be required for Provider personnel currently providing services to the Department under [Exhibit X] for whom such checks were previously conducted.

Rider B-IT Section 34 is deleted and replaced in its entirety with the following:

34. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS

1. Provider, to the best of its knowledge, is unaware of any infringement upon or violation with respect to any patent, copyright, trade secret, or any other proprietary rights of any third party with regards to the services, equipment, software, supplies and any other products provided under this Agreement. The Provider covenants 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. The Provider shall have primary control and the Department shall cooperate with any reasonable request by Provider in full defense of such claim at Provider's expense, and shall defend, indemnify,

and hold harmless the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees. Provider shall not enter into any settlement, adjustment or compromise with respect to such claim without the Department's written consent if such settlement, adjustment or compromise involves any admission of fault, culpability, or wrongdoing or failure to act by or on behalf of, the Department or otherwise imposes obligations upon the Department.

2. If a claim arises, or in Provider's reasonable opinion is likely to arise, under clause 1 above, Provider may, at its discretion and its sole cost and expense: (i) procure the right for the Department to continue using the affected intellectual property; (ii) make or procure alterations, modifications, adjustments or substitutions to all or any part(s) of the affected intellectual property so that it becomes non-infringing and of equivalent functionality; or (iii) substitute a non-infringing version of the infringing item of equivalent functionality.

3. The Provider shall have no obligation to indemnify the Department (or legal entity related to the Department) for any infringement claim based on: (a) Provider's compliance with the Department's specifications or designs; provided Provider had no actual knowledge that compliance would result in infringement and, if known, provided that Provider notify the Department in writing of any potential infringement and whether adherence to such specifications or designs could not be obtained without such infringement; or (b) Department's use of the affected intellectual property in combination with any intellectual property provided by anyone other than Provider if the infringement would not have occurred but for such combination, unless the Parties agree that such products or services are approved for use with the Services. Notwithstanding the forgoing, Provider shall be obligated to indemnify the Department for any infringement claims based upon Provider's compliance with the Department's specifications or designs if those specifications or designs were made clear in the Request for Proposal issued by the Department or if the Provider reasonably should have known that compliance could result in an infringement claim.

4. The Provider may not publish or copyright any Department 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 Department data in any manner, and for any purpose whatsoever, and may authorize others to do so.

Rider B-IT Section 35 is deleted and replaced in its entirety with the following:

35. WARRANTY The Provider expressly warrants its products, deliverables, 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 deviations in the deliverables and Services from the specifications in the Agreement using all reasonable 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.

Rider B-IT Section 38 is deleted and replaced in its entirety with the following:

38. ACCESSIBILITY Subject to any waivers by the State's Office of Information Technology issued and Provider's compliance with all the terms thereof, 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/policies/webstandards.html>) and the Digital Accessibility Policy.

Rider B-IT Section 39 is deleted and replaced in its entirety with the following:

39. STATE IT POLICIES Subject to any waivers issued by the State's Office of Information Technology and Provider's compliance with all the terms thereof, 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.

When there is a substantive change to State IT Policies, including but not limited to the below, the Provider shall be notified by the State and will have 5 business days to negotiate a window within which to implement the substantive change.

- i. Remote Hosting Policy (see: <http://www.maine.gov/oit/policies/RemoteHostingPolicy.htm>).
- ii. Application Deployment Certification Policy (see: <http://www.maine.gov/oit/policies/Application-Deployment-Certification.htm>).
- iii. Information Security Policy (see: <http://www.maine.gov/oit/policies/SecurityPolicy.htm>).

Rider B-IT Section 40 is deleted and replaced in its entirety with the following:

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.
 1. In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately.
 2. The Provider shall sign the Office of Information Technology Confidentiality and Non-Disclosure Agreement prior to performing work or services in connection with this Agreement (Appendix D). In the event of any conflict between the terms of this Agreement and the NDA, the terms of this Agreement shall control.
 3. The Department will hold Provider information constituting Pre-Existing IP or otherwise identified as proprietary information in confidence except as may otherwise be required by applicable freedom of access laws including but not limited to Maine's Freedom of Access Act 1 M.R.S. § 401 et seq. The Department will provide notice to Provider in the event of a request seeking disclosure of Provider Pre-Existing IP or information identified as proprietary information. Should the Provider believe that any of its information falls within one of the exceptions to the definition of "public records" as set forth in 1 M.R.S Section 402(3), it may submit that position to the Department for consideration.

5 The Provider shall comply with the Maine Public Law, Title 10, Chapter 210-B (Notice of Risk to Personal Data Act).

Rider B-IT Section 41 is deleted and replaced in its entirety with the following:

41. OWNERSHIP

1. DEFINITIONS.
 - (A) "Intellectual Property (IP) Rights" means, on a worldwide basis, any and all: (i) rights associated with works of authorship, including copyrights, moral rights, and mask-works; (ii) trademarks and service marks; (iii) trade secret rights; (iv) patents, designs, algorithms, and other industrial property rights; (v) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license, or otherwise; and (vi) registrations, initial applications, renewals, extensions, continuations, divisions or reissues in any of the foregoing.
 - (B) "Pre-Existing IP" of a Party (including a third party) means any software, including software that resides in a software as a service (SaaS) model, documents, materials, processes, works of authorship, know how, intellectual property, methodologies, technologies, algorithms, tools, forms and templates that either (i) were licensed, owned, created or otherwise held by or for the party prior to or on the contract effective date, or (ii) are subsequently created by or for the party and funded by Provider.
 - (C) "Derivative Work" means all modifications and enhancements to, or derivatives of existing material that either (i) were licensed, owned, or created or otherwise held by or for the party prior to or on the contract

effective date or (ii) are subsequently created by or for the party outside the scope of and independent from this Agreement.

2. Pre-Existing IP and Derivative Works. As between the Provider and the Department, each party will have and retain all of its right, title and interest, including Intellectual Property Rights, in and to its Pre-Existing IP and any Derivative Works of its Pre-Existing IP, and will be entitled to seek Intellectual Property Rights protection for its Pre-Existing IP as it deems appropriate; and a party will not be permitted to use the other Party's Pre-Existing IP, except as expressly provided herein.
3. Subject to the Provider retaining ownership of its Pre-Existing IP and any Derivative Works thereof, the Department shall own all Department data, and other original works of authorship specially developed under this Agreement which are designed, developed or installed with public funds, including Department data, notebooks, plans, working papers and other original works of authorship produced, and equipment and products purchased pursuant to the Agreement. Such items 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.
4. To the extent Provider must use Department Pre-Existing IP, or Derivative Works thereof, to perform Services under this Agreement, the Department hereby grants Provider the right to use Department Pre-Existing IP as strictly necessary to perform the Services under the Agreement and as approved by the Department.
5. Nothing contained in this Agreement shall restrict either party from the use of any ideas, concepts, know how, methodologies, processes, technologies, algorithms or techniques relating to the services which it retains in the unaided memories of its personnel, provided that in doing so neither party breaches its obligations of confidentiality or infringes the intellectual property rights or data ownership of the other party, or third parties who have licensed or provided materials to the other party. Except for the license rights contained in this Section 41 and Section 42, neither this Agreement nor any disclosure made hereunder grants any license to either party under any patents or copyrights of the other party. Each party reserves all rights in its ideas, concepts, know-how, methodologies, processes, technologies, algorithms, techniques and other intellectual property of every kind and description (except as otherwise expressly agreed in writing) and no provision of this Agreement shall be construed to transfer any of such party's rights in such intellectual property.
6. 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 for the Department free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Rider B-IT Section 42 is deleted and replaced in its entirety with the following:

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 and 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 software first developed under this Agreement for and at the State's expense, including 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 custom administrative, maintenance, and test software that are first developed under the Agreement for and at the Department's expense and installed as a result of this Agreement ("Custom Software").
2. The Provider shall deliver to the Department all ownership rights to the Custom Software, free of any claim or retention of rights thereto by the Provider. The Provider acknowledges that the Custom Software shall henceforth remain the sole and exclusive property of the Department, and the Provider shall not use or describe such Custom 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 Section 43 is deleted and replaced in its entirety with the following:

43. OFF-THE-SHELF (OTS) SOFTWARE For all OTS software furnished (to which the State is provided access) 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 internal data processing requirements on the equipment on which the OTS is initially installed during the term of this Agreement. 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.
2. This Agreement does not transfer to the Department the title to any intellectual property contained in any OTS software. The Department will not reverse engineer, 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.
4. This Agreement does not transfer to the State of Maine or Department title to any Intellectual Property contained in any OTS or Pre-Existing IP.
5. No party shall be entitled to use any OTS software unless the party has a valid written license to use such OTS software and all applicable charges for the use of such OTS software have been paid.

Rider B-IT Section 44 is deleted and replaced in its entirety with the following:

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, and upon the occurrence of one of the following events:

1. A final, non-appealable judicial determination that the Provider, or its successor in interest by operation of law, has failed to continue to do business in the ordinary course; or
2. 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.

Provider shall, subject to bankruptcy law of the competent jurisdiction and to the extent the Agreement is not assumed by Provider, or its successor in interest, in any such proceeding:

1. Promptly work with the Department, at its request, on a plan for takeover of the Services;
2. With respect to hosting services used exclusively to support the information systems required to meet the requirements of this Agreement, to the extent permitted by its agreement with any third-party hosting provider and subject to the terms thereof, transfer such hosting services to the Department;
3. With respect to OTS products used exclusively by Provider to meet the requirements of the Agreement, to the extent permitted by its agreements with third party OTS suppliers and subject to the terms thereof, assign such license rights to the Department or, where assignment is not permitted, exercise reasonable diligence to obtain a license for the use of such software by the Department;
4. For the duration of the term of the Agreement, make available under a license, Provider owned software in use by Provider to provide the Services at a price in line with the service fees paid under this Agreement, which shall be negotiated and agreed to, in writing, by the parties. The Department will enter into a licensing agreement under which the Department will receive executable files but not the application source code except as mutually agreed by the parties. The software package will be provided to the Department and maintained by the Provider in accordance with the terms of the license agreed between the parties; under this

arrangement, the Department will pay a license and annual maintenance fee in line with the services fees paid under this Agreement, which shall be negotiated and agreed upon, in writing, by the parties which will allow access to the client engagement model, continuous improvement/upgrades through the regular release cycle for the designated software.

5. When Department obtains a license to Provider owned software, provide all relevant documentation to support the development, testing and operations including architectural diagrams specific to the Department's instance of the software solution including identification of integration points external to Provider's software/modules; provided that subject to applicable freedom of access laws, including but not limited to Maine's Freedom of Access Act 1 M.R.S. § 401 et seq, any documentation is subject to confidentiality obligations necessary to protect Provider proprietary information (including trade secrets as defined under applicable law) from disclosure and or to comply with confidentiality obligations owed to third parties to which Provider is subject;
6. When Department obtains a license to Provider owned software, inform the Department of applicable security protocols implemented by Provider specifically to support the requirements of the Agreement should a subsequent contract award result in a take-over of the Services by another fiscal agent and such information is necessary to the provision of the services; provided that subject to applicable freedom of access laws, including but not limited to Maine's Freedom of Access Act 1 M.R.S. § 401 et seq, any Proprietary information is subject to confidentiality obligations necessary to protect Provider proprietary information (including trade secrets as defined under applicable law) from disclosure and or to comply with confidentiality obligations owed to third parties. Provider shall not be required to share security protocols implemented that jeopardize the security of other services provided by Provider;
7. Identify subcontractors that are part of supporting the system and its operations and will provide reasonable assistance to the Department in facilitating the establishment of a contract for continuation of services between the subcontractor and the Department; and
8. Not object to the hiring by the Department of Provider personnel identified as Key Personnel.

Rider B-IT Section 45 is deleted and replaced in its entirety with the following:

45. PRICE PROTECTION

1. RESERVED.

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.

Rider B-IT Section 46 is deleted and replaced in its entirety with the following:

46. **IRREVOCABLE LETTER OF CREDIT** In order to assure the Provider's faithful adherence to the terms and conditions of this Agreement, the Provider shall submit an irrevocable letter of credit, acceptable to the Department, that is payable on demand. This letter of credit will be procured at the expense of the Provider, naming the Department as the beneficiary. The letter of credit shall specifically refer to this Agreement and shall bind the parties to all the terms and conditions of this Agreement. The Provider shall have thirty (30) calendar days from the date of execution of this Agreement to furnish the letter of credit. The amount of the Letter of Credit shall be five million dollars (\$5,000,000). The Department acknowledges that the form of the letter of credit previously provided by Provider to the Department is acceptable.

Rider B-IT Section 48 is deleted and replaced in its entirety with the following:

48. **DISPUTE RESOLUTION** In the event of any dispute arising during the term of this Agreement concerning performance of this Agreement, either party will serve written notice of such dispute on the other party, and the dispute shall initially be decided in good faith by the Department's Project Manager who shall, within five (5) business days, reduce such decision to writing and serve a copy on the Provider. Should the Provider be dissatisfied with this decision, the Provider may, within five (5) business days of receipt of the decision, submit the dispute to the Department's Agreement Administrator for final resolution. The State Agreement Administrator's decision in the event of any written notice of dispute shall be final subject to any right to relief under applicable law. The Provider shall continue to perform during any pending dispute.

Rider B-IT Section 49 is deleted and replaced in its entirety with the following:

49. **SURVIVAL** The Parties agree that certain clauses are intended by their nature to survive expiration or termination of this Agreement including, without limited to, Sections: 6 (Subcontractors), 12 (Accounting, Record, and Audit), 13 (Termination), 15 (Governing Law), 16 (State Held Harmless), 17 (Limitation of Liability), 35 (Warranty), 40 (Confidentiality), 41 (Ownership).

Rider D Section 1 is deleted and replaced with the following:

CONFIDENTIALITY. To the extent that the services carried out under this Agreement involve the use, disclosure, access to, acquisition or maintenance of information that actually or reasonably could identify an individual or consumer receiving benefits or services from or through the Department ("Protected Information"), the Provider agrees to a) maintain the confidentiality and security of such Protected Information as required by applicable state and federal laws, rules, regulations and Department policy, b) contact the Department within 24 hours of a privacy or security incident that actually or could be reasonably believed to be a breach of Protected Information and c) cooperate with the Department in its investigation and any required reporting and notification of individuals regarding such incident involving Protected Information. To the extent that a breach of Protected Information is caused by the Provider or one of its subcontractors or agents, the Provider agrees to pay the cost of notification, as well as any financial costs and/or penalties incurred by the Department as a result of such breach."

To the extent the Provider under this Agreement is considered a Business Associate under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and its updates and associated regulatory requirements, rules and standards, including those issued under the Health Information Technology for Economic and Clinical Care Act (HITECH), the Provider shall execute the Department's Business Associate Agreement template (BA Agreement). The terms of the BA Agreement shall be incorporated into this Agreement by reference. Provider agrees that failure of Provider to execute and deliver such BA Agreement to the Department or to adhere to the terms of the BA Agreement shall result in breach of the underlying Agreement, and that remedies available to the Department for breach of the Agreement apply hereto.

Rider D is amended by adding the following after the Section 1 Paragraph 2:

Moreover, in connection with projects performed by Provider using Amazon Web Services ("AWS") all information shared with Provider by the Department that is also shared by Provider with AWS will be treated as confidential information under this Agreement and Provider will ensure that AWS protects and treats such confidential information with the same degree of care that Provider has agreed to in this Agreement.

Rider D Section 6 PUBLICATIONS is deleted in its entirety.

Rider D Section 7 OWNERSHIP is deleted in its entirety.

Rider D Section 8 SOFTWARE OWNERSHIP is deleted in its entirety.

Rider D Section 9 PROVIDER RESPONSIBILITIES /SUB AGREEMENTS is deleted in its entirety.

Rider D Section 14 is deleted and replaced with the following:

FUNDING SOURCES REDUCED. Notwithstanding any other provision of this Agreement, if the United States Government or any department of the United States Government, has de-appropriated or suspended funds for this Agreement, or where the Governor of the State of Maine has curtailed funds for this Agreement then the Department is not obligated to make payment under this Agreement to the extent of such de-appropriation, suspension or curtailment of funds and Provider shall be relieved of its continued performance under this Agreement. The Department shall promptly advise Provider if funds are de-appropriated or suspended, or if funds are curtailed. The Department shall pay for all work performed by Provider up to the date funds are de-appropriated or suspended or funds are curtailed. Provider shall not be required to provide any work for which payment will not be provided as a result of any of the foregoing. Where funds are insufficient to pay for the work to be performed, the Department in its sole discretion shall determine which aspects of the work, if any, shall proceed and which Services shall be performed, with Contractor's costs related to such Services and Deliverables determined in accordance with those in the Price Components in Appendix C. In the event of such de-appropriation, suspension or curtailment of funds, the Agreement shall be modified accordingly.

Rider D Section 15 is deleted and replaced with the following:

CHANGE OF OPERATIONS. The Provider shall report to the Agreement Administrator and Program Administrator any anticipated material changes of the Provider's operations, including but not limited to mergers, acquisitions, or closings, at the earliest possible date and no later than sixty (60) days prior to the anticipated closure date, with the exception of reasonably unforeseen circumstance.

Rider D Section 16 Paragraph 1 is deleted and replaced with the following:

BACKGROUND CHECKS. The Provider agrees to conduct background checks on all employees, temporary staff persons, persons contracted or hired, consultants, volunteers, students, and other persons who will provide services under this Agreement. Provider shall confirm the pass/fail results of each background check with the Program Administrator upon request. The cost of performing each background check shall be the responsibility of the Provider. The methods of performing the background checks shall be in compliance with DXC's standard global employment screening package and will include information from the Bureau of Motor Vehicles, the Sex Offender Registry, and the Maine State Bureau of Investigation. If Services to be provided under this agreement include services to minor children then the background check will include information from the Department's Office of Child and Family Services regarding substantiated findings of abuse or neglect of a child. If Services to be provided under this agreement are to be performed by a person who is professionally licensed, then the background check will include information from the appropriate licensing board or entity regarding the status of the person's license.

Rider D Section 17 TANF SUBRECIPIENT REQUIREMENTS is deleted in its entirety.

The Business Associate Agreement Page 1 Paragraph 1 is deleted and replaced with the following:

This Business Associate Agreement ("Agreement") is made this 1st day of September, 2020 (the "Effective Date") by and between the State of Maine, Department of Health and Human Services (the Covered Entity, hereinafter, the "Department") and DXC MS LLC ("Business Associate"), together (the "Parties") and is incorporated into that certain OMS-21-103 Agreement (the "Underlying Agreement") between the Parties; and

The Business Associate Agreement Page 1 Paragraph 1 is deleted and replaced with the following:

WHEREAS, Business Associate may use, disclose, create, receive, maintain or transmit protected health information in a variety of form or formats, including verbal, paper and electronic (together, "PHI") on behalf of the Department in connection with Business Associate's performance of its obligations under the Underlying Agreement; and

The Business Associate Agreement Section 2.c. is deleted and replaced with the following:

Reporting. Business Associate agrees to report to the Department any inappropriate use or disclosure of the Department's PHI of which it becomes aware, i.e. any use or disclosure not permitted in this Agreement or in violation of any legal requirement, including actual and suspected Breaches of unsecured PHI, and any actual or potential Security Incident of which it becomes aware. Such report will be made to the Department's Director of Healthcare Privacy or her designee within twenty-four (24) hours of when the Business Associate becomes aware of an actual or suspected Security Incident or Breach; provided that, pings and other broadcast attacks on Business Associate's firewall, port scans, denials of service and any combination of the above, that do not result in unauthorized access, use, modification, destruction, or disclosure of PHI, are not considered reportable Security Incidents. In the event that a Breach is determined to have occurred under the authority of the Business Associate, Business Associate will cooperate promptly with the Department to provide all specific information required by the Department for mandatory notification purposes.

The Business Associate Agreement Section 2.d. is deleted and replaced with the following:

Subcontractors and Agents. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any third parties, agents or subcontractors (together, "Subcontractors") that use, disclose, create, acquire, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI. Business Associate shall obtain and maintain a written agreement with each Subcontractor that has or will have access, through Business Associate, to the Department's PHI, ensuring that the Subcontractor agrees to be bound to the same restrictions, applicable terms and conditions that apply to Business Associate with respect to such PHI.

The Business Associate Agreement Section 2.e. is deleted and replaced with the following:

Mitigation. The Business Associate shall mitigate, to the extent practicable, any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement.

The Business Associate Agreement Section 2.f. is deleted and replaced with the following:

Accounting of Disclosures. Business Associate will maintain and make available the information and/or documentation required to provide an accounting of disclosures as necessary to satisfy the Department's obligations under 45 CFR 164.528.

The Business Associate Agreement Section 3.a. is deleted and replaced with the following:

The Department shall notify Business Associate of a) within five business days of any limitation in any applicable Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate and b) within 5 business days of any changes, revocations, restrictions or permissions by an individual to the use and disclosure of his/her PHI to which the Department has agreed, to the extent such restrictions or limitations may affect the performance of Business Associate's services on behalf of the Department. The Department shall provide Business Associate with a copy of any applicable Notice of Privacy Practices no later than the effective date of this Agreement.

The Business Associate Agreement Section 4 is deleted and replaced with the following:

Business Associate agrees to indemnify and hold harmless the Department, its directors, officers, agents, and employees against any and all third-party claims, demands, expenses, or liabilities that arise from Business Associate's use or disclosure of PHI not specifically permitted by this Agreement, or required by applicable state or federal laws, licensing, accreditation or other requirements. Business Associate shall have no obligation for the Department's unauthorized use or disclosure of PHI under HIPAA and HITECH.

The Business Associate Agreement Section 5.c.i. is deleted and replaced with the following:

Provide the Business Associate an opportunity to cure or end the violation within a reasonable time frame and upon such conditions as established by the Department; and

The Business Associate Agreement Section 5.c.ii. is amended by deleting "by the Department".

The Business Associate Agreement Section 5.d.iv. is amended by adding "at the sole expense of the Department" to the end of the section.

The Business Associate Agreement Section 8.a. is amended by adding "To the extent any amendment affects the provision of the Services of the Underlying Agreement, the Parties shall make a Change Request under Rider A." to the end of the section.

The Business Associate Agreement Section 8.c. is deleted and replaced with the following:

Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA and HITECH Rules, or other applicable laws or privacy or security requirements.

The Business Associate Agreement is amended by adding the following after Section 8.d.:

- e. *Counterparts.* This Agreement may be executed in counterparts, each of which may be deemed an original and which, taken together, shall be deemed to be a single instrument. Such counterparts may be transmitted as PDFs in an email.

RIDER D
ADDITIONAL REQUIREMENTS

1. **CONFIDENTIALITY.** To the extent that the services carried out under this Agreement involve the use, disclosure, access to, acquisition or maintenance of information that actually or reasonably could identify an individual or consumer receiving benefits or services from or through the Department ("Protected Information"), the Provider agrees to a) maintain the confidentiality and security of such Protected Information as required by applicable state and federal laws, rules, regulations and Department policy, b) contact the Department within 24 hours of a privacy or security incident that actually or potentially could be a breach of Protected Information and c) cooperate with the Department in its investigation and any required reporting and notification of individuals regarding such incident involving Protected Information. To the extent that a breach of Protected Information is caused by the Provider or one of its subcontractors or agents, the Provider agrees to pay the cost of notification, as well as any financial costs and/or penalties incurred by the Department as a result of such breach."

To the extent the Provider under this Agreement is considered a Business Associate under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and its updates and associated regulatory requirements, rules and standards, including those issued under the Health Information Technology for Economic and Clinical Care Act (HITECH), the Provider shall execute the Department's Business Associate Agreement template (BA Agreement). The terms of the BA Agreement shall be incorporated into this Agreement by reference. Provider agrees that failure of Provider to execute and deliver such BA Agreement to the Department or to adhere to the terms of the BA Agreement shall result in breach of the underlying Agreement, and that remedies available to the Department for breach of the Agreement apply hereto.

2. **LOBBY.** No Federal or State appropriated funds shall be expended by the Provider for influencing or attempting to influence, as prohibited by state or federal law, an officer or employee of any Federal or State agency, a member of Congress or a State Legislature, or an officer or employee of Congress or a 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. The signing of this Agreement fulfills the requirement that providers receiving over \$100,000 in Federal or State funds file with the Department with respect to this provision. If any other funds have been or will be paid to any person in connection with any of the covered actions specified in this provision, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form available at: <https://www.gsa.gov/forms-library/disclosure-lobbying-activities>.
3. **DRUG-FREE WORKPLACE.** By signing this Agreement, the Provider certifies that it shall comply with the drug-free workplace requirements of the Drug-Free Workplace Act (41 U.S.C. Ch. 81) by:
- a) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the provider's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
 - b) establishing a drug-free awareness program to inform employees about—
 - i) the dangers of drug abuse in the workplace;
 - ii) the provider's policy of maintaining a drug-free workplace;
 - iii) available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) the penalties that may be imposed on employees for drug abuse violations;
 - c) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (a);
 - d) notifying the employee in the statement required by subparagraph (a) that as a condition of employment in the contract the employee will—
 - i) abide by the terms of the statement; and

- ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after the conviction;
 - e) notifying the Department ten (10) days after receiving notice under subparagraph (d)(ii) from an employee or otherwise receiving actual notice of a conviction;
 - f) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and
 - g) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (a) to (f).
4. ENVIRONMENT TOBACCO SMOKE. By signing this Agreement, the Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C, which requires that smoking not be permitted in any portion of any indoor facility owned, leased, or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments by Federal grant, Agreement, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or MaineCare funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

Also, the Provider of foster care services agrees that it will comply with Resolve 2003, c. 134, which prohibits smoking in the homes and vehicles operated by foster parents.

5. MEDICARE AND MAINECARE ANTI-KICKBACK. By signing this Agreement, the Provider agrees that it shall comply with the dictates of 42 U.S.C. 1320a-7b(b), which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a Provider of goods or services that may be paid for with Medicare, MaineCare, or state health program funds.
6. PUBLICATIONS. When issuing reports, brochures, or other documents describing programs funded in whole or in part with funds provided through this Agreement, the Provider agrees to clearly acknowledge the participation of the Department of Health and Human Services in the program. In addition, when issuing press releases and requests for proposals, the Provider shall clearly state the percentage of the total cost of the project or program to be financed with Agreement funds and the dollar amount of Agreement funds for the project or program.
7. OWNERSHIP. All notebooks, plans, working papers, data, or other work produced in the performance of this Agreement, which are related to specific deliverables under this Agreement, are the property of the Department and upon request shall be turned over to the Department.
8. SOFTWARE OWNERSHIP. Upon request, the State and all appropriate federal agencies shall receive a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to do so, all application software produced in the performance of this Agreement, including, but not limited to, all source, object, and executable code, data files, and job control language, or other system instructions. This requirement applies only to software that is a specific deliverable under this Agreement, or is integral to the program or service funded under this Agreement, and is primarily financed with funding provided under this Agreement.
9. PROVIDER RESPONSIBILITIES / SUB AGREEMENTS. The Provider is solely responsible for fulfillment of this Agreement with the Department. The Provider assumes responsibility for all services offered and products to be delivered whether or not the Provider is the manufacturer or producer of said services.
- a) Sub-agreements.
 - i) All sub-agreements must contain the assurances of Rider B, Rider D, and Rider I of this Agreement;
 - ii) All sub-agreements must be signed and delivered to the Department's Agreement Administrator within five (5) business days following the execution date of the sub-agreement.

- iii) See Rider B Section 5.
 - b) Relationship between Provider, Subcontractor and Department. The Provider shall be wholly responsible for performance of the entire Agreement whether or not subcontractors are used. Any sub-agreement into which the Provider enters with respect to performance under this Agreement shall not relieve the Provider in any way of responsibility for performance of its duties. Further, the Department will consider the Provider to be the sole point of contact with regard to any matters related to this Agreement, including payment of any and all charges resulting from this Agreement. The Department shall bear no liability for paying the claims of any subcontractors, whether or not those claims are valid. The Provider is responsible for ensuring that all staff, employees, subcontractors, or other individuals or entities providing any services on behalf of the Provider clearly explain, verbally and in writing, to clients and families their relationship to the Provider and the Provider's relationship to the Department.
 - c) Liability to Subcontractor. The requirement of prior approval of any sub-agreement under this Agreement shall not make the Department a party to any sub-agreement or create any right, claim or interest in the subcontractor or proposed subcontractor against the Department. The Provider agrees to defend (subject to the approval of the Attorney General) and indemnify and hold harmless the Department against any claim, loss, damage, or liability against the Department based upon the requirements of Rider B, Section 14.
10. RENEWALS. This Agreement may be renewed at the discretion of the Department.
11. NO RULES OF CONSTRUCTIONS. The parties acknowledge that this Agreement was initially prepared by the Department solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all the language used in the Agreement. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement that construes ambiguous or unclear language in favor of or against any party because such party drafted this Agreement.
12. CONFLICT OF INTEREST. The Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Provider further covenants that in the performance of this Agreement, no person having any such known interests shall be employed. [See also Rider B, #8]
13. WHISTLEBLOWER PROTECTION.
- a) This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
 - b) The Provider shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
 - c) The Provider shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.
14. FUNDING SOURCES REDUCED. Notwithstanding any other provision of this Agreement, if the United States Government or any department of the United States Government, has de-appropriated or suspended funds for this Agreement, or where the Governor of the State of Maine has curtailed funds for this Agreement then the Department is not obligated to make payment under this Agreement to the extent of such de-appropriation, suspension or curtailment of funds. In the event of such de-appropriation, suspension or curtailment of funds, the Agreement shall be modified accordingly.
15. CHANGE OF OPERATIONS. The Provider shall report to the Agreement Administrator and Program Administrator any anticipated changes of the Provider's operations, including but not limited to mergers, acquisitions, or closings, at the earliest possible date and no later than sixty (60) days prior to the anticipated closure date, with the exception of reasonably unforeseen circumstance.
16. BACKGROUND CHECKS. The Provider agrees to conduct background checks on all employees, temporary staff persons, persons contracted or hired, consultants, volunteers, students, and other persons who may provide services under this Agreement. The results of each background check shall be made available to the Program Administrator

within five (5) days of completion and prior to the person providing services under this agreement. The cost of performing each background check shall be the responsibility of the Provider. The methods of performing the background checks must first be approved by the Department in writing and will include information from the Bureau of Motor Vehicles, the Sex Offender Registry, and the Maine State Bureau of Investigation. If services to be provided under this agreement include services to minor children then the background check will include information from the Department's Office of Child and Family Services regarding substantiated findings of abuse or neglect of a child. If services to be provided under this agreement are to be performed by a person who is professionally licensed then the background check will include information from the appropriate licensing board or entity regarding the status of the person's license. The Provider must receive written permission from the Department before making any changes to such methods.

The Provider shall not hire or retain in any capacity any person who may directly provide services to a client under this Agreement if that person has a record of:

- a) any criminal conviction that involves client abuse, neglect or exploitation;
- b) any criminal conviction, classified as Class A, B or C or the equivalent of any of these, or any reckless conduct that caused, threatened, solicited or created the substantial risk of bodily injury to another person within the preceding two years; or
- c) any criminal conviction resulting from a sexual act, contact, touching or solicitation in connection to any victim.

The Provider shall not hire or retain in any capacity any person who may directly provide services to a client who is minor child under this Agreement if that person has a record of substantiated abuse or neglect of a child.

The Provider shall not hire or retain a person to perform any service under this agreement that is required to be performed by a person with an appropriate license unless it has confirmation from the appropriate licensing board or entity that the person has a license in good standing.

17. TANF SUBRECIPIENT REQUIREMENTS. To the extent the contract utilizes Temporary Assistance for Needy Families (TANF) funding, the provider acknowledges that it is aware of the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (2 CFR 200 (Uniform Guidance), that TANF block grant funding is being used to fund the contract, to what extent TANF funding is being used and that TANF is governed by the Social Security Act, Title IV (Part A of Title IV), and TANF Regulations 45 CFR Chapter II (Parts 260 through 265)) and that it agrees that it shall:

- a) Ensure that funds are expended in accordance with state laws and procedures for the state's own funds and allow the Department to review the Provider's financial management system, in accordance with 2 CFR 200.302.
- b) Ensure that effective internal controls are used, which includes complying with federal statutes and taking prompt action in instances of non-compliance, in accordance with 2 CFR 200.303.
- c) Ensure that funds are spent in accordance with 2 CFR 200.305.
- d) Monitor program performance and, if required, submit performance reports, data on program objectives and the progress towards meeting those objectives, and additional pertinent data, in accordance with 2 CFR 200.328.
- e) Retain program, financial and statistical records for at least five years from the end of each program year, in accordance with 2 CFR 200.333.
- f) Conduct a Single Audit in accordance with 2 CFR 200 Subpart F, if applicable.

18. CLEAN AIR AND CLEAN WATER. By signing this agreement, the Provider agrees that it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

**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: Enter State
- Other. Please identify country: Enter 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.



Maine Department of Health and Human Services

Business Associate Agreement

This Business Associate Agreement (“Agreement”) is made this 1st day of September, 2020 (the “Effective Date”) by and between the State of Maine, Department of Health and Human Services (the Covered Entity, hereinafter, the “Department”) and DXC MS LLC (“Business Associate”), together (the “Parties”) and is incorporated into that certain OMS-21-901 Agreement (the “Underlying Agreement”) between the Parties; and

WHEREAS, Business Associate may use, disclose, create, receive, maintain or transmit protected health information in a variety of form or formats, including verbal, paper and electronic (together, “PHI”) on behalf of the Department in connection with Business Associate’s performance of its obligations under the Underlying Agreement; and

WHEREAS, the Parties intend to ensure the confidentiality, privacy and security of Department’s PHI as required by law, including the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), and its implementing regulations at 45 CFR Parts 160 and 164 (the Privacy, Security, Breach Notification and Enforcement Rules or “HIPAA Rules”) as updated by the Health Information Technology for Economic and Clinical Care Act (HITECH) enacted under Title XII of the American Recovery and Reinvestment Act of 2009, and its implementing Regulations (together, the “HIPAA and HITECH Rules”); and

WHEREAS, the Parties agree that certain federal and state laws, rules, regulations and accreditation standards also impose confidentiality restrictions that apply to this business relationship, and may include, but are not limited to: 42 CFR 2 *et. seq.*; 5 M.R.S.A. §19203-D; 22 M.R.S.A. §§42, 261, 815, 824, 833, 1494, 1596, 1711-C, 1828, 3173, 3292, 4008, 5328, 7250, 7703, 8754; 10 M.R.S.A 1346 *et. seq.*; 34-B M.R.S.A. §1207; 14-193 C.M.R, Ch. 1, Part A, § IX; and applicable accreditation standards of The Joint Commission or other appropriate accreditation body regarding confidentiality.

NOW THEREFORE, the parties agree as follows:

Specific Definitions for the Purpose of this Agreement:

Breach means the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such PHI. A security or privacy incident that involves PHI is presumed to be a breach requiring notification unless the Department proves, through specific risk analysis steps, that there is a low probability that the PHI was compromised or a) the incident does not involved unsecured PHI, or b) the incident falls into another exception or safe harbor as set forth in the HIPAA and HITECH Rules.

Business Associate is a person or entity that creates, receives, maintains or transmits PHI on behalf of, or provides services to, a covered entity, as set forth in the HIPAA Rules and other than in the capacity of a workforce member.

Covered Entity is a 1) health plan, (2) health care clearinghouse, or 3) health care provider who electronically transmits any health information in connection with transactions for which HHS has adopted standards. Generally, these electronic transactions concern billing and payment for services or insurance coverage.

Designated Record Set means the billing and medical records about individuals maintained by or for a covered provider: the enrollment, claims adjudication, payment, case or medical management record systems maintained by or for a health plan; or that are used in whole, or in part, by the covered entity to make decisions about individuals.

Individual means the person who is the subject of the PHI.

Protected Health Information means information that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual and is transmitted or maintained in electronic or any other form or medium.

Security Incident means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information [or PHI] or interference with system operation in an information system.

Subcontractor means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private, to whom a business associate has delegated a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

Unsecured Protected Health Information means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Department of Health and Human Services ("HHS") in its guidance.

General Definitions. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA and HITECH Rules: Data Aggregation, Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Required by Law, and Use.

1. Permitted Uses and Disclosures

- a. Business Associate agrees to use or disclose the PHI authorized by this Agreement only to perform the services of the Underlying Agreement between the Parties, or as required by law.
- b. Business Associate may use or disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, only where a) the use or disclosure does not violate any law governing the protection of the PHI, including, but not limited to, prohibitions under 42 CFR Part 2 (Part 2 Regulations), and b) the disclosures are required by law or c) Business Associate agrees only to disclose the minimum necessary PHI to accomplish the intended purpose and i) obtains reasonable assurances from the person or entity to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity, and ii) the person or entity agree to immediately notify Business Associate of any instances of which it is aware that the confidentiality, privacy or security of the information has been actually or potentially breached.
- c. Business Associate may provide data aggregation services relating to the health care operations of the Department, or de-identify the Department's PHI, only when such specific services are permissible under the Underlying Agreement or as otherwise preapproved in writing by the Department.

2. Obligations and Activities of the Business Associate

- a. *Compliance.* Business Associate agrees to comply with the HIPAA and HITECH Rules, and other applicable state or federal law, to ensure the protection of the Department's PHI, and only use and disclose PHI consistent with the Department's minimum necessary policy and the legal requirements of this Agreement. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA or HITECH Rules or other state or federal law if performed by the Department.
- b. *Safeguards.* In complying with the HIPAA and HITECH Rules, Business Associate agrees to use appropriate administrative, technical and physical safeguards, and comply with any required security or privacy obligations, to protect the confidentiality, integrity and availability of the Department's PHI.
- c. *Reporting.* Business Associate agrees to report to the Department any inappropriate use or disclosure of the Department's PHI of which it becomes aware, i.e. any use or disclosure not permitted in this Agreement or in violation of any legal requirement, including actual and suspected Breaches of unsecured PHI, and any actual or potential Security Incident of which it becomes aware. Such report will be made to the Department's Director of Healthcare Privacy or her designee within twenty-four (24) hours of when the Business Associate becomes aware of an actual or suspected Security Incident or Breach; provided that, pings and other broadcast attacks on Business Associate's firewall, port scans, denials of service and any combination of the above, that do not result in unauthorized access, use, modification, destruction, or disclosure of PHI, are not considered reportable Security Incidents. In the event that a Breach is determined to have occurred under the authority of the Business Associate, Business Associate will cooperate promptly with the Department to provide all specific information required by the Department for mandatory notification purposes.
- d. *Subcontractors and Agents.* In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any third parties, agents or subcontractors (together, "Subcontractors") that use, disclose, create, acquire, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI. Business Associate shall obtain and maintain a written agreement with each Subcontractor that has or will have access, through Business Associate, to the Department's PHI, ensuring that the Subcontractor agrees to be bound to the same restrictions terms and conditions that apply to Business Associate with respect to such PHI.
- e. *Mitigation.* The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate, to the extent practicable, any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement.
- f. *Accounting of Disclosures.* Business Associate will maintain and make available the information and/or documentation required to provide an accounting of disclosures as necessary to satisfy the Department's obligations under 45 CFR 164.528.
- g. *Access.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate will use commercially reasonable efforts to make PHI available in the format requested, and as necessary to satisfy the Department's obligation under 45 C.F.R. 164.524, within 30 days from the time of request. Business Associate will inform the Department of the individual's request within five (5) business days of the request.
- h. *Amendment.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate agrees to make any amendment(s) to the PHI as directed or agreed to by the Department, or take other measures as necessary to satisfy the Department's obligations under 45 CFR 164.526, in such time period and in such manner as the Department may direct.
- i. *Restrictions.* Upon notification from the Department, Business Associate shall adhere to any restrictions on the use or disclosure of PHI agreed to by or required of the Department pursuant to 45 CFR 164.522.

- j. *Audit by the Department or the HHS Secretary.* The Business Associate will make its internal practices, books and records relating to the use or disclosure of PHI received from the Department or used, acquired, maintained, created or received by the Business Associate on behalf of the Department, available to either the Department or the HHS Secretary for the purposes of determining the compliance of either the Department or the Business Associate with the Medicaid Act, and the HIPAA and HITECH Rules, or any other federal, state or accreditation requirement. 45 C.F.R. 164.504.
- k. *Other Obligations:* To the extent that Business Associate is to carry out one or more of the Department's obligations under the HIPAA and HITECH Rules or other federal or state law, Business Associate agrees to comply with the legal requirements that apply to the Department in performing that obligation;

3. Obligations of the Department

- a. The Department shall notify Business Associate of a) within five business days of any limitation in any applicable Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate and b) within 5 business days of any changes, revocations, restrictions or permissions by an individual to the use and disclosure of his/her PHI to which the Department has agreed, to the extent such restrictions or limitations may affect the performance of Business Associate's services on behalf of the Department. The Department shall provide Business Associate with a copy of any applicable Notice of Privacy Practices no later than the effective date of this Agreement.
- b. The Department shall not request that Business Associate use or disclose PHI in any format, and in any manner, that would be prohibited if performed by the Department.

4. Hold Harmless

Business Associate agrees to indemnify and hold harmless the Department, its directors, officers, agents, shareholders, and employees against any and all claims, demands, expenses, liabilities or causes of action that arise from any use or disclosure of PHI not specifically permitted by this Agreement, applicable state or federal laws, licensing, accreditation or other requirements.

5. Term of Agreement

- a. *Term.* This Agreement shall be effective as of the Effective Date and shall terminate at the end of the term of the Underlying Agreement. To the extent that the Underlying Agreement automatically renews, this Agreement shall also automatically renew itself for the same renewal period unless the Department terminates this Agreement for cause as set forth in Section 5(c). Either party may terminate the Agreement consistent with the written notice provision regarding termination in the Underlying Agreement.
- b. *Auto-renewal.* In the event that this Agreement is automatically renewed, the Business Associate agrees to be bound by the terms of this Agreement and laws referenced in this Agreement that are current and in effect at the time of renewal.
- c. *Termination for Cause.* Notwithstanding the foregoing, Business Associate authorizes termination of this Agreement by the Department if the Department determines that Business Associate has violated a material term of the Agreement. The Department shall either, at its sole discretion:
 - i. Provide the Business Associate an opportunity to cure or end the violation within a time frame and upon such conditions as established by the Department; and

- ii. Immediately terminate this Agreement in the event the Business Associate has either failed to cure in the time frame provided by the Department or if cure is not possible.
- d. *Obligations of the Business Associate upon Termination.* Upon termination of this Agreement for any reason, Business Associate, shall
 - i. Return or destroy all PHI used, created, accessed, acquired, maintained, or received by the Business Associate on behalf of the Department, and retain no copies in any format. Business Associate shall ensure that its Subcontractors do the same.
 - ii. If the Department agrees that Business Associate may destroy all PHI in its possession, Business Associate shall certify such destruction to the Department.
 - iii. If returning or destroying PHI is not feasible, Business Associate agrees to protect the confidentiality of the PHI and retain only that PHI which is necessary for the Business Associate to continue its proper management and administration, or to carry out its legal responsibilities. Business Associate shall not use or disclose the PHI for other than the purpose for which it was retained, and return to the Department, or destroy if approved by the Department, such PHI when no longer required. Furthermore, Business Associate shall continue to use appropriate safeguards and comply with the HIPAA and HITECH Rules, other applicable state and federal law, with respect to PHI in any format for as long as Business Associate retains the PHI.
 - iv. Upon appropriate direction from the Department, Business Associate shall transmit the PHI to another business associate of the Department consistent with all legal and regulatory safeguards delineated in this Agreement, at the sole expense of the Department.

6. Qualified Service Organization Agreement

To the extent that in performing its services for or on behalf of the Department, Business Associate uses, discloses, maintains or transmits PHI that is protected by the Part 2 Regulations, Business Associate acknowledges that it is a Qualified Service Organization for the purpose of such federal law; acknowledges that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 Regulations; and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 Regulations.

7. Survival of Business Associate Obligations

The obligations of the Business Associate under this Agreement shall survive the termination of this Agreement indefinitely.

8. Miscellaneous

- a. *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA and HITECH Rules, and/or other applicable laws or requirements. This Agreement may only be amended in writing, signed by authorized representatives of the Parties.

- b. *Injunction.* The Department and Business Associate agree that any violation of the provisions of this Addendum may cause irreparable harm to the Department. Accordingly, in addition to any other remedies available to the Department, Department shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without bond or other security being required and without the necessity of demonstrating actual damages.
- c. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA and HITECH Rules, or other applicable laws or privacy or security requirements.
- d. *Legal References.* A reference in this Agreement to a section in the HIPAA or HITECH Rules or to other federal or state law, means the section as in effect or as amended.
- e. *Counterparts.* This Agreement may be executed in counterparts, each of which may be deemed an original and which, taken together, shall be deemed to be a single instrument. Such counterparts may be transmitted as PDFs in an email.

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement as of the Effective Date.

Department		Business Associate	
Signature:	<small>DocuSigned by:</small> <u>Benjamin Mann</u>	Signature:	<small>DocuSigned by:</small> <u>David Hadsell</u>
Name:	<small>2870DA6E0E76471...</small> <u>Benjamin Mann</u>	Name:	<small>5B959DB523324C1...</small> <u>Andrew Saxe</u>
Title:	<u>Deputy Commissioner of Finance</u>	Title:	<u>Northeast GM</u>
Date:	<u>8/27/2020</u>	Date:	<u>8/28/2020</u>

ATTACHMENT: FUNDING & FEDERAL AWARD ALLOCATION



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

2. VENDOR CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT
(FORM A)

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”), is between the Maine State Office of Information Technology (“OIT”), having a principal place of business at 51 Commerce Drive, Augusta, Maine 04330, and DXC MS LLC (“Vendor”) with its principal place of business at PO BOX 731164, Dallas, TX 75373-1164 as of September 1, 2020 (the Effective Date).

WHEREAS, the State of Maine has engaged the Vendor to provide services in connection with the operation or management of certain State of Maine programs or services pursuant to [insert Contract No.] (“Contract”); and

WHEREAS, in connection with the performance of the Contract, Vendor has access to confidential information (as defined below); and

WHEREAS, OIT wishes to ensure the protection of Confidential Information and restrict the Vendor’s use of Confidential Information to purposes directly connected and necessary for the performance of the Contract; and

WHEREAS, the Vendor recognizes the need to restrict disclosure and use of Confidential Information.

NOW THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms shall be defined as follows:

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.

C. Confidential Information

Information that belongs to OIT, or resides on the State of Maine information technology infrastructure, includes highly sensitive and confidential data. In many instances, improper release or use of this information by an OIT or other state employee or third party provides a means for Confidential Information” includes any and all information disclosed to, or otherwise acquired or observed by, the

Benjamin Maine *David H. H. H. H.*

Vendor, including their respective employees, agents and subcontractors (all of the foregoing collectively referred to as “Representatives”), from or through OIT or any agency, instrumentality or political subdivision of the State of Maine Government, including but not limited to:

- 1) Any information that describes the State of Maine architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software (1 MRSA § 400 et seq.);
- 2) Tax information protected by 36 M.R.S.A §191 and the Internal Revenue Code, 26 U.S.C. §§6103, 7213, 7213A, 7413 regarding unauthorized disclosure or inspection of tax information. State and federal statutes may impose substantial civil and criminal penalties for unauthorized access or disclosure and carry monetary penalties of varying amounts, and/or imprisonment for up to 5 years, together with the costs of prosecution;
- 3) Protected health information and personally identifiable information received by the State from the Centers for Medicare and Medicaid Services and the Social Security Administration, and any other sources, that is protected under state and federal healthcare and privacy laws (including but not limited to the following: 22 MRSA §1711-C; the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 104th Congress; the federal Privacy Act of 1974, 5 U.S.C. § 552a, as amended; [section 1106 of the Social Security Act](#), as amended; the Patient Protection and Affordable Care Act of 2010 (Public Law No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152); the [E-Government Act of 2002, as amended](#); [related Centers for Medicare & Medicaid Services and Social Security Administration regulations and policies](#), as well as other relevant privacy federal statutes, rules, regulations and guidance;
- 4) Criminal Justice Information records maintained by the Federal Bureau of Investigation Criminal Justice Information Services Division, as well as any other state and federal criminal records information protected by various state and federal statutes. Violations may subject the disclosing party to civil penalties imposed by federal Privacy Act of 1974, 5 U.S.C. § 552a, as amended, for unauthorized disclosure or inspection of criminal record information;
- 5) Any sensitive information that may be protected pursuant to any other federal or state statutory or regulatory scheme intention to protect information, or by order, resolution or determination of a court or administrative board or other administrative body;
- 6) Any information that has been designated as confidential and not subject to disclosure pursuant to the Maine Freedom of Access Act (1 MRSA § 400 et seq.); and
- 7) Any information that OIT or the State, regardless of form or medium of disclosure (e.g., verbal, 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 the Agreement other than:
 - a) information that is previously rightfully known to 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 from a source other than the Vendor, OIT or any agency, instrumentality or political subdivision of the State of Maine Government, provided that such source is not bound by a confidentiality agreement or is not otherwise prohibited from transferring the information to the Vendor by a contractual, legal or fiduciary duty; or
 - c) information that is independently developed by the Vendor without the use of or benefit from Confidential Information and such independent development can be documented by the Vendor.

D. Electronic Information

“Electronic Information” is defined as information or data produced or stored by electronic, digital, or similar means.

E. Services

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

F. Vendor

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

2. Duty to Protect Confidential Information.

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, and must maintain commercially reasonable administrative, physical, and technical standards for maintaining this information confidential (e.g., standards established by the National Institute of Standards and Technology). 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 or other confidentiality obligations (e.g. attorney-client privilege) 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 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 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. Press Releases.

The Vendor shall not issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding his/her Contract or engagement under this Agreement- nor shall Vendor authorize or permit any other person or entity to do so - without the prior express written permission of OIT. Vendor shall immediately refer any media requests or other requests for information to the Director of Communications, Department of Administrative and Financial Services (207) 624-7800.

7. Use Restriction.

Vendor shall not receive, possess, store, access, view and/or use Confidential Information for any reason or purpose other than as strictly necessary in regard to the performance of the Services. 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.

8. Security Obligations Regarding Confidential Information.

The Vendor agrees to comply with the following security obligations as well as any other such obligations specified in the contract or conveyed to him/her during the course of the Agreement. The Vendor agrees to:

- A. Implement administrative, physical and technical safeguards 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. Continually monitor its operations and take any action necessary to assure that Confidential Information is safeguarded in accordance with OIT policies and standards and all applicable federal and state laws and regulations;
- C. Unless otherwise authorized by OIT, not to store Confidential Information on personal (i.e., non-OIT / non-Vendor) computing or other electronic or mobile storage devices or taken or removed in any form from OIT;
- D. Comply with all applicable federal and State laws and regulations;
- E. Comply with all OIT policies and procedures including but not limited to those that provide for accessing, protecting and preserving State assets;
- F. Hold all Confidential Information in the strictest confidence;
- G. Make reasonable efforts to comply with any reasonable request by OIT to conduct an audit, including a request to audit the Vendor's subcontractor work;
- H. Not to intrude upon, disrupt or deny services to OIT; and
- I. Use only those access rights granted by OIT.

9. 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 if feasible, shall return all Confidential Information stored on any format to OIT, or destroy any Confidential Information that Vendor possesses in a format that cannot be returned. If such return or destruction is not feasible for certain portions of Confidential Information (including if any stored in automatic archive systems), Vendor shall extend the protections of this Agreement to the Confidential Information which is not feasible to return or destroy and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. 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 of Maine or OIT have been returned, or if necessary destroyed, using the form provided in Appendix A.

10. 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 the Vendor's Contract, whichever occurs first.

11. Remedies.

In the event of any breach or threatened breach of this Agreement, the State of Maine shall have all equitable and legal rights (including the right to obtain injunctive relief and specific performance) to seek redress for such breach, prevent further breaches and to be fully compensated (including litigation costs and reasonable attorney’s fees) for losses or damages resulting from such breach. The Vendor acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality is a remedy available to the State of Maine.

12. 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 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.

13. 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. This Agreement is intended to be read in harmony with any other confidentiality and non-disclosure provisions contained within the Contract.

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

[DXC MS LLC]:

DocuSigned by:
By: David Hadsell
5B959DB523324C1...

Printed: Andrew Saxe

Title: General Manager Northeast

Date: 8/28/2020

Address: _____

**State of Maine
Office of Information Technology:**

DocuSigned by:
By: Frederick Brittain
052B9AC7F56A489...

Printed: Frederick Brittain

Title: Chief Information Officer

Date: 8/27/2020

Address: _____

3. APPENDIX A

**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 DXC MS LLC (“Vendor”) dated September 1, 2020, 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

DXC MS LLC

Vendor Name

Date