

**MASTER AGREEMENT**

ADVANTAGE CONTRACT #: 18P 25062700000000000170

COMMODITY/SERVICE DESCRIPTION: Long-Term Services & Support Care Management System

START DATE: 3/1/2025

END DATE: 2/28/2027

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

STATE OF MAINE DEPARTMENT

DEPARTMENT NAME: Office of State Procurement Services

ADDRESS: 111 Sewall St., 4th Floor Burton Cross Office Building, SHS# 9

CITY: Augusta

STATE: ME

ZIP CODE: 04333-009

PROVIDER

PROVIDER NAME: FEI.com, Inc.

ADDRESS: 9755 Patuxent Woods Drive, Suite 300

CITY: Columbia

STATE: MD

ZIP CODE: 21046

PROVIDER'S VENDOR CUSTOMER #: VS0000017510

Each signatory below represents that the person has the requisite authority to enter into this Contract.

Department Representative:

Provider Representative:

Signed by:

William J.E. Allen

2D5B6E39F57E44A...

William Allen, Senior Procurement Manager

Date 7/28/2025

DocuSigned by:

Martina Wood

0E1F6E71EC344F8...

Martina Wood, COO

Date 7/27/2025

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



IT SERVICE CONTRACT

DATE: 5/14/2025	CONTRACT AMOUNT: Unencumbered – work will be performed by Delivery Order
ADVANTAGE CONTRACT #: RQS 10A 20250327000000001383	
DEPARTMENT AGREEMENT #: ADS-25-9453	
START DATE: 3/1/2025	END DATE: 2/28/2027

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

STATE OF MAINE DEPARTMENT		
DEPARTMENT NAME: Health and Human Services		
ADDRESS: 109 Capitol St		
CITY: Augusta	STATE: ME	ZIP CODE: 04333-0011
PROVIDER		
PROVIDER NAME: FEI.com, Inc.		
DBA:		
ADDRESS: 9755 Patuxent Woods Drive, Suite 300		
CITY: Columbia	STATE: MD	ZIP CODE: 21046
VENDOR CUSTOMER #: VS0000017510	FEDERAL UE#:	

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

Department Representative:

5/15/25

BY: **Benjamin Mann** Date

Deputy Commissioner of Finance

Provider Representative:

DocuSigned by:
6/12/2025

BY: **Martina Wood** Date

COO

DAFS – Office of Information Technology:

DocuSigned by:
6/2/2025

BY: **Nicholas Marquis** Date

CIO

DAFS – Office of State Procurement Services:

DocuSigned by:
6/9/2025

BY: **David Morris** Date

CPO

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

DEPARTMENT AND PROVIDER POINT OF CONTACT

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

NAME:		
EMAIL: dcm.dhhs@maine.gov	TELEPHONE: (207) 287-5028	
ADDRESS: 109 Capitol St		
CITY: Augusta	STATE: ME	ZIP CODE: 04333-0011

PROGRAM ADMINISTRATOR: **(Program Administrator section is optional.)**

The following person is designated as the Program Administrator. This person will be able to respond to routine questions pertaining to the Contract; they will not be able to alter the scope of the Contract.

NAME: Lori Harding		
EMAIL: lori.harding@maine.gov	TELEPHONE: 207-287-7001	
ADDRESS: 41 Anthony Avenue, SHS #11		
CITY: Augusta	STATE: ME	ZIP CODE: 04333-0011

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

NAME: Martina Wood		
EMAIL: Martina.Wood@feisystems.com	TELEPHONE: 916-934-8969	
ADDRESS: 9755 Patuxent Woods Drive, Suite 300		
CITY: Columbia	STATE: MD	ZIP CODE: 21046

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

TABLE OF RIDERS

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

☒	Rider A – Specifications of Work to be Performed
☒	Rider B-IT – Payment and Other Provisions
☒	Rider C - Exceptions
☒	Rider D – Additional DHHS Requirements
☒	Rider BAA - Business Associate Agreement
☒	Rider G – Identification of Country in Which Contracted Work will be Performed
☒	ATTACHMENT A - Confidentiality and Non-Disclosure Agreement - Included at MainIT's Discretion

RIDER A: SCOPE OF WORK

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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	
ADO	Azure Dev Ops
APS	Adult Protective Services
BAA	Business Associate Agreement
CMS	Centers for Medicare and Medicaid Services
Contract	Formal and legal binding agreement
Department	State of Maine Department of Health and Human Services
DO	Delivery Order
FRD	Functional Requirements Document
IT	Information Technology
LOE	Level of Effort
M&O	Maintenance and Operations
OADS	Maine's DHHS Office of Aging and Disability Services
Provider	Organization providing services under this Contract
State	State of Maine
UAT	User Acceptance Testing

- A. Change Control Board (CCB):** A panel comprised of key decision makers who review and approve all Change Requests (CRs). The CCB oversees CRs through a formal governance process. The CCB reviews and approves the scope, priority, and budget for each change.
- B. Change Request (CR):** A formal request to make a change to Evergreen. The CR is a document that summarizes the change to Evergreen that is being requested. It includes a summary of the changes, Level of Effort (LOE), cost estimates, and priority. The CR will include changes such as source code, documentation, design, architecture etc. The CR is

part of the formal change management process and is used in tracking, reporting, and resolving an issue with Evergreen.

- C. Evergreen:** Electronic system created by FEI.com, Inc. to replace the legacy systems used by the Department within the OADS to manage State of Maine health and social program and client data, historically held in the Enterprise Information System (EIS) and Maine Adult Protective Services Information System (MAPSIS).
- D. Hardened Facility:** A secure facility providing fully redundant power and cooling. The facility is equipped with state-of-the-art physical security controls, such as 24/7 guards, biometric access controls, multilayered entry security, closed circuit cameras, and bollards.
- E. Long Term Services and Supports (LTSS):** A spectrum of health and social services that help adults with disabilities and older adults with disabling conditions or chronic illnesses.

II. INTRODUCTION/OVERVIEW:

The purpose of this Master Agreement is to procure professional services to make enhancements to the Evergreen system through formal Change Requests (CRs). The CRs will help the Department meet the informational, operational, and administrative needs necessary to support the day-to-day management of Evergreen.

The Provider shall provide ongoing enhancement services through approved CRs and Delivery Orders (DOs) in accordance with the requirements of this Contract. All work products deployed through a CR from this Contract will be supported pursuant to the Department's associated operations contract: ADS-18-9451.

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. Change Control and Change Request (CR) Process

Please note: the process outlined below provides an overview of the Change Control and Change Request Process. Additional, supplemental detail may be provided within the agreed upon "Evergreen Operations and Maintenance Plan" for this project.

 1. Provide Evergreen system changes and modifications. All system changes shall be tracked via a CR within Azure Dev Ops (ADO) and signed copies of the CRs shall be posted to the project's SharePoint site. CRs shall be approved by the CCB before the Provider starts work.
 2. Comply with the CR governance process established by the Department, which shall include a CCB that meets to review CRs in accordance with Department defined criteria. The Provider shall assign appropriate staff to attend CCB meetings.

3. If an annual CR fixed budget is established for this Contract, the Provider shall advise when all CR efforts exceed the annual CR fixed budget for system changes developed by the Department. The Provider shall invoice the Department based upon OADS confirmation of successful deploy to production.
4. Provide a Level of Effort estimate (LOE) for each CR. The LOE shall reflect the hours required to complete and shall be based on the rates from the current rate card to establish a fixed price for each CR (see Rider B Section 2). Subcontractor costs are not subject to the current rate card and will be quoted and invoiced at fixed costs. No work shall begin until the scope of work, schedule, and project budget are approved by the Department.
5. When the Department has approved the CR, the Department will create a Delivery Order (DO) with LOE as approved in the CR. The DO will route to the State's Division of Procurement Services for final approval. Once approved the Provider will receive a copy of the DO via email and shall reference this DO when submitting an invoice for the CR. The email is generated from the procurement contact information in the Provider's Vendor file.
6. Track the costs expended over the course of the federal fiscal year and provide a monthly report showing valuation of CRs closed.
7. Meet with the Department monthly to review the status and costs of the CR work pursuant to this Contract. At the discretion of the Department, the meeting may occur on a schedule other than monthly.
8. An emergency CR is defined as a CR that, in the determination of the Department, must be expedited to meet business requirements. In these cases, the Provider shall be authorized to begin work before the CR is fully scoped and approved by the Department, and Provider shall be paid for such authorized work, notwithstanding Section 9(iii) below. The Provider shall submit an LOE to the Department within five (5) business days of the date of completed requirements definition.
9. Follow the process outlined below for any CR that is designated a Federal/State initiative by the Department:
 - a. Any Evergreen system change or bundle of related changes that exceeds two hundred fifty thousand dollars (\$250,000) in scope may, at the discretion of the Department, be contracted as a separate project outside this Agreement. These projects are typically associated with Federal or State initiatives, and involve multiple phases, interim payments, and defined deliverables.
 - b. Develop the scope of work in compliance with the following steps:
 - i. Prepare an estimated cost and timeline to complete the work necessary to present the Department with a proposal for the entire project.
 - (i) Costs shall be developed using the Rate Card identified in Rider B, Section 2 Invoices and Payments.

- ii. Work on the initiative proposal shall cease until the Department has approved the estimated cost and timeline for completing the proposal, which will be attached to a separate CR within ADO.
- iii. If the CR for the estimated cost and timeline for completing the proposal is not approved, no further work on the initiative will be performed, and the Provider will not invoice the Department for any work performed on the initiative.
- iv. If the CR for the estimated cost and timeline for completing the proposal is approved, work shall continue until the proposal is completed and submitted to the Department. The proposal will include all work to be performed by the Provider.

IV. TECHNICAL REQUIREMENTS:

- A. ACCESSIBILITY: All IT products must be accessible to persons with disabilities and must comply with State Accessibility Policy and Standards and the Americans with Disabilities Act. All IT applications must comply with the Digital Accessibility Policy (<https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/DigitalAccessibilityPolicy.pdf>).
- B. STATE IT POLICIES: All IT products and services delivered as part of this Agreement must conform to the following State IT Policies, Standards, and Procedures (<https://Maine.Gov/oit/policies>), effective at the time this Agreement is executed. Special attention must be paid to the following three (3):
 - 1. Remote Hosting Policy (see: <https://www.maine.gov/oit/policies/RemoteHostingPolicy.pdf>).
 - 2. Application Deployment Certification Policy (see: <https://www.maine.gov/oit/policies/Application-Deployment-Certification.pdf>); and
 - 3. Information Security Policy (see: <https://www.maine.gov/oit/policies/SecurityPolicy.pdf>).
 - 4. The Provider must confirm annually that they are in compliance with current State IT Policies. The policy check shall be performed each July. In the event there is a substantive change to a specific State IT Policies the Provider is required to follow, the Provider shall have until the end of that same month to negotiate a window within which to implement the substantive change.

RIDER B-IT: METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT:** Unencumbered – Work will be performed by Delivery Order

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

Invoices must be associated with an approved Delivery Order, which covers Change Requests. Payments will be issued for completed and approved CRs as described in the approved Delivery Order.

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

RATE CARD			
Line	Classification	Hourly Rate (Not To Exceed) Period: 9/1/2023-8/31/2025	Hourly Rate (Not To Exceed) Period: 9/1/2025-2/28/2028
1	Application Software Team Lead	\$153.00	\$159.00
2	Programmer	\$140.00	\$146.00
3	System Analyst	\$138.00	\$144.00
4	Data Base Administrator	\$163.00	\$170.00
5	Web Developer	\$141.00	\$147.00
6	LAN Manager	\$194.00	\$202.00
7	Project Manager	\$210.00	\$218.00
8	Product Owner	\$159.00	\$165.00
9	Tester/Quality Assurance	\$137.00	\$142.00
10	Security Officer	\$205.00	\$213.00
11	Trainer	\$96.00	\$100.00
12	Help Desk Specialist	\$57.00	\$59.00
13	Business Analyst	\$115.00	\$120.00

14	Program SME	\$166.00	\$173.00
15	Reporting & Analytics SME	\$163.00	\$170.00
16	Technical Architect	\$222.00	\$231.00

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the email address: Invoices-DCM.dhhs@maine.gov. 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 Department. All invoices require the following:

- A. Provider letterhead with Provider name and payment address;
- B. A unique invoice number;
- C. The DHHS Agreement number for the Delivery Order;
- D. The DHHS Agreement number for this Master Agreement;
- E. The invoice date and the total amount of the invoice; and
- F. The Change Request Number(s) with the appropriate cost as approved by the CCB.

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 error-free invoice with all of the necessary and complete supporting documents.

Invoices cannot contain client specific Protected Health Information (PHI) or Personal Identifiable Information (PII). When applicable, invoices can contain the name of the resources who performed the services and for whom time is being billed.

The Provider shall only submit one invoice per month for all services performed under this agreement, unless otherwise approved in writing by the Department. Invoices that include items missed on a previous monthly invoice must be clearly marked for the month of service which they are related.

Delivery Orders (DO) will be created in AdvantageME for all orders. All DOs must include a quote for the commodities and/or services provided. For a quote that includes implementation services, a project specific Statement of Work may be required to be attached to the Delivery Order (delete if not applicable). DO's over \$5,000 will be emailed to the vendor's email address referenced on the MA as a .pdf file.

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

- The allowable payment amount from a project milestone payment will be multiplied by ten (10) percent, giving the amount that may be withheld from payment. The balance of the allowable project milestone payment amount will be paid to the Provider when the milestone is reached.
- The Retainage will be held by the Department until any defects directly related to the milestone deliverable, identified by the Department for remediation within 30 days of the

milestone date, are remedied by Provider, or the end of the warranty period, whichever is earlier.

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. **BENEFITS AND DEDUCTIONS:** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.
4. **INDEPENDENT CAPACITY:** In the performance of this Agreement, the Provider shall act in the capacity of an independent contractor and not as an employee or agent of the State.
5. **CHANGES IN THE WORK:** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to the execution of the changed work.
6. **SUBCONTRACTORS:** The Provider may not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees.

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

All Subcontractors shall be bound by the terms and conditions set forth in this Agreement. The Provider shall give the State immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement. The Provider shall indemnify and hold harmless the Department from and against any such claim, loss, damage, or liability as set forth in Section 16, State held Harmless.

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

8. EQUAL EMPLOYMENT OPPORTUNITY: During the performance of this Agreement, the Provider certifies as follows:

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

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

2. The Provider shall, in all solicitations or advertising for employees placed by, or on behalf of, the Provider, relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
3. The Provider shall send to each labor union, or representative of the workers, with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section, and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.
4. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against itself by any individual, as well as any lawsuit regarding alleged discriminatory practice.
5. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment, and in the provision of service, to include accessibility and reasonable accommodations for employees and clients.
6. Contractors and Subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
7. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. EMPLOYMENT AND PERSONNEL: The Provider shall not engage on a full-time, part-time or other basis during the period of this Contract, any executive employee who participated in any

way in the solicitation, award or administration of this Agreement according to [MRS Title 5 §18-A, 2](#) and in harmony with [MRS Title 17 §3104](#). Any contract made in violation of these sections is void.

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

11. ACCOUNTING, RECORDS, AND AUDIT:

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.
2. Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.
3. Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.
4. Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.
5. The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.
6. Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under this Agreement are being performed, to inspect, monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

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

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

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

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;
2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;

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

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

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

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

15. STATE HELD HARMLESS: The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.

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

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

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

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

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

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

1. Minimum Coverage

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

- A. All acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
- B. Network security and privacy risks, including, but not limited to, unauthorized access, failure of security, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of confidential information, related regulatory defense, and penalties in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
- C. Data breach expenses, in an amount not less than (*see NOTE below and insert the appropriate limit based upon the number of Personally Identifiable Information records*) \$5,000,000, and payable, whether incurred by the Department or the Provider; for and on behalf of the Department, including, but not limited to:
 - C.1) Consumer notification, whether or not required by law;
 - C.2) Forensic investigations;
 - C.3) Public relations and crisis management fees; and
 - C.4) Credit or identity monitoring, or similar remediation services.

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

NOTE: *Personally Identifiable Information (PII) is information that can be used to identify a single person, such as name, social security number, date and place of birth, mother's maiden name, driver's license, biometrics, etc. Maine State law also has a more specific definition in 10 M.R.S. §1347(6). The Data Breach component of the Insurance (per occurrence) is pegged to the number of PII records that are the subject of this Agreement.*

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

- b) Workers' Compensation and employer's liability, as required by law;
 - c) Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
 - d) Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
 - e) Crime, in an amount not less than \$1,000,000 (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and
 - f) Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.
2. Other Provisions - Unless explicitly waived by the Department, the insurance policies shall contain, or be endorsed to contain, the following provisions:
- a) The Provider's insurance coverage shall be the primary and contributory. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.
 - b) The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - c) The Provider shall furnish the Department with certificates of insurance, and with those endorsements, if any, affecting coverage, required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.

- d) All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason, including nonpayment.
- e) The Department will not grant the Provider, or any sub-contractor of the Provider, "Additional Insured" status and the Department will not grant any Provider a "Waiver of Subrogation".

20. NON-APPROPRIATION: Notwithstanding any other provision of this Contract, if the State does not receive sufficient State, Federal, or other sources of funds to fund this Contract and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from State or Federal legislative, executive or judicial bodies, then the State is not obligated to make payment under this Contract.

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

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

| Rider C Exceptions

Rider B-IT Terms and Conditions

Rider A Scope of Work

Rider D Additional DHHS Requirements

Rider BAA Business Associate Agreement Included at Department's Discretion

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

ATTACHMENT A: Confidentiality and Non-Disclosure Agreement |

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

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

25. INTERPRETATION OF THE AGREEMENT:

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

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

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

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

29. CONFLICT OF INTEREST: The Provider certifies that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of its

services hereunder. The Provider further certifies that in the performance of this Agreement, no person having any such known interests shall be employed.

30. LOBBYING:

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

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

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

31. PROVIDER PERSONNEL:

1. The parties recognize that the primary value of the Provider to the Department derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals whose résumés were offered by the Provider in the Proposal. Therefore, the parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.
2. The Department shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Department's judgment, are not appropriate for the

performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Department shall act reasonably and in good faith.

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

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

33. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS:

- V. 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.
- VI. The Provider may not publish or copyright any data without the prior approval of the Department. The State and the Federal Government, if applicable, shall have the right to publish, duplicate, use, and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

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

35. OPPORTUNITY TO CURE: The Agreement Administrator may notify the Provider in writing about the Department's concerns regarding the quality or timeliness of a deliverable. Within five (5) business days of receipt of such a notice, the Provider shall submit a corrective action plan, which may include the commitment of additional Provider resources, to remedy the

deliverable to the satisfaction of the Agreement Administrator, without affecting other project schedules. The Department's exercise of its rights under this provision shall not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 13, Termination.

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

37. CONFIDENTIALITY:

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

38. OWNERSHIP:

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

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

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

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

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

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

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

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

42. PRICE PROTECTION:

1. The Provider shall ensure that all prices, terms, and warranties included in this Agreement are comparable to, or better than, the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements as the Department. If, during the term of this Agreement, the Provider enters into agreement(s) that provide more favorable terms to other comparable customer(s), the Provider shall provide the same terms to the Department.

2. If Federal funding is used for the acquisition of products and/or services under this Agreement, interest cannot be paid under any installment purchase or lease-purchase agreement entered into as a part of this Agreement.

43. 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.

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

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

Contracts entered into by a state agency in violation of Title 5 M.R.S. §2030-B are void. A person who executes this contract in violation of this section commits a civil violation for which a fine may be adjudged in an amount that is twice the amount of this contract or \$250,000, whichever is greater, (Title 5 M.R.S., §2030-A).

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

RIDER C: EXCEPTIONS TO RIDER B-IT**Rider B-IT Item 5 - CHANGES IN THE WORK is amended to read as follows:**

CHANGES IN THE WORK: ~~The Department may order changes in the work, the Agreement Amount being adjusted accordingly.~~ Changes to the work and pricing shall be made via agreement signed by both parties. 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.

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

TERMINATION: The performance of work under this Agreement may be terminated by the Department in whole or in part, ~~whenever~~ with no less than thirty (30) days notice, for any reason the Agreement Administrator shall determine that such termination is in the best interests of the Department. Any such termination shall be effected by the delivery to the Provider of a Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated, and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

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

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;
2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval of the Agreement Administrator, settle all outstanding liabilities and claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement;
6. Transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Agreement Administrator, equipment and products purchased pursuant to this Agreement, and all files, source code,

data manuals, or other documentation, in any form, that relate to all the work completed, or in progress, prior to the Notice of Termination;

7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

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

Rider B-IT Item 15 – STATE HELD HARMLESS is amended to read as follows:

STATE HELD HARMLESS: The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all third party claims, liabilities, and costs, including reasonable attorney fees, for 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.

Rider B-IT Item 16 – LIMITATION OF LIABILITY is amended to read as follows:

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

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

Notwithstanding the above, Provider shall not be liable to the Department for any special, incidental, punitive, indirect or consequential damages arising from or relating to breach of this agreement even if it has been advised of the possibility of such damages not covered by any of the insurances required herein.

Rider B-IT Item 19 – INSURANCE REQUIREMENTS is amended to read as follows:

INSURANCE REQUIREMENTS: The Provider shall procure and maintain insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection to, the fulfillment of this Agreement, by the Provider, its agents, representatives, employees, or

Subcontractors. The insurance shall be secured by the Provider, at the Provider's expense, and maintained in force, at all times during the term of this Agreement, and, for any claims-made (as opposed to occurrence-based) policy(ies), for a period of not less than two (2) years thereafter.

1. Minimum Coverage

- a) Errors & Omissions, or Professional Liability Insurance, or Insurance by any other name, covering the following:
 - A. All acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
 - B. Network security and privacy risks, including, but not limited to, unauthorized access, failure of security, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of confidential information, related regulatory defense, and penalties in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
 - C. Data breach expenses, in an amount not less than (*see NOTE below and insert the appropriate limit based upon the number of Personally Identifiable Information records*) \$5,000,000, and payable, whether incurred by the Department or the Provider; for and on behalf of the Department, including, but not limited to:
 - C.1) Consumer notification, whether or not required by law;
 - C.2) Forensic investigations;
 - C.3) Public relations and crisis management fees; and
 - C.4) Credit or identity monitoring, or similar remediation services.

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

NOTE: *Personally Identifiable Information (PII) is information that can be used to identify a single person, such as name, social security number, date and place of birth, mother's maiden name, driver's license, biometrics, etc. Maine State law also has a more specific definition in 10 M.R.S. §1347(6). The Data Breach component of the Insurance (per occurrence) is pegged to the number of PII records that are the subject of this Agreement.*

Number of PII Records	Insurance per Occurrence
1 through 3,000 100,000	\$400,000 1,000,000
3,001 through 100,000	\$1,000,000
100,001 through 1,000,000	\$5,000,000
Greater than 1,000,000	\$510,000,000

- b) Workers' Compensation and employer's liability, as required by law;
 - c) Property General Liability (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
 - d) Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
 - e) Crime, in an amount not less than \$1,000,000 (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and
 - f) Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.
2. Other Provisions - Unless explicitly waived by the Department, the insurance policies shall contain, or be endorsed to contain, the following provisions:
- a) The Provider's insurance coverage shall be the primary and contributory. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.
 - b) The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - c) The Provider shall furnish the Department with certificates of insurance, and with those endorsements, if any, affecting coverage, required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.
 - d) All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason, including nonpayment.
 - e) The Department will not grant the Provider, or any sub-contractor of the Provider, "Additional Insured" status and the Department will not grant any Provider a "Waiver of Subrogation".

Rider B-IT Item 24 – SET-OFF RIGHTS is amended to read as follows:

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 ~~or any Maine tax delinquencies, 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.~~

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

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

Rider B-IT Item 35 – OPPORTUNITY TO CURE is amended to read as follows:

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~~ fifteen (15) business days of receipt of such a notice, the Provider shall submit a corrective action plan, which may include the commitment of additional Provider resources, to remedy the deliverable to the satisfaction of the Agreement Administrator, without affecting other project schedules. The Department's exercise of its rights under this provision shall not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 13, Termination.

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

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

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

1. The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software shall include, but not be limited to, all ~~source~~, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.
2. A fundamental obligation of the Provider is the delivery to the Department of all ownership rights to the complete system, free of any claim or retention of rights thereto by the Provider. The Provider acknowledges that this system shall henceforth remain the sole and exclusive property of the Department, and the Provider shall not use or describe such software and materials without the written permission of the Department. This obligation to transfer all ownership rights to the Department on the part of the Provider is not subject to any limitation in any respect.
3. Notwithstanding the foregoing, the Department acknowledges and agrees that the Provider shall own all right, title, and interest in and to Provider Pre-Existing Works (as defined herein) including any related patent, copyright, trademark, trade secret and other intellectual property and proprietary rights. In the event that any Provider Pre-Existing Works are incorporated into any deliverable by the Provider, then the Provider hereby grants to the Department a non-exclusive, non-sublicensable license to use the Provider Pre-Existing Works in connection with the applicable deliverables. "Provider Pre-Existing Works" shall mean any and all pre-existing works that are owned by or developed independently by or funded by the Provider or its suppliers.
4. Since Provider is providing the solution as a Software as a Service, the provisions of Section 41 of this Agreement shall apply and shall take precedence over this section in the event of a conflict.

Rider B-IT Item 42 – PRICE PROTECTION is amended to read as follows:**PRICE PROTECTION:**

1. The Provider shall ensure that all prices, terms, and warranties included in this Agreement are comparable to, or better than, the equivalent terms being offered by the Provider to any present customer meeting the ~~same qualifications or equivalent~~ requirements as the Department. If, during the term of this Agreement, the Provider enters into agreement(s) that provide more favorable terms for equivalent requirements to other comparable customer(s), the Provider shall provide the same terms to the Department.

2. If Federal funding is used for the acquisition of products and/or services under this Agreement, interest cannot be paid under any installment purchase or lease-purchase agreement entered into as a part of this Agreement.

Rider D Item 7 – PROVIDER RESPONSIBILITIES /SUB AGREEMENTS is amended to read as follows

1. **PROVIDER RESPONSIBILITIES / SUB AGREEMENTS:** The Provider is solely responsible for fulfillment of this Agreement with the Department. The Provider assumes responsibility for all services offered and products to be delivered whether or not the Provider is the manufacturer or producer of said services.
 - a) Sub-agreements.
 - i) All sub-agreements must contain the assurances of Rider B and Rider D of this Agreement;
 - ~~ii) All sub-agreements must be signed and delivered to the Department's Agreement Administrator within five (5) business days following the execution date of the sub-agreement.~~
 - iii) See Rider B Section 5.
 - b) Relationship between Provider, Subcontractor and Department. The Provider shall be wholly responsible for performance of the entire Agreement whether or not subcontractors are used. Any sub-agreement into which the Provider enters with respect to performance under this Agreement shall not relieve the Provider in any way of responsibility for performance of its duties. Further, the Department will consider the Provider to be the sole point of contact with regard to any matters related to this Agreement, including payment of any and all charges resulting from this Agreement. The Department shall bear no liability for paying the claims of any subcontractors, whether or not those claims are valid. The Provider is responsible for ensuring that all staff, employees, subcontractors, or other individuals or entities providing any services on behalf of the Provider clearly explain, verbally and in writing, to clients and families their relationship to the Provider and the Provider's relationship to the Department.
 - c) Liability to Subcontractor. The requirement of prior approval of any sub-agreement under this Agreement shall not make the Department a party to any sub-agreement or create any right, claim or interest in the subcontractor or proposed subcontractor against the Department. The Provider agrees to defend (subject to the approval of the Attorney General) and indemnify and hold harmless the Department against any claim, loss, damage, or liability against the Department based upon the requirements of Rider B, Section 14.

Rider D Item 8 – RENEWALS is amended to read as follows:

RENEWALS: This Agreement may be renewed upon mutual agreement of terms and conditions at the discretion of the Department.

Rider BAA Item 5 – Term of Agreement is amended to read as follows:

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 ~~or at the end of any amendment thereto. 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.

RIDER D: ADDITIONAL DHHS REQUIREMENTS

1. **CONFIDENTIALITY:** In addition to the requirements laid out in Rider B, Section 40 (Confidentiality) and to the extent that the services carried out under this Agreement involve the use, disclosure, access to, acquisition or maintenance of information that actually or reasonably could identify an individual or consumer receiving benefits or services from or through the Department ("Protected Information"), the Provider agrees to a) contact the Department within one (1) business day of a privacy or security incident in which there is suspicion or evidence that a breach of Protected Information has occurred and b) cooperate with the Department in its investigation and any required reporting and notification of individuals regarding such incident involving Protected Information. To the extent that a breach of Protected Information is caused by the Provider or one of its subcontractors or agents, the Provider agrees to pay the cost of notification, as well as any financial costs and/or penalties incurred by the Department as a result of such breach.

2. **LOBBY:** No Federal or State appropriated funds shall be expended by the Provider for influencing or attempting to influence, as prohibited by state or federal law, an officer or employee of any Federal or State agency, a member of Congress or a State Legislature, or an officer or employee of Congress or a State Legislature in connection with any of the following covered actions: the awarding of any Agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any Agreement, grant, or cooperative agreement. The signing of this Agreement fulfills the requirement that providers receiving over \$100,000 in Federal or State funds file with the Department with respect to this provision.

If any other funds have been or will be paid to any person in connection with any of the covered actions specified in this provision, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form available at: <https://www.gsa.gov/forms-library/disclosure-lobbying-activities>.

3. **DRUG-FREE WORKPLACE:** By signing this Agreement, the Provider certifies that it shall comply with the drug-free workplace requirements of the Drug-Free Workplace Act (41 U.S.C. Ch. 81).

4. **ENVIRONMENT TOBACCO SMOKE:** By signing this Agreement, the Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C, which requires that smoking not be permitted in any portion of any indoor facility owned, leased, or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments by Federal grant, Agreement, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or MaineCare funds, and portions of facilities used for inpatient drug or alcohol

treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

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

5. **MEDICARE AND MAINECARE ANTI-KICKBACK:** By signing this Agreement, the Provider agrees that it shall comply with the dictates of 42 U.S.C. 1320a-7b(b), which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a Provider of goods or services that may be paid for with Medicare, MaineCare, or state health program funds.
6. **PUBLICATIONS:** When issuing reports, brochures, or other documents describing programs funded in whole or in part with funds provided through this Agreement, the Provider agrees to clearly acknowledge the participation of the Department of Health and Human Services in the program. In addition, when issuing press releases and requests for proposals, the Provider shall clearly state the percentage of the total cost of the project or program to be financed with Agreement funds and the dollar amount of Agreement funds for the project or program.
7. **PROVIDER RESPONSIBILITIES / SUB AGREEMENTS:** The Provider is solely responsible for fulfillment of this Agreement with the Department. The Provider assumes responsibility for all services offered and products to be delivered whether or not the Provider is the manufacturer or producer of said services.
 - a) Sub-agreements.
 - i) All sub-agreements must contain the assurances of Rider B and Rider D of this Agreement;
 - ii) All sub-agreements must be signed and delivered to the Department's Agreement Administrator within five (5) business days following the execution date of the sub-agreement.
 - iii) See Rider B Section 5.
 - b) Relationship between Provider, Subcontractor and Department. The Provider shall be wholly responsible for performance of the entire Agreement whether or not subcontractors are used. Any sub-agreement into which the Provider enters with respect to performance under this Agreement shall not relieve the Provider in any way of responsibility for performance of its duties. Further, the Department will consider the Provider to be the sole point of contact with regard to any matters related to this Agreement, including payment of any and all charges resulting from this Agreement. The Department shall bear no liability for paying the claims of any subcontractors, whether or not those claims are valid. The Provider is responsible for ensuring that all staff, employees, subcontractors, or other individuals or entities providing any services on behalf of the Provider clearly explain, verbally and in writing, to clients and families their relationship to the Provider and the Provider's relationship to the Department.

- c) **Liability to Subcontractor.** The requirement of prior approval of any sub-agreement under this Agreement shall not make the Department a party to any sub-agreement or create any right, claim or interest in the subcontractor or proposed subcontractor against the Department. The Provider agrees to defend (subject to the approval of the Attorney General) and indemnify and hold harmless the Department against any claim, loss, damage, or liability against the Department based upon the requirements of Rider B, Section 14.

8. **RENEWALS:** This Agreement may be renewed at the discretion of the Department.

9. **WHISTLEBLOWER PROTECTION:**

- a) This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
- b) The Provider shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- c) The Provider shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

10. **FUNDING SOURCES REDUCED:** Notwithstanding any other provision of this Agreement, if the United States Government or any department of the United States Government, has de-appropriated or suspended funds for this Agreement, or where the Governor of the State of Maine has curtailed funds for this Agreement then the Department is not obligated to make payment under this Agreement to the extent of such de-appropriation, suspension or curtailment of funds. In the event of such de-appropriation, suspension or curtailment of funds, the Agreement shall be modified accordingly.

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

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

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

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

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

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

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

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

RIDER BAA: Business Associate Agreement

This Business Associate Agreement (“Agreement”) is made between the State of Maine, Department of Health and Human Services (the Covered Entity, hereinafter, the “Department”) and the Provider (“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 Agreement for which this Business Associate Agreement is a Rider (the “Underlying Agreement”); and

WHEREAS, the Parties intend to ensure the confidentiality, privacy and security of Department’s PHI as required by law, including as required under 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 in any format in a manner not permitted by Subpart E of the HIPAA and HITECH Rules that compromises the security or privacy of such PHI.

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. For clarity, an attempted Security Incident is one in which there is suspicion or evidence that information or PHI has been accessed, used, disclosed, modified, or destroyed.

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 PHI 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 such PHI has been subject to a Security Incident or Breach.

- 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 unauthorized 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 any Security Incident involving Department PHI. A 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 such Security Incident, or if Business Associate becomes aware of such Security Incident after regular business hours, then reporting shall be made on the next business day. 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 PHI and 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. 164.50
- 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

- e. *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.
- f. *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.
- g. *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:
 - iii. 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
 - iv. 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.
- h. *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.

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: MD**

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

Notification of Changes to the Information:

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



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

ATTACHMENT A: CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

RFP / CONTRACT #: RQS 10A 20250327000000001383

THIS AGREEMENT is hereby executed between the State of Maine ("State"), acting by and through the Maine Office of Information Technology ("OIT") and [FEI.com, Inc.] having a principal place of business at [9755 Patuxent Woods Drive, Suite 300, Columbia, MD 21046] ("Vendor"), in relation to services and/or products to be provided by the vendor pursuant to [insert Contract No.] ("Contract") as of March 1, 2025 ("Effective Date").

1. Definitions

A. Authorized Person

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

B. Authorized Use

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

C. Confidential Information

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

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

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



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

D. Services

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

E. Vendor

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

2. Duty to Protect Confidential Information; Reporting Requirements

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

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

3. Discovery and Notification of Breach of Confidential Information

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

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



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potential loss of Confidential Information affecting this Agreement.

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

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

4. Written Report

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

5. Notification to individuals.

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

6. Use Restriction

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

7. Security Obligations

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

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



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

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

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

9. Termination

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

10. Compliance

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

11. Governing Law

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



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

12. Entire Agreement

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

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

[Name of Vendor]:

State of Maine /Office of Information Technology:

By:_____

By:_____

Printed: Martina Wood

Printed:_____

Title: COO

Title:_____

Date:_____

Date:_____

APPENDIX A TO CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

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

Pursuant to the Vendor Confidentiality and Non-Disclosure Agreement between the State of Maine, acting by and through the Office of Information Technology (“OIT”) and FEI.com, Inc. (“Vendor”) dated 03/01/2025, 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

Martina Wood, COO

Vendor Name

Date




Certificate Of Completion

Envelope Id: ADEDA262-F546-4EDE-93F4-29546D020C8A		Status: Completed
Subject: Complete with Docusign: IT-SC ADS-25-9453 FEI_ToProvider.pdf		
Source Envelope:		
Document Pages: 51	Signatures: 3	Envelope Originator:
Certificate Pages: 4	Initials: 0	Matthew Curley
AutoNav: Enabled		9755 Patuxent Woods Dr
Envelopeld Stamping: Enabled		Suite 300
Time Zone: (UTC-08:00) Pacific Time (US & Canada)		Columbia, MD 21046
		matthew.curley@feisystems.com
		IP Address: 73.191.67.22

Record Tracking

Status: Original	Holder: Matthew Curley	Location: DocuSign
6/12/2025 6:19:12 AM	matthew.curley@feisystems.com	

Signer Events	Signature	Timestamp
Martina Wood	<div>DocuSigned by:  0E1F6E71EC344F8...</div>	Sent: 6/12/2025 6:23:32 AM
martina.wood@feisystems.com		Viewed: 6/12/2025 6:51:57 AM
COO		Signed: 6/12/2025 6:52:15 AM
FEI		
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style	
	Using IP Address: 108.228.162.187	

Electronic Record and Signature Disclosure:
Accepted: 6/12/2025 6:51:57 AM
ID: 5d122b6c-a144-48ca-9695-d311c32f1bf2

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/12/2025 6:23:32 AM
Certified Delivered	Security Checked	6/12/2025 6:51:57 AM
Signing Complete	Security Checked	6/12/2025 6:52:15 AM
Completed	Security Checked	6/12/2025 6:52:15 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, FEI Systems (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact FEI Systems:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: feiaccounting@feisystems.com

To advise FEI Systems of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at feiaccounting@feisystems.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from FEI Systems

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to feiaccounting@feisystems.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with FEI Systems

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to feiaccounting@feisystems.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify FEI Systems as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by FEI Systems during the course of your relationship with FEI Systems.

Certificate Of Completion

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 Subject: Complete with Docusign: MA 18P 250627_0170 Long-Term Services_Support FEI.pdf
 Source Envelope:
 Document Pages: 56
 Certificate Pages: 5
 AutoNav: Enabled
 Envelopeld Stamping: Enabled
 Time Zone: (UTC-05:00) Eastern Time (US & Canada)

Status: Completed

Envelope Originator:
 Thomas Paquette
 thomas.paquette@maine.gov
 IP Address: 69.204.160.165

Record Tracking

Status: Original
 7/25/2025 7:55:23 AM
 Security Appliance Status: Connected
 Storage Appliance Status: Connected

Holder: Thomas Paquette
 thomas.paquette@maine.gov
 Pool: StateLocal
 Pool: State of Maine - Office of Information Technology

Location: DocuSign

Location: Docusign

Signer Events

William Allen
 WJE.Allen@maine.gov
 NOI 0720250723 07/21/2025 - 07/27/2025
 State of Maine - Office of Information Technology
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via Docusign

Martina Wood
 Martina.Wood@feisystems.com
 Chief Operating Officer
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Accepted: 7/27/2025 5:04:51 PM
 ID: 7dfe97ad-2750-4357-ae11-dc680f817b33

William J.E. Allen
 WJE.Allen@maine.gov
 NOI 0720250723 07/21/2025 - 07/27/2025
 State of Maine - Office of Information Technology
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via Docusign

Signature

Completed

Using IP Address: 45.46.23.247

DocuSigned by:

 0E1F6E71EC344F8...

Signature Adoption: Pre-selected Style
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 Signed using mobile

Signed by:

 2D5B6E39F57E44A...

Signature Adoption: Pre-selected Style
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Timestamp

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In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
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Certified Delivered	Security Checked	7/28/2025 7:25:07 AM
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Completed	Security Checked	7/28/2025 7:25:30 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Carahsoft OBO Maine Office of Information Technology (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Carahsoft OBO Maine Office of Information Technology:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: kendra.l.coates@maine.gov

To advise Carahsoft OBO Maine Office of Information Technology of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at kendra.l.coates@maine.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

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