

MA 18P 20041600000000000130  
MODIFICATION

## State of Maine



### Master Agreement

**Effective Date:** 05/26/20

**Expiration Date:** 06/30/24

**Master Agreement Description:** Statewide IT Staff Augmentation Services

#### Buyer Information

Michelle Fournier	624-8868	ext.	Michelle.Fournier@maine.gov
-------------------	----------	------	-----------------------------

#### Issuer Information

Kathy Paquette	207-624-7877	ext.	KATHY.L.PAQUETTE@MAINE.GOV
----------------	--------------	------	----------------------------

#### Requestor Information

Thomas Howker	207-624-8878	ext.	Thomas.n.howker@maine.gov
---------------	--------------	------	---------------------------

#### Agreement Reporting Categories

**Reason For Modification:** Extension of competitively awarded NASPO Cloud Solutions 2-years per NASPO contract AR2504.

#### Authorized Departments

ALL

### Vendor Information

**Vendor Line #:** 1

#### Vendor ID

VS0000010028

#### Vendor Name

GuideSoft Inc.

#### Alias/DBA

Knowledge Services

#### Vendor Address Information

5875 Castle Creek Parkway, Suite 400

Indianapolis, IN 46250

US

Please see authorized signatures displayed on the next page

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

State of Maine - Department of Administrative and Financial Services

DocuSigned by:  
 5/27/2022  
-----  
Signature Date

Jaime C. Schorr, Chief Procurement Officer

Vendor

DocuSigned by:  
 5/27/2022  
-----  
Signature Date

Katie Belange

Corporate Counsel

Print Representative Name and Title



SERVICE CONTRACT

DATE: **5/19/2022**

ADVANTAGE CONTRACT #: **MA 18P 200416\*130**

DEPARTMENT AGREEMENT #: **NA**

CONTRACT AMOUNT: \$ **\$0.00 (Master Agreement)**

START DATE: **7/1/2022**      END DATE: **6/30/2024**

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

**State of Maine DEPARTMENT**

DEPARTMENT: **Department of Administrative and Financial Services, Procurement Services**

Address: 9 SHS, 111 Sewell Street

City: Augusta      State: ME      Zip Code: 04333

**PROVIDER**

PROVIDER: **GuideSoft Inc. dba Knowledge Services**

Address: 9800 Crosspoint Boulevard

City: Indianapolis      State: IN      Zip Code: 46256

Provider's Vendor Customer #: **VS00000010028**

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 of Administrative & Financial Services, Office of Information Technology**

DocuSigned by:

A blue ink signature of Frederick Brittain.

5/25/2022

052B9AC7F56A489...

Signature: Frederick Brittain, CIO, OIT-DAFS      **Date**

**GuideSoft, Inc. dba Knowledge Services**

DocuSigned by:

A blue ink signature of Julie Bielawski.

5/25/2022

F25BD391BAC44B3...

Signature: Julie Bielawski, CEO      **Date**

**Department of Administrative & Financial Services, Division of Procurement Services**

DocuSigned by:

A blue ink signature of Jaime C. Schorr.

5/25/2022

6D6437754DD0459...

Signature: Jaime C. Schorr, CPO, DAFS      **Date**

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

✓	
	Payment Rider
	Rider A – Specifications of Work to be Performed
	Rider B – Terms and Conditions
	Rider C – Exceptions to Rider B
	Rider D – Not Used
	Rider E – Not Used
	Rider F – Debarment, Performance, and Non-Collusion Certification – included at Department's Discretion
	Rider G – Identification of Country in Which Contracted Work will be Performed
	Rider H – Business Associate Agreement
	Rider I: IRS Safeguard Contract Language
	Rider J: State of Maine - Vendor Confidentiality & Non-Disclosure Agreement
	Rider K – Not Used
	Rider L: MSP Program SOW Projects Process

DEPARTMENT LEADS:

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

Name and Title: **Jeannine Spears**      Address: 9 SHS, 111 Sewall St. Augusta, Maine  
**IT Procurement System Section**  
**Manager**

Telephone: **207-480-9986**      E-mail: **Jeannine.a.spears@maine.gov**

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

Name and Title: Katie Belange,      Address: 9800 Crosspoint Boulevard, Indianapolis, IN  
Corporate Counsel      46256

Telephone: 317-806-6197      E-mail: KatieB@knowledgeservices.com

## PAYMENT RIDER

**CONTRACT AMOUNT: \$    N/A \$0 Master Agreement**

The sources of funds and compliance requirements for this Contract follow:

- |                              |        |
|------------------------------|--------|
| A. State General Fund        | \$ -0- |
| B. Dedicated/Special Revenue | \$ -0- |
| C. Federal Funds             | \$ -0- |

**CODING:** Each agency will submit Delivery Orders with agency financial coding against this Master Agreement.

**Additional Requirements:** Delivery Orders will be issued to the Provider on a per resource basis or per defined project. Delivery Orders are fully funded for the resource(s) for the numbers of hours and resources for the length of the agreement. Recruiting process may not begin until the Provider has been issued a finalized Delivery Order by Procurement Services in the Bureau of Business Management.

### **INVOICES AND PAYMENT:**

Department will pay the Provider as follows:

Payment terms are net 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documents. Provider shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, bill rates, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices will be sent to each agency separately and must include the Department and Master Agreement number, Vender (Provider) code, and the specific Delivery Order number to be charged.

The Provider must pay all sub-vendors within 10 business days from the date the State of Maine's payment is received by the Provider. The Provider must provide sub-vendors with the option of receiving payments via electronic transfer of funds through their bank account.

## RIDER A SCOPE OF WORK

### TABLE OF CONTENTS

- I. Acronyms
- II. Introduction/Overview
- III. Deliverables
- IV. Service Level Agreements
- V. Reports

#### I. ACRONYMS/DEFINITIONS:

The following terms and acronyms shall have the meaning indicated below as referenced in this Contract:

COMMONLY KNOWN ACRONYMS AND DEPARTMENT ABBREVIATIONS	
Agency or State Agency	State of Maine agencies
Contract	Formal and legal binding agreement
Department	State of Maine Department entering into this Contract
Delivery Order	Financial document created by requesting agency to fund a requisition.
dotStaff	GuideSoft, Inc. proprietary Vendor Management System
Employer of Record	KHI Solutions, Inc. an affiliate of GuideSoft, Inc. dba Knowledge Services acts as the employer of certain pre-identified individuals who have been selected by the Department without the assistance of a recruiting, staffing, or any third- party, organization, to perform work on temporary assignments.
Provider	Organization providing services under this Contract
IT	Information Technology
State	State of Maine
MSP	Managed Service Provider
Managed Services Provider	GuideSoft, Inc. dba Knowledge Services
Program Website	<a href="https://www.maine.gov/dafs/bbm/procurementservices/reports/statewide-contracts/information-technology-managed-staffing-program">https://www.maine.gov/dafs/bbm/procurementservices/reports/statewide-contracts/information-technology-managed-staffing -program</a>
Requisition or Job Posting or	Form completed by State of Maine hiring managers describing Job Title/Description of required resource and includes justification for position.
Resource(s) or IT Resource	Contractor(s) sometimes referred to as consultants.



VMS	Vendor Management System
SaaS	Software as a Service application hosted in the cloud
State Facility	State of Maine location
FTE	Full Time Employee
Supplier network or Sub-Vendor	Vendor in the network who recruit and supply candidates for job postings.

## II. INTRODUCTION/OVERVIEW:

- A. This contract covers Cloud Solutions provided by the contractor Knowledge Services under master agreement AR2504 led by NASPO. The contract may be used by State of Maine agencies, Courts, Legislature, Boards and Commissions, quasi-state governmental entities, the University and Community College System and political subdivisions located in the State of Maine with the prior approval of the contract Administrator.
- B. This contract provides a cloud based SAAS Vendor Managed Service Provider (VMSP) for securing IT Staff Augmentation to aid in a variety of information technology projects on an hourly basis for State agencies on an as needed basis. Consultants may be required to provide specific work products / deliverables; however, the work is billed on an hourly basis. In most cases, the work will be performed onsite at State agencies; however, work can be done offsite with prior approval of the State. The contract also allows milestone-based, deliverable-based and/or fixed fee Statement of Work Projects (SOW Projects) to be executed through the VMS.
- C. Contractor (Knowledge Services) shall provide the ongoing administration of the MSP program, including the recruiting, review, ranking, filtering of candidates, on-boarding, off-boarding, and management of the Sub-Vendor network to fulfill Service requests. The State reserves the right to revise this Contract to add or expand services or labor categories. The program shall include, but will not be limited to:
  1. On-site program management as defined in Section I. Account Management.
  2. Program management to performance Service Level Agreement measurements.
  3. Consultation with State staff, Sub-Vendor network, resources.
  4. Development assistance of individual position requirements based on job skill needs.
  5. Entry of position requirements with skills in Vendor Management System (VMS).
  6. Position posting to suppliers for candidate recruiting.
  7. Candidate screening based on skills and individual job needs.
  8. Candidate interview aid (screening, scheduling, coordination, background checks).
  9. Candidate recommendations.
  10. Candidate or resource ("Resource") performance management (orientation, on-boarding, performance measurement, separation).
  11. Management and mentoring of the supplier ("Sub-Vendor") network.
  12. Periodic rate card reviews to align job categories with market wage rates.

13. Provision, and configuration of a VMS to automate and support the IT staff augmentation and SOW Project lifecycle and to provide standard and customized reports, as mutually agreed upon by the Contract Administrator and Provider, to the Department on a timely basis.
14. Provide training sessions to State staff and Sub-Vendors on VMS capabilities and processes and validate such training was effective. Validation should be confirmed with the State staff that training was effective and there is no additional training needed.
15. Maintain a web portal for the State of Maine's MSP Program. The State and Provider will mutually agree on items to be posted on the portal. The web portal would include items staff augmentation process, current rate card, listing of job descriptions, job posting form, statement of work process & templates, process documents, quarterly business reviews, training material, and other templates.

### III. DELIVERABLES:

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

#### A. Rates

1. Contract Not-to-Exceed rates shall be per the rates posted at the program website. These rates may be changed from time to time based on mutual written agreement between the State of Maine and Provider due to IT recruiting market conditions, changes in job skill requirements or implementation of other contract features. The Managed Service Provider fee is 2.25%. Provider will deduct the 2.25% MSP fee for its compensation prior to remitting payment to the Supplier Network. The Not to Exceed Hourly Rate Chart referenced includes the MSP fee.
2. The Provider shall issue a rebate of 1.00% to the State of Maine at the close of each quarter. Provider will deduct the 1.00% rebate, in addition to the MSP Fee, prior to remitting payment to the Supplier Network. The rebate shall be calculated from all billed transactions during the previous quarter starting with time worked and billed beginning July 5, 2020. Direct expenses, authorized by the Contract Administrator, such as travel, or training course tuition are excluded from the rebate computation. The Rebate and MSP fee are separate and included in the contract hourly rate or the fixed SOW fee.
3. If any hourly bill rate exceeds the maximum rates, written approval of an exception must be submitted to the State Contract Administrator. Once the waiver is approved by the Contract Administrator, the MSP manager may enter into an engagement with Provider for a candidate who has special skillset to fill a position.
4. All rate changes require the approval of the State Contract Administrator.

#### B. Pre-identified Resources

1. As part of the State MSP Program, Knowledge Services shall provide Employer of Record services, subject to approval by the State, for Resources pre-identified by the State. KHI Solutions, Inc. will become the Employer of Record, and assign said Resource to any State facility subject to approval by the State, if determined by the State to be in the State's best interest. Resources from Sub-Vendors in the MSP program will not be converted to the Employer of Record Provider, unless otherwise directed by the Contract Administrator.
  - a. The Mark Up Rate for former employees of the State of Maine and Intern Resources pre-identified by the State shall be 23%.
  - b. The Mark Up Rate for all Resources pre-identified by the State, excluding pre-identified former employees of the State of Maine and Intern Resources, shall be as follows:

Resource Hourly Pay Rate	Mark Up
Pay rate up to \$20.00 per hour	25.75%
Pay rate of \$20.01 – \$50.00 per hour	23.25%
Pay rate greater than \$50.00 per hour	21.75%

- c. In the event background checks and/or drug screens are necessary as determined by the using State agency, to the assignment of a resource under this paragraph, Knowledge Services shall bear the cost associated with the background checks and/or drug screens.

C. Conversion Schedule

1. If the State determines that it would be in the State's best interest to hire a Resource of Sub-Vendor after a period of nine hundred and sixty (960) hours, Provider will require that Sub-Vendor will release the selected Resource from any non-competition agreements that may be in effect. This release will be at no cost to the State, Provider or Resource. If the State determines that it would be in the State's best interest to hire a Resource of the Sub-Vendor, prior to completion of nine hundred and sixth (960) hours, the State will notify the Provider of the intention to convert the Resource. Provider will require that Sub-Vendor release the selected Resource from any non-competition agreements that may be in effect. The following conversion schedule will apply.

Hours Worked	0-160 hours	>160-320 hours	>320-480 hours	>480-640 hours	>640-800 hours	>800-960 hours	>960 hours
Maximum/not to exceed conversion fee	20% of first year annual salary*	15% of first year annual salary*	12.5% of first year annual salary*	10% of first year annual salary*	7.5% of first year annual salary*	5% of first year annual salary*	0% of first year annual salary*

\*The first-year annual salary will be the annual salary that would be paid to Resource by the State during the first year of service, exclusive of any benefits or fees paid to the Resource.

The conversion schedule and associated fees does not apply for participants in the Employee of Record program.

D. Information Safeguard, Security, Background Checks, Debarment and Sub-Contractors

1. Provider, and all sub-contractors, shall comply with information security requirements presented in Rider I – IRS Safeguard Contract Language, Rider J – State of Maine Vendor Confidentiality & Non-Disclosure Agreement and Rider F- Debarment, Performance and Non-Collusion Form. Rider I, J and F Contract terms shall be included in all sub-Contractor agreements.
2. If the Department advises the Provider that an IT Resource provided through the Contract will have access to Federal Tax Information, the Provider may not enter into any sub-contract or payroll agreement for the work to be performed by the IT Resource under this agreement without the express written consent of the Department which will include the appropriate 45-day notification to the IRS Contact. The 45-day notification process will be coordinated and executed

by the State of Maine, Maine Revenue Services. This provision shall not apply to Contracts of employment between the Provider and its employees. This provision shall not apply to sub-contracts for IT Resources not handling Federal Tax Information.

3. Provider agrees to conduct or to have conducted a background check of any Resource placed on assignment at a State Agency, or State facility ("Facility"), prior to the start of Resource's assignment.
4. Provider shall maintain records & files of information safeguard, security and background check and make them available for state inspection as requested by the State.
5. Background checks shall be completed for verification of, but not limited to:
  - a. Social security trace – verification of social security number.
  - b. Federal Criminal history check; including all State and Counties of Residence for the past 7 years.
  - c. E-Verify employment eligibility verification.
  - d. Federal Exclusion and Debarment Screening (FACIS). Provider shall confirm that Resources are not excluded from participation in any federal health care program (such as Medicare or any state Medicaid program) or debarred or otherwise prohibited from participating in federal procurement and non-procurement programs by checking the Department of Health and Human Services' Office of the Inspector General's List of Excluded Individuals/Entities (<https://exclusions.oig.hhs.gov/search.html>) and the General Service Administration's list of debarred Contractors (<http://epls.arnet.gov>). Screening of FACIS is valid for six (6) months prior to initial hire date. Provider shall administer an updated FACIS check when temporary personnel have been assigned to Client for a period of twelve (12) months or more.
  - e. Sex Offender Registry check for all states of residency in the past seven (7) years; and
  - f. A Maine Revenue Services tax liability check, if applicable, will be initiated by Provider, subject to Maine Revenue Services' policies regarding such checks, for all Resources on assignment at Maine Revenue Services, and/or for Resources on assignment at other State Agencies, if so, directed by the applicable Agency.
6. If the Department notifies the Provider and Sub-Vendor that Sub-Vendor personnel will have access to protected health information, Sub-Vendor personnel must execute a Business Associate Agreement (Rider H) with the Department of Health and Human Services.
7. Resources may also be required to provide additional, relevant pre-assignment documents, at the request of a State Agency.
8. In the event an Agency requires fingerprinting, such fingerprint check requirements shall supersede the background check requirements (a) and (b) stated above.
9. Provider may require Sub-Vendor to use a background check company specified by Provider.
10. Reasons for determining that a Resource did not satisfactorily pass the background check include, but are not limited to, the below guidelines. Any exceptions to the below guidelines must be approved by the Contract Administrator.
  - a. Candidates convicted of criminal felonies or misdemeanors involving dishonesty or a breach of trust, including burglary, larceny, embezzlement, counterfeiting, forgery, theft or robbery, shall be excluded from consideration.
  - b. Candidates convicted of criminal felonies or misdemeanors involving violent acts such as murder, assault, rape, and battery shall be excluded from consideration.
11. Costs associated with background or fingerprint checks shall be the sole responsibility of the applicable Sub-Vendor. Background and fingerprint check results shall be effective for a period of thirty (30) days prior to Resource's assignment start date. In the case of a "break in service" from the State, a new background check must be completed. A background check is effective for a period of six (6) months, unless otherwise specified for assignments at a State hospital.

12. A background or fingerprint check may be required to be run each year for Resources on assignment, as measured from Resource's assignment start date, and as directed by the applicable Agency. In the event the Resource begins work for a new Agency or Facility during such time, a separate fingerprint check will be required. Additionally, assignments located at a State hospital, school or correctional facility may require a TB shot to be updated annually. In the event, this is not performed by the applicable Facility, Sub-Vendor will be responsible for such test.
13. In extremely rare instances, under only the approval of the Contract Administrator, it may be allowed for a Resource to begin an engagement contingent upon a passed background check. If the Resource does not pass the background check, the Resource will immediately be terminated. No invoice will be submitted to the State of Maine for hours worked by the resource failing the background check.

E. Intellectual Property

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by Provider prior to execution of this Agreement, but specifically developed under this Agreement shall be considered "work for hire" and Provider transfers any ownership claim to the State, and all such materials will be the property of the State. Use of these materials, other than related to Agreement performance by Provider, without the prior written consent of the State, is prohibited. During the performance of this Agreement, Provider shall be responsible for any loss of or damage to materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of Provider. Any loss or damage thereto shall be restored at Provider's expense. Provider shall provide the State full, immediate, and unrestricted access to the work product during the term of this Agreement.

All sub-contractor and Sub-Vendor agreements shall include this requirement.

F. Space, Facilities and Equipment

1. The State of Maine will provide (for the business purposes only): a laptop, internet access, workspace and copy facilities to the Provider's on-site team and resources requested. Telephone is 'Bring Your Own Device' w-expectation that all resources will have a smart phone for communication. The State of Maine will work closely with the Provider and Sub-Vendor in the event a resource has an ergonomic request and can be reasonably accommodated.
2. With State of Maine authorization, Provider and Sub-Vendor resource personnel may work offsite. If offsite work is authorized the State and Provider/Sub-Vendor shall jointly agree on device usage.

G. Other

1. Provider shall require that Sub-Vendor complete, "Knowledge Services MSP Resource Employment Status Validation Form," located on the program website, for each Resource that is selected to work on behalf of the State prior to the start of Resource's assignment. Provider shall require that Sub-Vendor upload this form into the system as specified by Provider prior to the start of Resource's assignment.
2. Provider shall require that Sub-Vendor complete a Maine Master Services Agreement as presented on the program website. No modifications will be permitted to this agreement.

H. Vendor Management System Information

1. The Provider will host a Vendor Management System (VMS) to automate and support the IT staff augmentation and SOW Projects lifecycle and to provide standard and customized reports, as mutually agreed upon by the Contract Administrator and Provider, to the Department. The VMS must be a 3<sup>rd</sup> party verified NIST 800-53 SaaS application and hosted on a FedRAMP

Authorized to Operate (ATO) compliant data center site with a FedRAMP Moderate level of service.

2. The Provider shall provide dotStaff™ VMS, a web-based Software as a Service (SaaS) solution accessible through commonly used, industry standard browsers. The Maine SaaS environment will be a separate client instance of dotStaff™ for other clients. No other clients may have access to State of Maine data.
3. The State of Maine owns all data. Upon request, the data exports will be provided in a standard data format of the state's choice. At the conclusion of the contract, MSP shall work with State to extract required data from VMS.
4. Data shall be available in the dotStaff™ VMS in real-time with 99.98% up time.
5. dotStaff™ VMS is required to have a role-based security model. All users must be authenticated before gaining access to the dotStaff™ VMS. Once authenticated by username and encrypted password, specific application roles are used to grant access to specific data by specific role types.
6. The dotStaff™ VMS shall provide automated communication triggers via product notification for notifying the Department, resources, Sub-Vendors, and Provider of information, status updates, and needed actions related to processes in the program. Examples of product notifications include: requisition approvals, resume submissions, interview scheduling, time entry requiring approval and contract end date notifications. Report triggers also result in automatic email delivery of defined reports at defined intervals.
7. The dotStaff™ VMS allows for requisition workflow approvals to be automated within the VMS, if desired by the State.
8. Each new requisition is required to have a unique requisition/Job Posting Id number. This unique identifier tracks all activities associated with the user including all time entries, approval, denies, reasons for acceptance, and reasons for contract end. All activities must be date and time stamped. All associated activities are recorded in dotStaff™ VMS and does not require exporting of data into any 3rd party system for data tracking and reporting purposes.
9. The dotStaff™ VMS will host and store attachments in the requisition's record. State managers will provide documents to be uploaded as attachments to the requisition posting and the VMS will be able to reproduce attachments at later time, if requested by the state for any reason.
10. State managers and approvers who are attached to a requisition/job posting will have a "view" or "edit" capability. "Edit" rights allow the user to modify the entered request.
11. The Provider will activate/deactivate Approval Workflows upon request by the Contract Administrator after the requisition is created on a requisition-by-requisition basis.
12. The dotStaff™ VMS generates requisition update notifications. Status updates such as "Candidate Accepted", "Position Filled", "Interview Requested", etc. are sent automatically from the dotStaff™ VMS to all concerned parties associated with the requisition. The dotStaff™ VMS automatic requisition status update emails can be turned on or off based on State or State manager preferences.
13. The dotStaff™ VMS allows for Sub-Vendor and manager to readily view all aspects of the requisition, the status of the requisition, as well as coordination of interviews and start dates in dotStaff™ VMS. Managers and Sub-Vendors also have an activity-driven dashboard to view the overall status of requisitions.
14. The dotStaff™ VMS allows State managers to view all candidate resumes that were submitted for each requisition at any time. dotStaff™ VMS provides a variety of configuration options that include immediate visibility of all submissions to the Department manager (bid queue), visibility to submissions presented by the MSP Team (optional), or submission of a defined number of

best fit candidates. A pre-approval queue is set up to allow the MSP team to preview and/or pre-qualify submissions before approving them to move to the Department manager queue.

15. The dotStaff™ VMS generates an e-contract for the selected candidate, submitting Sub-Vendor, bill rate. That contract is then assigned to work areas/projects/tasks. The contract can be associated with as many project assignments as the Department desires. The resource, at time entry, must be able to select from a drop down of the project assignment(s) for which time is to be entered.
16. Contractors are required to enter their time based on hours worked and managers are required to approve timesheets electronically on the hours worked on a weekly basis. The manager must be able to view the full week of time at a glance for each resource and can also expand the week to view the specific time in and time out details. Managers must be able to approve or deny time for the entire week or at a line-item level.
17. The Provider and State, post contract execution, agree to work to modify the format of agency-specific invoices, which will be delivered electronically in .PDF format to the appropriate agency bi-weekly.
18. The dotStaff™ VMS must be available in a secure mobile application format and must allow users to perform tasks such as time entry, time approval, expense entry and approval, view daily tasks, and fill out electronic forms where applicable.
19. The dotStaff™ VMS will be accessible by end users through the internet and residing on a secure server with backup and recovery capabilities. The VMS must be 3<sup>rd</sup> party verified NIST 800-53 compliant and hosted on a FedRAMP Authorized to Operate (ATO) data center, with a FedRAMP Moderate level of service.

#### Sub-Vendor/Supplier Network and Candidate Sourcing

1. The MSP shall not be biased in any way towards participating Sub-Vendors and will objectively manage the program by being Sub-Vendor neutral.
2. The MSP will sustain a Sub-Vendor network that will put forward quality candidates for all job titles and unique requirements and foster an open relationship between Sub-Vendors and the Department.
3. At a minimum, the MSP shall hold semi-annual metric meetings with the Sub-Vendor network to update the Sub-Vendor network on contract information and performance. The MSP must notify the Department when these meetings will occur.
4. The MSP program must allow for the removal of any Sub-Vendor, candidate, or contractor, including any affiliated company, from the Department's network list for unsatisfactory performance and upon request by State of Maine.
5. The MSP program must allow for the entry of any Sub-Vendor, candidate, or contractor, including any affiliated company, on Department's network based upon reasonable request by State of Maine.
6. The MSP Account Team will assist State Managers with performance/attendance related issues, as needed, by facilitating communication with the resource's Sub-Vendor. If required, the MSP Account Team will facilitate performance improvement plans between State Manager, Sub-Vendor and Resource, as necessary.
7. The MSP program shall provide a 4-day posting submission window for standard candidate submittals. The MSP program shall provide the option of 2-day posting submission window for urgent response time for candidate submittals to be utilized at the discretion of the State.

8. MSP must have a mechanism in place to not allow the Sub-Vendors to brand resumes with Sub-Vendor name and logo allowing the state manager to select candidates based on fit for the position, availability, and cost.
9. MSP team shall perform candidate screenings and facilitate and schedule the candidate interview process for the State.
10. The Department requires there will be a process or procedure in place to address situations that occur when the selected candidate(s) do not arrive at the worksite or cancel after candidate has accepted the engagement.
11. MSP will assist with the process of engagement extensions prior to the end date of the engagement.  
The Sub-Vendor is responsible for all employment related issues such as pay benefits, discipline, performance, employee relations, and termination.
12. MSP team will ensure and verify all State managers & selected candidates are properly trained on any VMS requirements, such as appropriate time entry and time approval.

**a. MSP Program Role**

Employer of Record Services  
Employee Relations Facilitation with Sub-Vendors and State Managers  
Sub-Vendor Performance Management  
Requisition Facilitation Management  
Education Sessions w/ all users (Sub-Vendors, contractors, State Managers)

**b. State of Maine Role**

Obtain funding for contractor's engagement & manage funding for duration of project  
Manage the resources' day-to-day work product  
Escalate all performance issues to Knowledge Services On-site Program Manager  
Approve time and expenses weekly

**c. Sub-Vendor Role**

Employee Performance Recognition  
Address and answer any resource questions on payroll, benefits, tax, PTO  
Pay all statutory taxes and costs

13. At the request of the State, the Provider shall provide all data and other VMS Maine specific information in a mutually agreed upon format.
14. Prior to the conclusion of the Contract, the Provider shall provide all VMS Maine specific data and other information to the State of Maine to facilitate data use and transition to an alternate Provider.

**I. MSP Account Team**

1. State requires a qualified team to manage the relationship between the State and the MSP, and the MSP and the supplier network. These team members should have extensive knowledge of IT industry trends and best practices.
2. The dedicated On-site Program Manager will partner with the State and State managers in the following ways:
  - a. Program Manager will meet with State manager and departments on an ongoing basis to build strong working relationships and create and maintain profiles of their historical and future needs, core technologies and legacy systems, projects, and State manager unique preferences.



- b. Serve as the main point of contact for the State and State managers to facilitate all aspects of requisition management process including qualifying manager needs, reviewing resumes, phone screening candidates and facilitating interviews.
  - c. Act as primary relationship manager on behalf of the State and Knowledge Services for all Sub-Vendors.
  - d. Act as point of escalation for issues relating to Provider management, staff, resource employee relations, billing, recruitment, reporting and general questions on services.
  - e. Recommend solutions on any issues raised by State managers, as well as review processes on an ongoing basis to identify proactive ways to improve efficiencies and notify Contract Administrator of any issues raised by State managers.
  - f. Provide MSP 1:1 program education and VMS training to the Department and State managers.
  - g. Work closely with State Contract Administrator and executive management to ensure all are kept up to date on management of program, meet or provide weekly updates on requisition status, current topics, and any other items such as billing, industry topics, etc.
  - h. Support the State to raise level of awareness of Knowledge Services MSP Program with internal end-user clients through training /education sessions, road shows, 1:1 meetings, etc.
- 3. Any changes to this Account team must be communicated to the Department a minimum of 10 business days in advance of any changes. The Department reserves the right to request changes to the account team if performance is not satisfactory.
  - 4. The Department reserves the right to select or reject assigned team members based on resumes, interviews, or performance.

At a minimum one FTE Program Manager and one FTE Program Specialist must be onsite in Augusta, Maine to be part of the MSP Account Team, based upon a minimum MSP Program annual run rate spend of \$15,000,000. Both positions will be 100% dedicated to State of Maine's MSP program. If at any time a member of the MSP Account Team is to be temporarily reassigned or provide assistance to another program, the State requires written notice for approval prior to such reassignment. The State at its discretion may deny approval if it's in the best interest of the State. In the event there is a request by either the State or the Provider to change number of staff dedicated to this program, it will be negotiated through a contract amendment mutually agreed upon by both parties.

- 5. The MSP team hours are Monday to Friday, 8 a.m. to 5 p.m. local time. The MSP Team is available to be onsite. Account management staff should be available via State communication channels such as State email address and Microsoft Teams consistent with State Employee expectations during the same time frame to assist the Department in creating reports, addressing VMS issues, and providing backup to the MSP onsite team.
- 6. The Program Manager and Program Specialist shall coordinate work schedules to monitor and maintain onsite staffing availability at 51 Commerce Drive, Augusta Maine during MSP on-site team hours unless there has been prior approval by Contract Administrator.

#### J. Control and Oversight

- 1. MSP shall work with the State's Contract Administrator to document the State's processes and policies related to the contract and post on Provider's web portal for users of the MSP program.
- 2. At the Department's request the MSP will provide trend analysis for IT labor market bill rates known as "wage rate review" or "market rate review" for the Job Titles listed in the Rate Card or in the event new Job Titles will be created.

3. MSP will track and report on candidate and Sub-Vendor performance to the State of Maine and to the Sub-Vendor.
4. Provider must track & report on employment status of contractors "W2" or "1099" or eligibility to work under work H1-B, L1, L9 visa, or other visa categories.
5. Provider's Sub-Vendor(s) shall use E-verify to determine contractor's eligibility to work in the United States.
6. The MSP shall have a flexible candidate screening process which includes coaching and mentoring the network (weekly Sub-Vendor calls, etc.).
7. Sub-Vendor has view of all transactions related to an individual resource it represents such as date on-boarded, contract rate, time entered, time approved, time invoiced, invoice date, invoiced amount, invoiced rates including any premiums for shift or overtime, Department payment date, MSP funds received date and MSP payment date.
8. The Department requires a reverse auction feature within VMS tool.
9. Provider will coordinate and accommodate all urgent requests for ad hoc reports by the Contract Administrator. Provider will provide timeline to Contract Administrator on when urgent request will be completed.
10. Delivery of reports should be available to the contract administrator, State manager, and other contract users either by email to user or on their dashboard in the dotStaff™ VMS available in real time. Report data may be exported for use in other applications (such as Office 365).
11. The MSP Account Team will train State Users on how to customize and configure their Dashboard within the VMS so that reports may run in real time and users have easy access to the reports.

K. Travel

1. Contracted resources at times may be asked to travel on behalf of the State of Maine.
2. Any in-state travel by contracted resources on behalf of the State of Maine must be approved by the State manager. Any requests for contracted resources on behalf of the State of Maine to travel out-of-state must be submitted by the State Manager to the Agency Travel Coordinator and approved by the State Agency Commissioner's Office.
3. All travel must follow the State's Administrative and Accounting Manual (SAAM) policies. All travel expense reimbursements requests must be submitted through dotStaff™ and follow all SAAM policies and procedures which includes receipts (supporting documentation) and/or spreadsheet documenting mileage in accordance with the SAAM.
4. The State does not reimburse travel expenses for the MSP Account Team.

L. Other

1. Per legal advice, the State of Maine will not provide "Client Letters" or any other documentation typically requested as part of the visa process.
2. The Provider shall be responsible for completing visa letters as reasonably requested and provided by Sub-Vendors for the visa process.
3. Contract sub-vendor personnel shall not use information or their access to State staff for marketing or to promote their company.

IV. Service Level Agreements

### Service Level Agreements (SLA)

This Service Level Agreement (SLA) shall govern this Contract for services. Failure of the provider to meet the SLAs below will require the provider to create and submit a remediation plan that will allow the provider to meet such SLAs provider will have 90 days to perform remediation else the provider will be in breach. Additional SLAs as mutually agreed upon may be added, but any change in the original SLAs shall only be made at the sole discretion of the Department. Any changes must be made in writing.

<b>Service Level Agreement (SLA)</b>	<b>MSP Goal</b>	<b>Description</b>	<b>Calculation</b>	<b>Target</b>
Requisition Confirmation Response Time	4 business hours	Time for onsite manager or designee to respond to approved State manager request for new requirement or engagement extension: 8-5 local time	Number of approved requirements with 4 business hr. or less response time/Total number of approved requirements	90.0% or higher
Normal Resume Submittal Response Time	4 business days	Measures average response time from release of requirement to the network to State manager's receipt of first round of screened candidate resumes	Number of requisitions which received first round of resumes for review within 4 business days/ total number of requisitions.	90.0% or higher
Normal Round 1 Fill Rate	N/A	Measures Contract Provider's ability to satisfactorily fulfill requisitions within first round of resumes submitted to requestor (normal requisitions).	Total number of engagements resulting from the first round of resumes / total number of engagements.	80.0% or higher
Urgent Resume Submittal Response Time	2 business days	Measures average response time from release of requirement to the network to State manager's receipt of first round of screened candidate resumes - an urgent requirement is needed in less than 10 business days	Number of URGENT requisitions that received first batch of resumes for review within 2 business days / total number of URGENT requisitions.	92.0% or higher
Attrition Rate	N/A	Measures resource turnover due to unplanned situations that are not caused by the State, not including inadequate performance, death, serious illness, etc. Applicable situations include resource leaving for another position.	Number of unplanned turnovers from engagements / total number of engagements.	7.0% or lower

<b>Service Level Agreement (SLA)</b>	<b>MSP Goal</b>	<b>Description</b>	<b>Calculation</b>	<b>Target</b>
Performance Removal*	N/A	Measures resource turnover due to inadequate resource performance.	Number of turnovers from engagements (due to inadequate performance) / total number of engagements.	5.0% or lower
Opportunity to the Network*	N/A	Measure of how many resource resumes, provided to the State after requisition, are from the contractor's Sub-Vendor network.	Total number of resumes provided to the State from Sub-Vendor resource pools / total number of resumes provided to the State.	90.0% or higher
Usage of the Network*	N/A	Measure of how many Sub-Vendor resources is selected by the State.	Number of Sub-Vendor resources selected within period / total number of resources selected within period.	90.0% or higher

\*Excludes resources through the Employer of Record Program.

All SLAs will be reviewed quarterly, unless any single SLA fails the target, whereupon monthly review will be implemented.

#### V. Reports

<b>Service Level Agreement</b>	<b>Frequency*</b>	<b>Description</b>	<b>Distribution List</b>
<b>Reports</b>	<b>Various (see below)</b>	<b>Descriptions for each report listed below</b>	<b>Various (see below)</b>
<i>Candidate ("Burndown") Report</i>	<i>Bi-Weekly</i>	<i>DO number, Candidate roll off dates, Engagement funding balance</i>	<i>Procurement Services: Contract Administrator, all OIT Managers (time approvers)</i>
<i>Current Contractor Report</i>	<i>Monthly - No later than 5 p.m. on 10th</i>	<i>Contractor Name, Start Date, End Date, DO end date, DO number, Bill Rate, Agency</i>	<i>Procurement Services: Contract Administrator, OIT Finance</i>
<i>Rebill Report</i>	<i>Monthly - No later than 5 p.m. on 10th</i>	<i>Rebill Report is to show the hours applied down to the accounting line level AND to break out hours worked on projects, Rebill rates and account codes.</i>	<i>Procurement Services: Contract Administrator, OIT Finance</i>

<b>Service Level Agreement</b>	<b>Frequency*</b>	<b>Description</b>	<b>Distribution List</b>
<b>Reports</b>	<b>Various (see below)</b>	<b>Descriptions for each report listed below</b>	<b>Various (see below)</b>
<i>Intern Report</i>	<i>Monthly - No later than 5 p.m. on 10th</i>	<i>Intern names, DO burndown, engagement end date vs. DO end date, Bill rates,</i>	<i>Procurement Services: Contract Administrator, OIT Finance</i>
<i>Status Reports</i>	<i>Weekly</i>	<i>Week date, Number of active contractors, Number of recruitments in process, Number of contractors ended</i>	<i>Procurement Services: Contract Administrator, OIT Finance, OIT Security</i>
<i>Background Check</i>	<i>Monthly - No later than 5 p.m. on 10th</i>	<i>Contractor Name, Background check results, Date completed</i>	<i>Procurement Services: Contract Administrator</i>
<i>H-1B Visa Report</i>	<i>Monthly - No later than 5 p.m. on 10th</i>	<i>DO number, Candidate name, manager, current project, expected State of Maine project end date, H-1B Visa end date, Notes/Status (if any)</i>	<i>Procurement Services: Contract Administrator</i>

\*\*Additional reports may be requested by the State to be provided on an ad hoc basis or frequency as requested by the State.

**RIDER B-IT****METHOD OF PAYMENT AND OTHER PROVISIONS**

**1. AGREEMENT AMOUNT** \$ N/A

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

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

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

Payments are subject to the Provider's compliance with all items set forth in this Agreement. The Department will pay the Provider within thirty (30) days following the receipt of an approved invoice.

The Department may withhold a Retainage for project-based services in the following manner:

- The allowable payment amount from each project milestone payment will be multiplied by ten (10) percent, giving the amount that will be withheld from payment. Ninety (90) percent of the allowable project milestone payment amount will be paid to the Provider.
- The Retainage will be held by the Department until the end of the warranty period.

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.

**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 make decisions on all claims of the Provider. The Provider shall address all contract correspondence to the Agreement Administrator. The following person is the Agreement Administrator for this Agreement:

Name:	Jeannine A Spears
Title:	Contract Administrator, IT Procurement Services
Address:	SHS 9, 111 Sewall St, Augusta, ME 04333-0145
Telephone:	207-480-9986
E-mail address:	Jeannine.a.spears@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:

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

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

G. 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:**

A. 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.

B. 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.

C. Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.



- D. 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.
- E. 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.
- F. 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.
- G. **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 affected by the delivery to the Provider of a Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated, and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

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

- A. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination.
- B. 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.
- C. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination.
- D. 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.

E. 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.

F. 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.

G. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and

H. 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 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 no greater than:

A. Damages for violation or infringement of any copyright or trademark.

B. Damages for bodily injury (including death) to persons, and damages for physical injury to tangible personal property or real property; and

C. The amount of any other actual direct damages up to the greater of \$500,000 or three times the value of the Product or Service that is the subject of the claim, up to a maximum of \$25,000,000. For example, if the Product or Service that is the subject of the claim was valued at \$15,000,000, then the Provider would be liable for no more than \$25,000,000. For purposes of this subsection, the term "Product" would typically include the following, but not be limited to, Materials, Source Code, Machine Code, and Licenses.

Notwithstanding the above, Provider shall not be liable for any indirect or consequential damages.

**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, for the duration of the Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection with, the fulfillment of this Agreement by the Provider, its agents, representatives, employees, or Subcontractors.

A. Minimum Coverage:

1. Commercial general liability (including products, completed operations, and broad-form contractual): \$1,000,000 per occurrence.
2. Workers' Compensation and employer's liability: as required by law.
3. Professional liability: \$1,000,000; and
4. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence.

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

1. The Provider's insurance coverage shall be the primary insurance. 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, effecting 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.

**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**

- A. **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.
- B. **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.
- C. **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:**

- A. **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.
- B. **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.

- C. **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:**

- A. 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.
- B. 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.
- C. 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.
- D. 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.

E. 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:**

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.

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-standards>) 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:**

A. 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.

B. 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:

A. 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.

B. 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.

A. 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.

B. 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.

C. 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:

A. 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.

B. 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:

1. The Provider has failed to carry out its obligations set forth in this Agreement; or
2. A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or
3. 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
4. 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
5. 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.

C. The Provider is responsible for all fees to be paid to the Escrow Agent.

D. 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. THIS ITEM IS INTENTIONALLY LEFT BLANK**

**46. THIS ITEM IS INTENTIONALLY LEFT BLANK**

**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**

**7. SUBLETTING, ASSIGNMENT OR TRANSFER**

All Subcontractors/Vendors shall be bound by the terms and conditions set forth in this Agreement unless modifications to the terms and conditions are otherwise agreed to by the Department.

**8. EQUAL EMPLOYMENT OPPORTUNITY**

C, Requirement shall be waived, it is not applicable to the Provider. The Provider does not have a collective bargaining union, labor unions, or representatives of the worker.

**12. ACCOUNTING, RECORDS AND AUDIT**

D. 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, with reasonable notice to Provider. 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.

F. 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, with reasonable notice to Provider. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

**40. CONFIDENTIALITY is replaced with:**

A. 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.

B. 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.

C. In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately in accordance with the terms of the State of Maine - Vendor Confidentiality & Non-Disclosure Agreement (Rider J).

D. The Provider shall sign the State of Maine - Vendor Confidentiality & Non-Disclosure Agreement prior to performing work or services in connection with this Agreement (Rider J).

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

**43. Escrow contract requirement waived. Therefore 43 A., B. 1.2.3.4.5., C., D. are not applicable.**

**Rider D – Not Used**

**RIDER E – Not Used**

**RIDER F**  
**DEBARMENT, PERFORMANCE, and NON-COLLUSION CERTIFICATION**

Vendor Name: GuideSoft, Inc. dba Knowledge Services Date: 5/25/2022

---

Certification Regarding

Debarment, Suspension and Other Responsibility Matters

---

Primary covered Transactions

---

This Certification is required by the Regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The Regulations were published as Part VII of the May 26, 1998 Federal Register (pages 19160-19211).

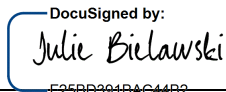
(BEFORE SIGNING THIS CERTIFICATION, PLEASE READ THE ATTACHED INSTRUCTIONS WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principles:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b of this Certification; and
  - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Julie Bielawski                      CEO

---

Name and Title, Authorized Representative

DocuSigned by:  
  
F25BD991BAC44B2...

Signature

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the Certification set out below.
2. The inability of a person to provide the Certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the Certification set out below. The Certification or explanation will be considered in connection with the Office of Information Technology (OIT) determination whether to enter into this transaction. However, failure

of the prospective primary participant to furnish a Certification or an explanation shall disqualify such person from participation in this transaction.

3. The Certification in this clause is material representation of fact upon which reliance was placed when the Office of Information Technology (OIT) determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous Certification, in addition to other remedies available to the Federal Government, the Office of Information Technology (OIT) may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the Office of Information Technology (OIT) if at any time the prospective primary participant learns its Certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of Information Technology (OIT) for assistance in obtaining a copy of these regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Office of Information Technology (OIT).
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions" provided by the Office of Information Technology (OIT), without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Lists of Parties Excluded from Procurement or Nonprocurement Programs.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Office of Information Technology (OIT) may terminate this transaction for cause or default.

**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:** Indiana and Maine

**Other. Please identify country:**

**Notification of Changes to the Information**

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

## RIDER H BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20xx (the "Effective Date") by and between the State of Maine, Department of Health and Human Services (the Covered Entity, hereinafter, the "Department") and \_\_\_\_\_ ("Business Associate"), together (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 following agreement between the parties:

\_\_\_\_\_, dated \_\_\_\_\_, 20xx (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 involve 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 incident or breach. 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 under this Agreement.
- e. *Mitigation.* The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate 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.* To the extent required by the terms of this Agreement, 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 5 (five) 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) any limitation in any applicable Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate and b) 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.
- 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.

## 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 to ensure that the Department is in compliance 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.

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

Department

Business Associate

Signature:

Signature:

Name:

Name:

**RIDER I**  
**IRS SAFEGUARD CONTRACT LANGUAGE**

**CONTRACT LANGUAGE FOR GENERAL SERVICES**

**I. PERFORMANCE**

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

(1) All work will be performed under the supervision of the contractor or the contractor's responsible employees.

(2) The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

(3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

(4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

(5) No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

(6) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

(7) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

(8) (Include any additional safeguards that may be appropriate.)

## II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### III. INSPECTION

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

**RIDER J  
STATE OF MAINE**

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

**OFFICE OF INFORMATION TECHNOLOGY (OIT)**

**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 <sup>knowledge</sup>\_\_\_\_\_ (“Vendor”) with its principal place of business at \_\_\_\_\_ as of <sup>services</sup>5/25/2022, 20\_\_ (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 provider is a crime. “Confidential Information” includes any and all information disclosed to, or otherwise acquired or observed by, the 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 MRS §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 abide by all 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 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. Obtain fingerprint-based criminal history record checks for all Vendor's employees, agents and subcontractors when requested by OIT pursuant to federal and state statutory and regulatory directives, at the expense of the vendor.
- H. Make reasonable efforts to comply with any request by OIT to conduct an audit, including a request to audit the Vendor's third-party or contractor work.
- I. Not to intrude upon, disrupt or deny services to OIT; and
- J. 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 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. 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.

[Name of Vendor]: knowledge services

By:  \_\_\_\_\_  
F25B0791BAC44B2

Printed: Julie Bielawski \_\_\_\_\_


Title: CEO \_\_\_\_\_

Date: 5/25/2022 \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

State of Maine Office of Information Technology:

By:  \_\_\_\_\_  
052B9AC7F56A489

Printed: Frederick Brittain \_\_\_\_\_

Title: CIO \_\_\_\_\_

Date: 5/25/2022 \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

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 (“Vendor”) dated \_\_\_\_\_, 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

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Date  
\_\_\_\_\_

## **RIDER K – Not Used**

**RIDER L**  
**MSP PROGRAM SOW PROJECTS PROCESS\***

1. The OIT Project Sponsor completes a Request for Project Services.
2. The Project Sponsor emails the Project Work Requirements to the MSP Onsite Team at: [MEMSP@knowledgeservices.com](mailto:MEMSP@knowledgeservices.com) for review. MSP Onsite Team to review requirements.
3. The MSP Onsite Team will forward the MSP Project Work Requirements to the Contract Manager for approvals. Contract Administrator/Procurement facilitates internal approval process.
4. Once Contract Administrator/Procurement gives final approval to post the Project, the MSP Onsite Team posts the project opportunity via the VMS within one week from approval. Emails with the Project Requirements are sent to ALL Sub-Vendors in the SOW program.
5. Proposals are submitted online via the VMS at the designated time noted in the SOW.
6. The MSP Onsite Team waits until the Proposal due date has passed to screen for minimum qualifications and forwards all Proposals that meet the minimum requirements to the Project Sponsor within one week of proposal closing date. MSP coordinates & sets up evaluation meetings.
7. The Project Sponsor and evaluation team reviews, evaluates, and selects the highest-ranking bidder's proposal.
8. The MSP Onsite Team will forward the MSP Project Work Selection Justification to the Contract Administrator/Procurement.
9. Contract Administrator/Procurement reviews the MSP Project Work Selection Justification and all scoring documentation to ensure it is consistent with the MSP Project Work Requirements and the Proposals.
10. Once selection process is approved by the Contract Administrator/Procurement, the MSP Onsite Team notifies all Sub-Vendors who submitted proposals of the selected Sub-Vendor (all Sub-Vendors are notified at the same time).
11. The MSP Onsite Team prepares the Work Order form with the Deliverables and costs identified, attaches the selected proposal and sends it to the Project Sponsor for final review.
12. Once final Work Order is approved by Sub-Vendor, Project Sponsor and Contract Administrator/Procurement, MSP Onsite Team sends the Sub-Vendor the Work Order for signature. Following Sub-Vendor signature, Agency signs.
13. The Project Sponsor executes a Delivery Order into Advantage ME to encumber funds for the project. Project Sponsor must provide a copy of the final signed Work Order, Project Work justification, selection documents to be attached to the Delivery Order Advantage Header page.
14. Procurement Services will review and approve delivery orders. Once Procurement Services approves the Delivery Order, Procurement Services sends a copy of approved Delivery Order to MSP Onsite Team and Project Sponsor.
15. Once the MSP Onsite team receives the Delivery Order from Purchases, work may begin on the project.
16. The MSP onsite team will create the project in the VMS defining the agreed upon milestones and associated billing amounts.
17. When a Deliverable is completed, the Sub-Vendor will submit the Deliverable for approval through the VMS.
18. The Project Sponsor will approve the Deliverable in the VMS, at which time, the VMS will schedule generation of invoices to the agency.

Changes to the Deliverables, cost, or schedule on the Work Order will require a Change Order form to be processed. The Change Order will require the same approvals as steps 12-14 above. \* The Contract Administrator will work closely with the Provider to make any modifications to the process.