

NEW

State of Maine**Master Agreement****Effective Date:** 09/15/19**Expiration Date:** 12/31/23**Master Agreement Description:** Fortis Enterprise Document Management & Content Solution**Buyer Information**

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

Issuer Information

Joan Bolduc 207-624-9904 ext. JOAN.BOLDUC@MAINE.GOV

Requestor Information

Dawnna Pease 207-624-7548 ext. dawnna.pease@maine.gov

Authorized Departments

ALL

Vendor Information**Vendor Line #: 1****Vendor ID**

VC0000203987

Vendor Name

DOCUWARE CORPORATION

Alias/DBA**Vendor Address Information**

4 CROTTY LANE STE 200

NEW WINDSOR, NY 12553

US

Vendor Contact Information

CORY GIOVANELLA

713-806-9166 ext.

CORY.GIOVANELLA@DOCUWARE.COM

Commodity Information

Vendor Line #: 1

Vendor Name: DOCUWARE CORPORATION

Commodity Line #: 1

Commodity Code: 92046

Commodity Description: Fortis Enterprise Document Management & Content Solution

Commodity Specifications:

Commodity Extended Description: AS PER THE SPECIFICATIONS ATTACHED AND MADE PART OF THIS MA.

Quantity	UOM	Unit Price
0.00000		\$0.00
Delivery Days	Free on Board	
Contract Amount	Service Start Date	Service End Date
\$0.00	09/15/19	12/31/23
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Advantage CT/MA#: To be assigned

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
Office of Information Technology
Agreement to Purchase Services

THIS AGREEMENT (“Agreement”), made this 13th day of September, 2019 (“Effective Date”) is by and between the State of Maine, Department of Administrative and Financial Services, Office of Information Technology, hereinafter called “Department,” and Docuware Corporation, located at 4 Crotty Lane Ste 200, New Windsor, NY 12553, phone number 713-806-9166 x230, hereinafter called “Provider”, for the period of September 15, 2019 to December 31, 2023.

The AdvantageME Vendor/Customer number of the Provider is VC0000196036

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

Rider A –	Specifications of Work to be Performed
Rider B-IT –	Method of Payment and Other Provisions
Rider C –	Exceptions to Rider B-IT
Rider D –	Not Used
Rider E –	Docuware Corporation Professional Services Agreement
Rider F –	Docuware Corporation Customer Support Agreement
Rider H –	Docuware Corporation EULA
Rider G –	Identification of Country in Which Contracted Work will be Performed
Rider I –	Information Technology Confidentiality and Non-Disclosure Agreement
Rider J –	Debarment Certification
Rider K –	Not used
Rider L –	Application Deployment Certification Policy
Rider M –	Web Accessibility and Usability Policy
Rider N –	Information Security Policy

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

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Docuware Corporation

DocuSigned by:
By: Paul Remington
0D150368E92F492
Paul Remington, CFO
Date: 9/12/2019

Department of Administrative and Financial Services
Office of Information Technology

DocuSigned by:
By: Frederick Brittain
052B9AC7F56A489
Frederick Brittain, Chief Information Officer
Date: 9/12/2019

Total Agreement Amount \$ 0.00* (master agreement)

*Delivery Orders placed under this Agreement will carry their own financial value.

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

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RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

The State of Maine, Office of Information Technology, has chosen Fortis as its Enterprise Document Management and Content Solution product. The State of Maine has used Fortis for over 17 years, ten years as an Enterprise Document Management Solution. The State has invested extensively in implementing Fortis. It is used across all Executive Agencies and it's a critical core application of State Government.

Fortis/Westbrook Technologies was purchased by Docuware in January 2015. The Fortis family of software products will be migrated to the Docuware suite of document management software during the term of this agreement. Until the migration from Fortis to Docuware software is fully complete, the Provider shall continue to support the Fortis software.

This contract establishes a master agreement under which product and services may be purchased from the Provider to operate, support, maintain and implement document management solutions based on the Fortis/Docuware platform. Individual delivery orders ("Delivery Orders") will be initiated by the State of Maine under this contract for specific products and services, and the Provider shall have the option of accepting, responding to or rejecting any such Delivery Order. Examples of such Delivery Orders could include, but will not be limited to: (1) annual software support and maintenance; (2) software license purchases; (3) software application training; and (4) fixed price statement of work/change orders with fixed deliverables.

Contract terms and conditions from this Agreement apply to Delivery Orders initiated under this Agreement. Work to be performed and work terms, work deliverables and milestones, work payment terms, and the work performance period shall be detailed in each Delivery Order that is agreed to by the State and accepted by the Provider.

All Delivery Orders entered into during the duration of this Agreement and whose performance and payment time frames extend past the end date of the then-current term of the contract shall remain in effect for performance and payment purposes only, limited to the time frame and services established per each written Delivery Order, and the terms and conditions of this Agreement shall be incorporated into and survive solely for purposes of such Delivery Orders. No new Delivery Order may be executed after the Contract has expired.

If found to be advantageous for the State, this Agreement shall not limit the State from contracting and purchasing from other vendors' Fortis/Docuware software, support and consulting services. In any event, the Department and Provider may terminate this Agreement at their convenience upon 30 days written notice, unless there is an outstanding Statement of Work in which case the termination of this Agreement shall only occur once all Statements of Work have earlier expired, terminated or otherwise been completed according to their terms.

All software purchases, renewals and Statement of Work orders will be based on fixed cost quotes.

Customized deliverables, which are generally covered by Rider E, will follow the following process:

- A. Request for Quote (RFQ) – Application development and customization requests under this Agreement will be initiated by the Department with a written Request for Quote (RFQ). The RFQ will contain sufficient detail to allow the Provider to respond with a complete and accurate quote, and at a minimum will contain: contact information including technical, administrative and program area contacts; any draft or final drawings or specification; any deadlines for delivery of quote or deadlines related to final delivery.

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- B. RFQ Response** - Provider will either respond to the RFQ with a firm price, fixed response, or Provider may choose not to respond to the RFQ. As necessary, the RFQ response would include any functional design documents or other such specifications that describe in detail the work to be performed, project plans/timetables, project limitations and project payment terms. The RFQ may describe the Providers' work role and expectations of the State of Maine's work role. If the RFQ response as delivered to the Department is not acceptable, the Department may not accept the response or the Department and Provider may work together to refine the RFQ response to better meet the desired outcomes of the Department, at which time the Provider will resubmit a revised RFQ Response.
- C. Delivery Order** - Upon acceptance of the RFQ Response the Department shall issue a Delivery Order, attaching the RFQ Response signed by both parties approving funding and work initiatives. Delivery Orders must be accepted by Provider before they take effect

Rates charged in SOW Delivery Orders executed shall not exceed rate presented below.

Title	Work Location	Hourly Rate
Fortis / Docuware Business and Document Management Specialist	Client-site, Augusta, ME	\$225.00/hr
Fortis / Docuware Business and Document Management Specialist	Docuware Location	\$187.50/hr
<i>Add titles as applicable</i>		

Vendor shall invoice the Department per invoice contact details contained in the signed agreements between the parties. On work completion, invoices shall be approved and paid by the Department.

E. Travel

- 1) The State shall request and authorize Provider personnel to perform on-site/Maine contract work (in writing).
- 2) The State shall reimburse the Provider for travel cost associated with travel to/from Augusta Maine and lodging/meals and incidentals associated with travel and work in Maine.
- 3) While working on-site in Maine, Provider hourly rate shall be the 'client-site' rate.
- 4) The Provider shall include all travel costs in the Work Order/Delivery Order budget which shall be used for reimbursement. The State shall not pay travel cost which exceeds the Delivery Order budget. Travel time is not billable.
- 5) Car rental, if applicable, shall be for an economy car. Mileage shall not be reimbursed when a car is rented (assume unlimited mileage).
- 6) Personal auto use is reimbursed based on the State of Maine mileage rate at the website indicated. Personal mileage while on-site in Augusta Maine shall not be reimbursed.
- 7) Receipts required for toll reimbursement.
- 8) Airfare shall be economy rates. Receipt required for airfare.
- 9) When on-site (in travel status), meals, lodging and incidental cost reimbursement shall be governed by State of Maine per diem travel policies presented on <http://www.maine.gov/osc/travel>. Receipt required for lodging.

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- 10) If there is a travel re-schedule/cost adjustment required due to weather or another event, additional expense must be preapproved by the State in order to guarantee reimbursement.

All IT products and services delivered as part of this Agreement must conform to state IT Policies, Standards, and Procedures including:

- a. Application Deployment Certification Policy (Rider L)
- b. Web Accessibility and Usability Policy (Rider M)
- c. Information Security Policy (Rider N)

Application Deployment

The State shall perform Application Deployment tests on major releases of Docuware code/functions per Section 5 of the Application Deployment policy, Rider L. Since the State manages, hosts and operates the Document Management environment on the State network, using State personal computers, with State servers, performing backup and recovery functions in State data centers, the State shares responsibility for application security, performance, backup/recovery and interfaces. The State shall maintain a secure computing environment monitoring the equipment, applying timely OS and software patches and performing regular backups.

The State shall document deployment test findings and categorize them as a State item, Docuware item or joint item. The State shall review the findings and decide if the software release (or change) is ready for Production service. The State acknowledges that Docuware software is configurable COTS software and software changes may or may not be feasible. The State shall work with Docuware to resolve (or waive) open items.

The State shall follow the application deployment process outlined above, in a limited manner, for system changes implemented by Deliver Order based on the scope of the Delivery Order,

Accessibility

The State of Maine policy is that websites and applications be accessible to people with disabilities (Rider M). The State shall regularly test the software products acquired or developed through this agreement to assure they comply with the State Accessibility Policy and the Americans with Disabilities Act. The State may accept a Docuware VPAT (voluntary product accessibility template) evaluation of the application. The State and Provider shall in good faith negotiate and implement plan(s) of action to bring the software products into compliance, which may include use of third-party software tools with the application.

Security

The State shall perform security testing of Docuware software, and the system network/hosting environment, on a regular schedule. As the State supplies the data transport network, State personal computers, State servers, backup and recovery functions and State data centers, the State shares significant responsibility for application security and performance. The State shall document security test findings and categorize them as a State item, Docuware item or joint item. Per the policy, all medium or high-risk items must be addressed before the software is placed in Production or within 60/30 days of identification.

Hosting

In the future, this contract may be amended/updated if Docuware cloud hosting services are to be used. Contract update items could include hosting terms and conditions, storage volumes and rates, service level

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agreement performance metrics, disaster recovery terms, recover time and point objectives, information security requirements, cyber security insurance requirements and other items.

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RIDER B-IT

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ _____

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

thirty (30) days from the receipt of the applicable invoice, unless otherwise set forth in the applicable Rider. _____

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

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

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

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

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

The charges described in this Agreement are the only charges to be levied by the Provider for the products and services to be delivered by it. There are no other charges to be made by the Provider to the Department, unless they are performed in accordance with the provisions of Section 5, Changes in the Work. The Provider shall maintain documentation for all charges against the Department under this Agreement.

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

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

Name: D. Pease_____
Title: Director, Computing Infrastructure_____
Address: 51 Commerce Drive, Augusta ME 04333-0145
Telephone: _207.624.7548_____
E-mail address: Dawnna.Pease@maine.gov_____

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

Name: A. Saban_____
Title: Senior Technical Support Specialist_____
Address: 51 Commerce Drive, Augusta ME 04333-0145
Telephone: _207.624.9503_____
E-mail address: _Ann.saban@maine.gov_____

5. CHANGES IN THE WORK The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to the execution of the changed work.

6. SUBCONTRACTORS The Provider may not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees.

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

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

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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.

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9. EMPLOYMENT AND PERSONNEL The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Provider shall not engage on a full-time, part-time, or any other basis, during the period of this Agreement, any personnel who are, or have been, at any time during the period of this Agreement, in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time, or any other basis, during the period of this Agreement, any retired employee of the Department, who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement, so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

10. STATE EMPLOYEES NOT TO BENEFIT No individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, due to his employment by, or financial interest in, the Provider, or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

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

12. ACCOUNTING, RECORDS, AND AUDIT

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.

2. Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.

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

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4. Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.

5. The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.

6. Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under this Agreement are being performed, to inspect, monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Minimum Coverage

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

- A) All acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
- B) Network security and privacy risks, including, but not limited to, unauthorized access, failure of security, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of confidential information, related regulatory defense, and penalties in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
- C) Data breach expenses, in an amount not less than (*see NOTE below and insert the appropriate limit based upon the number of Personally Identifiable Information records*)

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\$_____, and payable, whether incurred by the Department or the Provider; for and on behalf of the Department, including, but not limited to:

- C.1) Consumer notification, whether or not required by law;
- C.2) Forensic investigations;
- C.3) Public relations and crisis management fees; and
- C.4) Credit or identity monitoring, or similar remediation services.

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

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

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

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

2. Workers' Compensation and employer's liability, as required by law;
 3. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
 4. Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
 5. Crime, in an amount not less than \$_____ (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and
 6. Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.
2. **Other Provisions** Unless explicitly waived by the Department, the insurance policies shall contain, or be endorsed to contain, the following provisions:
1. The Provider's insurance coverage shall be the primary and contributory. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.

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

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

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

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

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

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

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of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

26. INTERPRETATION OF THE AGREEMENT

1. **Reliance on Policy Determinations** The Department shall determine all program policy. The Provider may, from time to time, request the Department to make policy determinations, or to issue operating guidelines required for the proper performance of this Agreement, and the Agreement Administrator shall respond in writing in a timely manner. The Provider shall be entitled to rely upon, and act in accordance with, such written policy determinations and operating guidelines, unless subsequently amended, modified, or changed in writing by the Department, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Agreement, or in any agreement, determination, operating guideline, or other communication from the Department shall relieve the Provider of its obligation to keep itself informed of applicable State and Federal laws, regulations, policies, procedure, and guidelines, to be in complete compliance and conformity therewith.

2. **Titles Not Controlling** Titles of sections and paragraphs used in this Agreement are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of the language.

3. **No Rule of Construction** This is a negotiated Agreement and no rule of construction shall apply that construes ambiguous or unclear language in favor of or against any party.

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

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

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

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

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31. LOBBYING

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

2. **Federal Certification** Section 1352 of Title 31 of the US Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Provider or grantee (such as the Department) certifies that no Federal funds will be used to lobby or influence a Federal officer or member of Congress.

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

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

32. PROVIDER PERSONNEL

1. The parties recognize that the primary value of the Provider to the Department derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals whose résumés were offered by the Provider in the Proposal. Therefore, the parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.

2. The Department shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Department's judgment, are not appropriate for the performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Department shall act reasonably and in good faith.

3. During the course of this Agreement, the Department reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Department. In

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considering the Provider's employees' acceptability, the Department shall act reasonably and in good faith.

4. In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Agreement, including any Subcontractors, including persons or corporations who have critical influence on or control over this Agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal or State department or agency.

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

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

34. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS

1. The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider, at its expense, shall defend, indemnify, and hold harmless the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees.

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

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

36. OPPORTUNITY TO CURE The Agreement Administrator may notify the Provider in writing about the Department's concerns regarding the quality or timeliness of a deliverable. Within five (5) business days of receipt of such a notice, the Provider shall submit a corrective action plan, which may include the commitment of additional Provider resources, to remedy the deliverable to the satisfaction of the Agreement Administrator, without affecting other project schedules. The Department's exercise of its rights under this provision shall be not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 13, Termination.

37. COVER If, in the reasonable judgment of the Agreement Administrator, a breach or default by the Provider is not so substantial as to require termination, and reasonable efforts to induce the Provider to cure the

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breach or default are unavailing, and the breach or default is capable of being cured by the Department or by another contractor without unduly interfering with the continued performance by the Provider, then the Department may provide or procure the services necessary to cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

38. ACCESSIBILITY All IT products must be accessible to persons with disabilities, and must comply with the State Accessibility Policy and the Americans with Disabilities Act. All IT applications must comply with the Computer Application Program Accessibility Standard (Maine.gov/oit/accessiblesoftware). All IT applications and contents delivered through web browsers must comply with the Website Standards (Maine.Gov/oit/webstandard) and the Website Accessibility Policy (Maine.Gov/oit/accessibleweb).

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

40. CONFIDENTIALITY

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

41. OWNERSHIP

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

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

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

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

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

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

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

1. The Provider, as depositor, shall enter into an escrow contract, upon terms acceptable to the Department, with a recognized software Escrow Agent. The escrow contract must provide for the

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Department to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of the Department's data, and all updates thereof (the "Deposit Materials"), in electronic format. Deposits will occur no less frequently than once a month.

2. The escrow contract shall provide for the retention, administration, and controlled access of the Deposit Materials, and the release of the Deposit Materials to the Department, upon receipt of a joint written instruction from the Department and the Provider, or upon receipt of written notice from the Department that:

- a. The Provider has failed to carry out its obligations set forth in the this Agreement; or
- b. A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or
- c. The Provider has filed a voluntary petition in bankruptcy, or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or becomes subject to an involuntary petition in bankruptcy, which petition or proceeding is not dismissed or unstayed within sixty (60) days from the date of filing; or
- d. The Provider is in material breach of its maintenance and support obligations and has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or
- e. A condition has occurred that materially and adversely impacts the Provider's ability to support the software and the Provider has failed to cure such condition within thirty (30) days from the date of receipt by the Provider of written notice of such condition.

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

4. The Escrow Agent may resign by providing advance written notice to both the Department and the Provider at least thirty (30) calendar days prior to the date of resignation. In such an event, it is the obligation of the Provider to establish a new escrow account with a new Escrow Agent.

45. THIS ITEM IS INTENTIONALLY LEFT BLANK

46. THIS ITEM IS INTENTIONALLY LEFT BLANK

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

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particular remedy for any breach shall not be deemed as a waiver for any subsequent breach. No waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies under this Agreement.

RIDER C
EXCEPTIONS TO RIDER B-IT

The provisions of Rider B-IT (Method of Payment and Other Provisions) are revised as follows:

1. The following language in Section 2, INVOICES AND PAYMENTS, is deleted and is not replaced with any language:

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

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

2. The second sentence of Section 6, SUBCONTRACTORS, is deleted and replaced with the following:

This provision shall not apply to contracts of employment between the Provider and its employees or its affiliates.

3. The last sentence of Section 6, SUBCONTRACTORS, is deleted and replaced with the following:

The Provider shall indemnify and hold harmless the Department from and against any third party claim, loss, damage, or liability based upon claims from Provider's Subcontractors for payment from Provider in connection with Provider's performance 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.

4. The first sentence of Section 7, SUBLETTING, ASSIGNMENT OR TRANSFER, is deleted and replaced with the following:

The Provider shall not 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; provided, Provider may assign this Agreement and any Delivery Order hereunder in connection with a merger, acquisition or asset transfer of its business.

5. Section 8.4 is deleted and replaced with the following:

The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints in connection with this Agreement 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.

6. The third sentence of Section 12.5 is deleted in its entirety.

7. The following language is added at the end of Section 12.6:

Notwithstanding anything herein to the contrary, any audit under this Agreement shall be subject to the following limitations : (i) use of any third party auditor that is a competitor of Provider shall not perform any

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such audit; (ii) Department or any auditor conducting any such audit shall at all times comply with any and all reasonable confidentiality guidelines of Provider with respect to the audit; (iii) Department shall provide Provider with reasonable prior written notice of an audit, but in no event less than thirty (30) days prior notice; (iv) audits shall be limited in scope to Provider sites and records directly relating to the Agreement and the same shall not be for the prior period of more than four years; (v) audits shall be conducted during regular business hours; (vi) audits shall minimize any disruption to the services or Provider's operations; (vii) except for audits conducted by regulators or at the insistence of any government agency, audits shall not be conducted more than once per calendar year, and (viii) any and all audit's cost shall be borne by Department. Department and its auditors and representatives shall not be entitled to audit (i) data or information of other customers of Provider, (ii) any Provider proprietary data, including cost information or personnel data, or (iii) any other Provider Confidential Information that is not relevant for the purposes of the audit.

8. Section 13, TERMINATION, is deleted and replaced with the following:

The performance of work under this Agreement may be terminated by either party upon no less than thirty (30) days written notice. In the event of termination, the Department shall pay Provider for all work approved and completed prior to the date of the notice of termination; provided, Provider will not provide the Department with any refunds.

9. Section 14, GOVERNMENTAL REQUIREMENTS, is deleted and replaced with the following:

The Provider shall comply with governmental ordinances, laws, and regulations applicable to it as a provider of the products and services hereunder.

10. Section 16, STATE HELD HARMLESS, is deleted and replaced with the following:

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 bodily injuries to persons or tangible property damage, 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.

11. Section 17, LIMITATION OF LIABILITY, is deleted and replaced with the following:

The Provider's total aggregate liability for claims for any and all claims arising out of or related to this Agreement shall be limited to amounts paid by the Department to the Provider under this Agreement in the twelve (12) months immediately preceding the incident giving rise to the claim; provided, however, this limitation of liability shall apply to Provider's indemnity obligations set forth in Section 16.

Notwithstanding the above, Provider shall not be liable to the Department for any indirect or consequential damages, or damages based on loss of data, good will or anticipated savings, whether or not Department has been advised of the possibility of such damages.

12. Section 20, INSURANCE REQUIREMENTS, is deleted and replaced with the following:

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

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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).

A. Minimum Coverage

1. Errors & Omissions, or Professional Liability Insurance, or Insurance by any other name, in an amount not less than \$1,000,000 per occurrence and as an annual aggregate.
2. Workers' Compensation and employer's liability, as required by law;
3. Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;

B. Other Provisions

Unless explicitly waived by the Department, the following provisions shall apply:

1. The Provider shall furnish the Department with certificates of insurance. 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. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.
2. All policies should contain a cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason, including nonpayment.
3. 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".

13. Section 21, NON-APPROPRIATION, is deleted and replaced with the following:

Notwithstanding any other provision of this Agreement, if the Department does not receive sufficient funds to pay for the work to be performed under this Agreement, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State may terminate this Agreement pursuant to Section 13.

14. Section 24, FORCE MAJEURE, is deleted and replaced with the following:

Either party may be excused from the performance of an obligation (excluding any payments due for work performed) 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.

15. Section 25, SET-OFF RIGHTS, is deleted in its entirety.

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16. The last sentence of Section 26.1, is deleted and replaced with the following:

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 State and Federal laws, regulations, policies, procedure, and guidelines applicable to Provider as a provider of its software, to be in complete compliance and conformity therewith.

17. Section 27, PERIOD OF WORK, is deleted and replaced with the following:

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 end on December 31, 2023.

18. Section 32.5, is deleted and replaced with the following:

During the course of this Agreement, the Department reserves the right to, at Department's expense, 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.

19. Section 34, PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS, is deleted and replaced with the following:

1. Subject to Sections 34.2 and 34.4, the Provider will indemnify the Department against any third party claim that the Software (as defined below) licensed by it under this Agreement infringes any patent, copyright, trade secret, or any other intellectual property right of any third party, including against any loss, cost, expense, or liability arising out of such third party claim, including reasonable attorney fees.
2. In the event of any claim by a third party against the Department pursuant to Section 34.1, the Department shall: (i) promptly notify the Provider; (ii) not admit any liability or attempt to settle the claim without Provider's prior consent; (iii) provide reasonable cooperation at its own expense to Provider in the defense and settlement of the claim; and (iv) give Provider sole authority to defend or settle the claim.
3. In the defense or settlement of any claim under Section 34.1, Provider may, in its sole discretion, procure the right for the Department to: (i) continue using the Software; or (ii) replace or modify the Software to be non-infringing; or (iii) if these remedies are not reasonably available, terminate this Agreement and applicable Delivery Order on thirty (30) days' notice to the Department without any additional liability or costs.
4. Provider will not be liable under this Section 34 to the Department if an alleged infringement is based on: (i) any modification of the Software by anyone other than Provider; or (ii) the Department's use of the Software contrary to the instructions or documentation provided by Provider; or (iii) the Department's continued use of the Software after receiving notice of the alleged or actual infringement; or (iv) a combination of the Software with any other product or service which in the absence of such combination would not have resulted in any infringement.

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5. THIS SECTION 34 STATES THE DEPARTMENT'S SOLE AND EXCLUSIVE RIGHT AND REMEDY, AND PROVIDER'S ENTIRE LIABILITY, FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

6. 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.

20. Section 35, PRODUCT WARRANTY, is deleted and replaced with the following:

The Provider expressly warrants its deliverables expressly identified in a Delivery Order ("Deliverable") for ninety (90) days from their final written acceptance by the Department. The Department will be deemed to have accepted any Deliverable within ninety (90) days of delivery unless expressly rejected by the Department providing Provider written notice to Provider of such rejection. The responsibility of the Provider with respect to this warranty is limited to correcting deficiencies in any Deliverable, 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. To the extent Provider is providing software under this Agreement, the term "Software" shall mean the Software expressly licensed by Provider under this Agreement.

21. Section 36, OPPORTUNITY TO CURE, is deleted in its entirety.

22. Section 37, COVER, is deleted in its entirety.

23. Section 38, ACCESSIBILITY is deleted in its entirety.

24. Section 39, STATE IT POLICIES is deleted in its entirety.

25. Section 40, CONFIDENTIALITY, is deleted and replaced with the following:

1. All materials and information given to one party by the other party, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information of the disclosing party ("Confidential Information"). Each party shall keep confidential and use any such Confidential Information only to the extent required for the purposes of this Agreement, and each party shall impose similar obligations to persons who have a right and need to know such Confidential Information. Each party shall exercise the same standard of care to protect such confidential information as it uses to protect its own same or similar confidential information (but in no event less than a reasonable degree of care).

2. Confidential Information does not include information which (and only to the extent that) the receiving party can establish through documentary evidence that such information: (i) was rightfully received without restrictions from third parties who owe no obligations of confidentiality to the disclosing party with respect to such information; (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party; (iii) was independently developed by the receiving party without breach of any obligation owed to the disclosing party; or (iv) was already publicly known at the time of disclosure or subsequently becomes publicly known through no breach by the receiving party of its obligations under this Section. If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it shall provide the disclosing party with prior notice of such compelled disclosure (to the extent legally

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permitted) and reasonable assistance, at disclosing party's cost, if the disclosing party wishes to contest the disclosure.

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) in connection with this Agreement.

26. Section 41, OWNERSHIP, is deleted and replaced with the following:

1. There shall be no assignment or transfer of any preexisting and/or independently developed intellectual property rights of Provider (including any amendments, derivative works, modifications or enhancements thereto) pursuant to this Agreement and any Delivery Order. Provider shall continue to remain the exclusive owner of any such intellectual property rights, and Department shall assign to Provider any such intellectual property rights.

2. Department shall retain ownership of all its data.

27. Section 42, CUSTOM SOFTWARE, is deleted in its entirety.

28. The first sentence of Section 43, OFF-THE-SHELF (OTS) SOFTWARE, is deleted and replaced with the following:

This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its internal business purposes as such license is specifically described in the software's specific license terms.

29. Section 44, SOFTWARE AS SERVICE, is deleted in its entirety.

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RIDER D

Not Used

RIDER E
DOCUWARE CORPORATION PROFESSIONAL SERVICES AGREEMENT

Note: The following DocuWare PSA is a template, and it will need to be populated for applicable work. The “General Terms and Conditions of DocuWare Corporation for Professional Services” (i.e., starting on page 10) will be generally applicable for professional services.

Quote

For
<ADP> on behalf of

<CustomerName>

<Enduser Logo>

<Project Name>
<Proposal Date>

Project Number <ProjectNumber>

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General Information

Goal

Project Goals Listed.

Proposed Products / Current Products:

Binding Scope of requested Services

<List of requested services – delete elements which are not applicable>

- 1. Process Analysis for the following document types
 - a. List Doc Types included in configuration
- 2. System Review
 - <list of requested document types – delete elements which are not applicable >
 - a. Fortis/FortisBlue System Review
 - i. Review System Setup
 - ii. Develop Migration Strategy
 - iii. Validate Effort/Timelines
 - b. DocuWare System Details
 - i. Server Review and Recommendations
 - ii. Database Validations
 - iii. Design Review and Recommendations
 - 1. Update System to Reflect Current Company Needs
 - 2. Speed and Performance
 - iv. System Shortcuts, Tips & Tricks
 - v. Leverage Latest Features
- 3. Configuration development based on an existing and approved Process Analysis including the following documents
 - <list of requested document types – delete elements which are not applicable >
 - a. Install Manual
 - b. Migration Assessment Guide
 - c. Upgrade/Side grade Assessment
 - d. Software Requirements for custom programming
 - i. <Programming A>
 - ii. <Programming B>
 - iii. ...
 - e. Definition of level of documentation
 - i. Installation report
 - ii.
 - f. User Acceptance Testplan
- 4. Implementation of DocuWare based on an existing and approved Configuration Development
- 5. System test and final approval based on an existing and approved user acceptance test plan
- 6. Training plan
 - a. Creation of Training plans for Power Users
 - b. Creation of Training plans for End Users
- 7. Additional Services
 - <list of requested document types – delete elements which are not applicable >
 - a. Upgrading of existing DocuWare installs
 - b. Side grade of existing DocuWare installs
 - c. Fortis to DocuWare Migration
 - d. Transfer of DocuWare to new server

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- e. Converting databases
- f. Migrating from On-Premise to DocuWare Cloud
- g. 3rd Party Migration to DocuWare
- h. Premium Support (Block of Hours)

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Scope of Services

[Deliverables, Milestones and Project Descriptions]

Configuration Development

[Deliverables]

Software Requirements for Custom Programming

[Deliverables]

Documentation

[Deliverables]

Acceptance Test Plan

Training Plan

Training plan for Power User

Training plan for administrator defines the content for specific training for named employees of customer to maintain a DocuWare system. Optional topics are:

- Installation
- Planning of file cabinets
- Configuring specific DocuWare modules proposed in General Information Section
- Administration Station Review
 - Add Users/Role/Profiles
 - Build New Cabinets
- Create Store/Search Dialogues
- Manage Select Lists

Responsibility of Customer

Customer provides a binding list of attendees for admin training and guarantees that these attendees are fully available on the dates of training. This is the only way to guarantee success of training.

Please add the names of attendees for admin training in the amendment.

Training time is not part of this proposal and will be proposed with separate proposal based on training plan.

Training plan for End Users

The training plan for users defines the measures to introduce a list of named users to work with DocuWare. Special emphasis of training is that different groups learn the essentials of DocuWare they need to succeed with their tasks. Ideas for groups are e.g.

- Users mainly searching and processing filed documents (edit, mail, print)
- Users who capture and store documents
- Users who want to configure elements to optimize their daily work.

Possible content:

- Search and edit of documents
- Capture and file
- Configuring specific DocuWare modules proposed in General Information Section

Responsibility of Customer

Customer provides a binding list of attendees for user training and guarantees that these attendees are fully available on the dates of training. This is the only way to guarantee success of training.

Please add the names of attendees for user training in the amendment.

Training time is not part of this proposal and will be proposed with separate proposal based on training plan.

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Project Management

As part of project management DocuWare provides reports about delivered services and current status of the project in a bi-weekly period. This report is presented, discussed and approved to and by named contacts. Please add the receivers for the report and the attendees of the presentation in the amendment.

Additional Services

Upgrading an existing DocuWare system

[Deliverables]

Sidegrading an existing DocuWare system

[Deliverables]

Moving a DocuWare system to a new server

[Deliverables]

Migrating an On-Premise System to DocuWare Cloud

[Deliverables]

Migrating from 3rd Party System to DocuWare

[Deliverables]

Proposal Pricing

Terms

All Pricing at Cost to <CustomerName>

- Pricing Terms:
 - Fixed
- Location: Onsite/Remote

DW-CONS-D - Discovery (Fixed): \$ N/A

- Process Analysis on Premise/Conference Call
- Process analysis Documentation
- Presentation and approval of process analysis via conference call

DW-CONS-D Installation/Configuration - Estimate: \$ N/A

- Subject to Change depending on findings/recommendations from Process Analysis
- Configuration Development
- Presentation and approval of configuration development via conference call
- Installation and Configuration (Onsite/Remote)
- Test and approval based on test plan (Onsite/Remote)

SOL05 Customization Support - Estimate: \$ N/A

- Subject to Change depending on findings/recommendations from Design Document Findings

SKU	Customization Cost (exclude Discovery)	Annual Support Fee
SOL01	\$1 - 5,000	\$500
SOL05	\$5000.01 - 10,000	\$1,500
SOL10	\$10,000.01 – 25,000	\$3,500
SOL25	\$25,000.01 – 40,000	\$6,550

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Total: \$ N/A

After the approval of process analysis DocuWare reserves the right to update pricing for all subsequent services because of changes in requirements identified during the process analysis. Both parties reserve the right to cancel the project after process analysis. Cost of process analysis are covered by customer. Possible changes in total pricing are document and approved from both parties in writing.

NOTE: For avoidance of doubt, total project cost does not include:

- Shipping and travel-related expense. Shipping and travel-related expenses shall be separately reimbursed by Customer to DWC pursuant to Sections 4.2 and 4.3 of the Agreement
- Pricing above and estimated completion timeframes are made on a best endeavor basis and may require additional resources and billable consulting days, and thus additional costs
 - Changes in scope of the Quote shall be handled pursuant to the Change Order Process set forth in Section 9.2
- Payment Schedule

Name	Rate
TBD	TBD
Completion of Work	TBD

Order

Hereby Customer orders the services listed in Project Number: <ProjectNumber> for a total of <add the total here> accepting the terms and conditions listed in this proposal.

<CustomerName>

Order number of customer: _____

(Signature)

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Appendix A:

List of responsible contacts for Process Analysis/System Review and Installation

Name	Function/Title	Process

Project Stakeholders

Name	Email	Title/Role

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

General Terms and Conditions of DocuWare Corporation For Professional Services

This PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of **12. Sep. 2019** (the "Effective Date") by and between **ADP/Customer Name & Address in CRM** ("Customer"), and DocuWare Corporation (DWC), with offices at 4 Crotty Lane, New Windsor, NY 12553, and describes the terms and conditions pursuant to which DWC will provide professional services to Customer. In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1. Scope of Services

- 1.1. **Services.** DWC will provide the professional services (the "Services") set forth in one or more Statements of Work (each, an "QUOTE"). Each subsequent QUOTE must be executed by both parties to be effective. Each such executed QUOTE shall then be attached to and made a part of this Agreement. In the event of any conflict between an QUOTE and this Agreement, this Agreement shall prevail, unless the QUOTE expressly states that the parties intend to override any such conflicting term in this Agreement.
- 1.2. **Manner of Performance.** DWC will retain the sole and exclusive right to control or direct the manner or means by which the Services are performed. DWC may subcontract or assign any or all of its obligations and rights under this Agreement.
- 1.3. **Commencement.** The initial Services will commence as soon as reasonably practical following DWC's receipt and acceptance of a signed copy of this Agreement. Any future Services will commence as soon as reasonably practical after the parties have executed an QUOTE for such Services.

2. Customer's Duties and Responsibilities

- 2.1. **Data, Information and Equipment.** Customer will make available in a timely manner at no charge to DWC all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources required by DWC for the performance of the Services. Customer will be responsible for, and assume the risk of, any problems resulting from the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer. Customer will provide, at no charge to DWC, office space, services and equipment (such as copiers, fax machines, and modems) as DWC reasonably requires to perform the Services when Services are performed at Customer's premises or as otherwise agreed to between Customer and DWC and noted in an QUOTE.
- 2.2. **Tasks.** Tasks that are the responsibility of Customer's personnel will remain Customer's responsibility and will remain under Customer's supervision, management, and control, even if DWC assists Customer in performing such tasks.
- 2.3. **Additional Duties.** Additional duties and responsibilities of Customer are set forth in "Responsibility of Customer" of the QUOTE.

3. Relationship of Parties

- 3.1. **Independent Contractors.** Each party to this Agreement will be and act as an independent contractor and not as an agent or partner of, or joint venture with, the other party for any purpose related to this Agreement or the transactions contemplated by this Agreement, and neither party by virtue of this Agreement will have any right, power, or authority to act or create any obligation, expressed or implied, on behalf of the other party.
- 3.2. **Contact Person.** Each party will appoint in writing an employee or agent of such party to act as the "Contact Person" for all communication between the parties related to the Services. The Contact Person will be responsible for monitoring the status of the Services and will schedule regular meetings with both technical and management personnel of each party to review the status of the Services. Either party may change its Contact Person upon written notice to the other. Contacts will be entered into Appendix A: Project Stakeholders.
- 3.3. **Non-solicitation.** Customer acknowledges and agrees that the employees and consultants of DWC who perform the Services are a valuable asset to DWC and are difficult to replace. Accordingly, Customer agrees that for a period of one (1) year after the completion of the Services (as defined in Scope of Services of the applicable QUOTE), it will not offer employment as an employee, independent contractor, or consultant to any DWC employee or consultant who performs any of the Services.

4. Fees and Payments

- 4.1. **Fees.** Customer will pay DWC for the Services in accordance with the pricing terms and payment schedule set forth in the applicable QUOTE. DWC reserves the right to modify the fees by providing Customer with thirty (30) days written notice of any such modification. DWC will invoice Customer as set forth in "Proposal Pricing" of the QUOTE. Customer will pay all fees and expenses within forty-five (45) days of the date of invoice, unless specified differently in an QUOTE.
- 4.2. **Expenses.**
 - 4.2.1. Customer will reimburse all reasonable travel and other related expenses incurred by DWC in its performance of the Services, unless specified differently in an QUOTE.
 - 4.2.2. Customer will reimburse all reasonable shipping expenses incurred by DWC in its performance of the Services, unless specified differently in an QUOTE.
- 4.3. **Taxes.** Customer will pay or reimburse DWC for all federal, state, or local sales, use, personal property, excise or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement (other than taxes on the net income of DWC).
- 4.4. **Interest and further costs.** Customer will pay DWC one and one half percent (1½%) interest, or the maximum rate allowable by law, whichever is less, per month on the outstanding balance of any fees or expenses not paid within forty-five (45) days of the date of invoice. Customer will be responsible for all costs incurred by DWC in connection with any claim made by DWC to recover payment of Customer's account, including, without limitation, all professional fees and legal costs.

5. Warranty and Limitation of Liability

- 5.1. **Warranty and Disclaimer.** DWC WARRANTS TO CUSTOMER THAT IT WILL PERFORM THE SERVICES IN A PROFESSIONAL AND WORKMANLIKE MANNER. DWC MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING OR RELATING TO ANY MATERIALS OR SERVICES PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. DWC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY SUCH MATERIALS AND SERVICES OR THE USE OF ANY OF THE FOREGOING. No employee, agent, representative, or affiliate of DWC has authority to bind DWC to any oral representations or warranty concerning the Services. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.
- 5.2. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER, OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF WHETHER ANY CLAIM FOR SUCH DAMAGES IS ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, DWC WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OF OR FURNISHING THE SERVICES. DWC'S LIABILITY UNDER THIS AGREEMENT FOR DAMAGES OF ANY KIND WILL NOT IN ANY EVENT EXCEED THE FEES PAID BY CUSTOMER TO DWC UNDER SECTION 4.1 OF THIS AGREEMENT. The provisions of this Article 5 allocate risks under this Agreement between Customer and DWC. DWC's pricing reflects this allocation of risk and limitation of liabilities.

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- 5.3. **Timing.** No action arising out of any breach or claimed breach of this Agreement or the transactions contemplated by this Agreement may be brought by either party more than one (1) year after the cause of action has accrued. For purposes of this Agreement, a cause of action will be deemed to have accrued when a party knew or reasonably should have known of the breach or claimed breach.

6. Ownership of Proprietary Rights

- 6.1. **Ownership.** Customer agrees that all inventions, improvements, discoveries, or developments, including but not limited to all deliverables, specifications, designs, documentation, and other materials developed or authored by DWC, that DWC may make or conceive, either solely or jointly with others, whether arising from DWC's own efforts or suggestions received from any other source, and arising out of the Services provided under this Agreement, are the sole property of DWC. To the extent that Customer would have a claim to any such rights, Customer hereby irrevocably grants, conveys, and assigns to DWC all such rights therein, including but not limited to all patents, copyrights, trade secrets, and all other proprietary rights.
- 6.2. **Right to Develop Independently.** Customer understands and acknowledges that DWC is in the business of developing products and providing consulting services similar to those provided for Customer for other parties generally based upon the same computer software, tools and knowledge base. Customer agrees that nothing in this Agreement will impair DWC's right to provide the same services or develop for itself or others deliverables substantially similar to, or performing the same or similar functions as, the Services under this Agreement.

7. Term and Termination

- 7.1. **Term.** This Agreement will take effect on the Effective Date and will remain in effect until the later of (i) TBD and (ii) the date of completion of the Services (as defined in "Scope of Services" if the applicable QUOTE) under all outstanding QUOTES, unless earlier terminated in accordance with Section 7.2.
- 7.2. **Termination.** This Agreement may be terminated: (a) by either party if the other commits a material breach of this Agreement, which breach is not cured within thirty (30) days of a written notice of such breach by the non-breaching party; or (b) by DWC if Customer (i) terminates or suspends its business activities, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.
- 7.3. **Effect of Termination.** Termination of this Agreement will not affect the provisions relating to the payment of amounts due, or the provisions of the following Articles and Sections: 3.1, 3.3, 4, 5, 6, 8, 9.4, and 9.7, all of which will survive termination of this Agreement, regardless of the reason for termination.

8. Confidential Information

- 8.1. **Definition.** The parties acknowledge that by reason of their relationship with each other under this Agreement each will have access to certain information and materials concerning the other's business, plans, customers, technology and/or products that is confidential and of substantial value to that party, which value would be impaired if such information were disclosed to third parties ("Confidential Information").
- 8.2. **Obligation.** Each party agrees that it will not use in any way for its own account, or for the account of third parties, nor disclose to any third party, any Confidential Information revealed to it by the other party. Each party will protect the Confidential Information by using the same degree of care it uses for its own confidential information, but in no event less than reasonable care. Upon request by the receiving party, the disclosing party will advise whether or not it considers any particular information to be Confidential Information. Notwithstanding the foregoing, the parties acknowledge and agree that Customer's confidentiality obligations are subject to the provisions of the Maine Freedom of Access Act, 5 M.R.S. § 401 et seq.

9. General

- 9.1. **Assignment.** Customer may not assign any of its rights or delegate any of its obligations under this Agreement, whether by operation of law or otherwise, without the prior express written consent of DWC, which consent will not be unreasonably withheld or delayed. Any purported assignment in violation of this Section 9.1 will be void and of no effect.
- 9.2. **Amendment; Waiver; Change Orders Procedure.**
- 9.2.1. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. No terms, provisions, or conditions of any purchase order or other business form or written authorization used by Customer will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of DWC to object to any such terms, provisions, or conditions. No failure or delay by either party in exercising any right, power, or remedy under this Agreement will operate as a waiver of any such right, power, or remedy.
- 9.2.2. Any changes to the scope of the Services must be made in writing and signed by both parties ("Change Order"). The Change Order shall contain a description of the change and deliverable, as well as the cost, timeline and possible delays that may occur due to the change. The Contact Person of the party proposing the change in scope must communicate the proposed Change Order to the Contact Person of the other party.
- 9.3. **Force Majeure.** Neither party will be liable to the other party for any failure or delay in performance caused by reasons beyond its reasonable control, including but not limited to acts of God, war, strikes, or shortages of materials.
- 9.4. **Notices.** All notices, demands, or consents required or permitted under this Agreement will be in writing. Notice will be sent by certified or registered mail, return receipt requested, or by commercial express courier, to the parties at the addresses set forth on the first page of this Agreement, or at such other postal or e-mail address or fax number as may be given by either party to the other in writing. Notice by fax or e-mail must be accompanied by a confirmation copy sent by mail or courier.
- 9.5. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement will remain in full force and effect.
- 9.6. **Entire Agreement.** This Agreement constitutes the final, complete and exclusive agreement between the parties with respect to its subject matter, and supersedes any prior or contemporaneous agreements.
- 9.7. **Governing Law.** This Agreement will be governed by the laws of the State of Maine, USA, excluding conflict of law's provisions. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction and venue of the state and federal courts of Maine, and the parties consent to the exclusive and personal jurisdiction of these courts.

Counterparts. This Agreement may be executed in two or more counterparts, each of which will be considered an original and may be transmitted by facsimile or e-mail, and all of which will constitute one and the same instrument.

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RIDER F
DOCUWARE MAINTENANCE AND SUPPORT AGREEMENT

DocuWare Maintenance and Support Agreement

Contract Number: _____

This **Maintenance and Support Agreement** (“Agreement”) is made this _____ day of _____ (“Effective Date”) by and between _____, a _____, having its principal place of business at _____

_____ (“Licensee”) and DocuWare Corporation, a New York corporation, having its principal place of business at 4 Crotty Lane, Suite 200, New Windsor, NY 12553 (“DocuWare”). Each of Licensee and DocuWare is referred to individually as a “Party,” and together, the “Parties.”

Introduction

- A. DocuWare is in the business of providing certain proprietary document storage solutions to customers.
- B. Licensee either has or will execute a EULA with DocuWare for the licensing of DocuWare Software (as defined below) (“EULA”).
- C. Licensee wishes to purchase Maintenance and Support Services (as defined below) for such DocuWare Software.

The Parties therefore agree as follows:

1. Covered DocuWare Software

The Maintenance and Support Services shall be further detailed in the quote attached hereto (“Quote”), and the DocuWare Software listed in the Quote is subject to the terms and conditions of this Agreement and the provision of Maintenance and Support Services (“DocuWare Software”).

2. Services

DocuWare grants to Licensee a non-transferable, non-sublicensable, non-exclusive license to display and perform DocuWare Software updates, upgrades, patches and fixes during the Term (as defined below) of this Agreement and in accordance with the EULA. DocuWare will provide to Licensee the maintenance and support services as described in this Section 2 (“Maintenance and Support Services”).

- a. **DocuWare Software Upgrades and Updates.** To the extent that Licensee is in compliance with this Agreement and the EULA, and subject to Section 2(c) below, Licensee will receive all major upgrades, updates, patches and fixes to the DocuWare Software as and when released by DocuWare, and DocuWare shall make available to Licensee new releases of the DocuWare Software as such new releases are made generally available by DocuWare. Notwithstanding the foregoing, DocuWare shall not be obligated to provide Licensee with, any software product that offers substantially new or different functionality in relation to the DocuWare Software.
- b. **Technical Support.** To the extent that Licensee is in compliance with this Agreement and the EULA, Licensee will receive support for the DocuWare Software included in this Agreement as follows:
 - 1. DocuWare shall provide Licensee with access to a database of known issues and existing solutions (“DocuWare Support Solution Center”).
 - 2. Licensee may request technical support from DocuWare at any time via the DocuWare Support Portal (“Support Request”). In the DocuWare Support Portal, the Licensee will be able to check the status or provide new information for existing Support Requests.

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3. DocuWare will respond to Support Requests on weekdays (excluding DocuWare recognized holidays) (“Business Days”) as follows:
 - For questions received by DocuWare before 12 PM (EST) on Business Days, Licensee will receive a response from DocuWare on the same Business Day.
 - For questions received by DocuWare after 12 PM (EST) on Business Days, Licensee will receive a response from DocuWare by the following Business Day before 12 PM (EST).
 - For questions received by DocuWare on weekends and DocuWare recognized holidays, Licensee will receive a response from DocuWare by the following Business Day.
4. In responding to Support Requests within the foregoing time periods, DocuWare shall provide: (1) a proposed solution or workaround; (2) request additional information; or (3) a timeline for DocuWare to resolve the Support Request.
5. During Business Days, DocuWare’s hours are as follows: Monday through Friday: 8:30 AM – 8:00 PM EST.
6. In order to solve reported issues, DocuWare may require Licensee to provide a DocuWare support employee remote online access to Licensee’s computer system. In such event, DocuWare will remain subject to its confidentiality obligations set forth in Section 6(b).
- c. Other Professional Services. Depending on the size or complexity of a DocuWare system and/or the nature of a major upgrade or update of the DocuWare Software, the installation of such upgrade or update may exceed Licensee’s capabilities. In such cases, separate professional services – either on site or via remote online access - through DocuWare or an Authorized DocuWare Reseller (i.e., a third party entity with a contractual relationship with DocuWare for purposes of the sale or distribution of DocuWare Software) is required. Licensee acknowledges that these professional services are not covered under this Agreement, and if such professional services are not procured, Licensee will not receive such upgrades and/or updates of DocuWare Software. Licensee acknowledges and agrees that specific services, complex requests and support related to the installation of Licensee’s system, the configuration of Licensee’s system, and the training of Licensee’s administrators and users, will require the purchase of professional services which are not part of and are outside the scope of this Agreement.

3. Term and Termination

- a. Initial Term and Renewal Terms. This Agreement begins on the start date as stated in the attached Quote (“Annual Subscription Payment Period Start Date”) and continues for a period of twelve (12) months following such date (“Initial Term”), after which this Agreement shall automatically renew at the end of the Initial Term and each Renewal Term (“Effective Renewal Date”) for consecutive twelve (12) month periods at DocuWare’s then current retail price for Maintenance and Support Services (each a “Renewal Term”). Notwithstanding the foregoing, Licensee may terminate or reduce the scope of this Agreement by providing DocuWare with written notice at least thirty (30) days prior to the end of the Effective Renewal Date.
- b. Termination for Late Payment. If Licensee is late in payment for any reason by more than thirty (30) days, DocuWare may terminate this Agreement and any Quotes hereunder immediately upon written notice to Licensee.
- c. Financing Termination/Suspension. In the event of any default (including any delayed payment) by Licensee in connection with Licensee’s third party financing of Maintenance and Support Services procured under the Agreement, DocuWare may, in its sole and absolute discretion, terminate and/or suspend the provision of Maintenance and Support Services provided under the Agreement, and such termination and/or suspension shall be effective immediately. DocuWare shall have no liability or responsibility for any termination and/or suspension pursuant to this Section.
- d. Termination for Bankruptcy. Either Party may terminate this Agreement immediately with written notice to the other Party upon: (1) the bankruptcy of the other Party, (2) any assignment by the other Party for the benefit of its creditors, (3) the inability of the other Party to pay its debts as the same fall due, (4) the appointment of a receiver for or any execution levied upon all or substantially all of the other Party’s business or assets, or (5) the filing of any petition for voluntary or involuntary bankruptcy or similar proceeding for or against the other Party.
- e. Termination for Denied Access. If DocuWare is denied physical and/or virtual access to Licensee’s network/premises where the DocuWare Software installation is located, then DocuWare may immediately terminate this Agreement upon written notice to Licensee.
- f. Survival. Sections 3 through 10 will survive the termination or expiration of this Agreement.

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4. Payment Terms

- a. Quote Process. Licensee may procure Maintenance and Support Services for DocuWare Software through a Quote executed by the Parties in connection with this Agreement.
- b. Invoicing. Prior to the Effective Renewal Date, DocuWare will invoice Licensee for this Agreement, and Licensee shall pay DocuWare any amounts due for the Renewal Term prior to the Effective Renewal Date, and Licensee shall pay DocuWare all amounts due in connection with this Agreement in advance prior to, as applicable, the Initial Term and/or Renewal Term (collectively, "Term"). If Licensee does not pay DocuWare such amounts prior to the Effective Renewal Date, then DocuWare shall have no obligation to provide the Maintenance and Support Services to Licensee. Any fees not paid when due shall incur interest at the rate of one and a half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is lower. All fees paid under this Agreement are nonrefundable.
- c. Taxes. Unless otherwise expressly provided, DocuWare's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes"). Licensee is responsible for paying all Taxes associated with Licensee's purchases hereunder, excluding taxes based on DocuWare's net income or property. If DocuWare has the legal obligation to pay or collect Taxes for which Licensee is responsible under this Section, the appropriate amount shall be invoiced to and paid by Licensee, unless Licensee provides DocuWare with a valid tax exemption certificate authorized by the appropriate taxing authority.
- d. Attorney's Fees. In the event that the Licensee defaults in the payment of any funds pursuant to the terms of this Agreement, the Licensee agrees to pay all costs and fees incurred by DocuWare to the extent DocuWare is successful in the collection of said payments (including attorneys' fees and court costs).

5. Limitation of Liability

IN NO EVENT SHALL DOCUWARE'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS EXCEED THE SUM OF THE AMOUNTS PAID BY LICENSEE TO DOCUWARE DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS PRIOR TO THE DATE THE CLAIM AROSE. IN NO EVENT SHALL DOCUWARE BE LIABLE, TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COMPENSATORY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, GOODWILL OR ANTICIPATED SAVINGS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Proprietary Rights and Confidentiality

- a. Proprietary Rights. Licensee acknowledges and agrees that DocuWare has all right, title and interest in and to the DocuWare Software and any related documentation (including with respect to any Maintenance and Support Services provided hereunder). Licensee further agrees and acknowledges that the DocuWare Software and any related documentation (including with respect to any Maintenance and Support Services provided hereunder) embodies DocuWare's trade secrets and copyrights. Subject to the license rights of Licensee hereunder, all right, title and interest in the DocuWare Software and any related documentation (including with respect to any maintenance or support provided hereunder), including all trade secrets, copyrights and other intellectual property rights pertaining thereto, are and shall remain vested in DocuWare. Nothing contained in this Agreement shall be construed as transferring any of such rights to Licensee or any third party.
- b. Confidentiality. Each Party acknowledges that certain information that it will acquire from the other Party may constitute such other Party's Confidential Information. The term "Confidential Information" includes all information related to the business, operations, financial information, computer software and systems of a Party and such other information that is disclosed by one Party to the other Party which is marked "confidential" by the disclosing Party or which, under the circumstances, should reasonably be considered confidential. Each Party agrees: (i) to exercise the same degree of care and protection (but no less than a reasonable degree of care and protection) with respect to the other Party's Confidential Information as such Party exercises with respect to its own Confidential Information; and (ii) except with the prior written consent of the disclosing Party hereunder, not to, directly or indirectly, disclose, copy, transfer or allow access to any Confidential Information obtained from the other Party. Notwithstanding the above, the following shall not be considered Confidential Information, and neither Party bears any responsibility for safeguarding information that is: (1) publicly available, (2) already in the receiving Party's possession, (3) obtained by the receiving Party from third parties without restrictions on disclosure, (4) independently developed by receiving Party without reference to the disclosing Party's Confidential Information, or (5) required to be disclosed under the Maine Freedom of Access Act, by order of a court or other governmental entity. Notwithstanding the foregoing, Licensee acknowledges and agrees that the DocuWare Software and any

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

related documentation (including with respect to any maintenance or support provided hereunder) is the Confidential Information of DocuWare. The Licensee shall implement all necessary measures on a sufficiently frequent basis to properly protect and secure its data.

- c. HIPAA Compliance. If Licensee is a HIPAA Covered Entity or Business Associate under the rules and regulations of the Health Insurance Portability and Accountability Act of 1996, then the Business Associate Agreement, attached hereto as Exhibit A ("Business Associate Agreement"), is deemed incorporated by reference herein. In the event of any conflict between the terms of Section 6(b) and the terms of the Business Associate Agreement, the terms of the Business Associate Agreement shall govern and control.

7. Assignment

Licensee shall not assign, transfer or sell its rights or delegate Licensee's obligations under this Agreement without the prior written consent of DocuWare.

8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine, United States. Exclusive legal venue or all disputes arising out of the Agreement shall be the courts of Maine.

9. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (i) when delivered personally; (ii) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (iii) when sent by email, with written confirmation of receipt by email; (iv) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (v) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the addresses listed below (or to such other addresses or persons as may be designated by a Party by giving written notice to the other Party pursuant to this Section).

If to DocuWare, to:

DocuWare Corporation
35 Thorpe Avenue, Suite 201
Wallingford, CT 06492
Attention:
Chief Financial Officer
Fax: (203) 269-0322

If to Licensee, to:

State of Maine, Office of Information Technology
51 Commerce Drive
Augusta, ME 04330
Attention: F. Brittain or D. Pease
CIO
Fred.Brittain@maine.gov

Email: Paul.Remington@docuware.com Email: Dawnna.Pease@maine.gov

Licensee shall provide DocuWare with additional contact information in Attachment 1, and during the Initial Term and any Renewal Term, Licensee shall keep such contact information current with DocuWare. DocuWare may, in its sole discretion, provide notice to such Licensee contacts of applicable issues (e.g., related to billing and/or systems administration); provided, however, DocuWare shall only be obligated to notify the main contact of Licensee as set forth in this Section 9.

10. Miscellaneous

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements between the Parties relating to the same subject matter; provided, however, the EULA shall apply to DocuWare Software. Any amendments to this Agreement must be in writing and mutually agreed by both the Licensee and DocuWare. In the event of a conflict between the terms of this Agreement and any Quote, the terms of this Agreement shall govern and control. In the event that any provision of this Agreement is deemed void, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect. There are no third-party beneficiaries to this Agreement.

Licensee and DocuWare have executed this Agreement as of the Effective Date.

Licensee

DocuWare Corporation

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By: _____	By: _____
Signature	Signature
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Attachment #1 – Additional Licensee Contact Information

Additional Licensee Billing Contact:

_____	_____	_____
Name	Telephone no. & ext.	Email address

Title		

Additional Licensee Systems Administrator Contact:

_____	_____	_____
Name	Telephone no. & ext.	Email address

Title		

AGREEMENT TO PURCHASE SERVICES (BP54-IT)**Exhibit A – Business Associate Agreement**

This Exhibit A is included as part of the DocuWare Maintenance and Support Agreement (the “Maintenance and Support Agreement”) by and between Licensee (as defined in the Maintenance and Support Agreement) and DocuWare (as defined in the Maintenance and Support Agreement). This Business Associate Agreement (this “Agreement”) is made as of the Effective Date of the Maintenance and Support Agreement, by and between Licensee and DocuWare, each individually a “Party” and together the “Parties.”

BACKGROUND STATEMENTS

A. **Purpose.** The purpose of this Agreement is to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and the associated regulations, 45 C.F.R. parts 160-164, as may be amended (including the “Privacy Rule” and the “Security Rule”) (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act and the associated regulations, as may be amended (“HITECH”). “HIPAA” and “HITECH” are hereafter collectively referred to in this Agreement as “HIPAA.” Unless otherwise defined in this Agreement, capitalized terms have the meanings given in HIPAA. This Agreement is only effective when required by law, when Licensee is either a HIPAA Covered Entity or Business Associate, and when HIPAA requires DocuWare to provide reasonable assurances to Licensee that DocuWare will appropriately safeguard Protected Health Information (“PHI”).

B. **Relationship.** DocuWare and Licensee have entered into a relationship under which DocuWare may receive, use, obtain, access, maintain, transmit, or create PHI from or on behalf of Licensee in the course of performing services for Licensee (the “Services”).

AGREEMENT

The Parties agree as follows:

Section 1. Permitted Uses and Disclosures.

DocuWare may use and/or disclose PHI only as permitted or required by this Agreement or as otherwise Required by Law. DocuWare may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives to the extent directly related to and necessary for the performance of the Services. DocuWare will request from Licensee no more than the minimum PHI necessary to perform the Services. DocuWare will request, use and disclose only PHI that constitutes a Limited Data Set, if practicable, and will otherwise limit any request, use or disclosure of PHI to the minimum necessary for the intended purpose of the request, use or disclosure. DocuWare will not use or disclose PHI in a manner (i) inconsistent with Licensee’s obligations under HIPAA, or (ii) that would violate HIPAA if disclosed or used in such a manner by Licensee if and to the extent DocuWare’s performance of the Services involves carrying out Licensee’s Privacy Rule obligations. **Section 2. Safeguards for the Protection of PHI.**

DocuWare will implement and maintain appropriate administrative, physical and technical security safeguards to ensure that PHI obtained by or on behalf of Licensee is not used or disclosed by DocuWare in violation of this Agreement. Such safeguards will be designed to protect the confidentiality and integrity of such PHI obtained, accessed, created, maintained, or transmitted from or on behalf of Licensee. DocuWare will comply with the applicable requirements of the Security Rule.

Section 3. Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures.

DocuWare will promptly report, upon discovery, in writing and in accordance with Section 9 of the Maintenance and Support Agreement, any Security Incident or Breach (as defined below) by it or any of its employees, directors, officers, agents, subcontractors or representatives concerning the use or disclosure of PHI. For purposes of this Agreement, “Breach” means any acquisition, access, use or disclosure of PHI under this Agreement that is (a) in violation of the Privacy Rule or (b) not permitted under this Agreement. DocuWare will be deemed to have discovered a Breach as of the first day on which the Breach is, or should reasonably have been, known to (a) DocuWare or (b) any employee, officer, or other agent of DocuWare other than the individual committing the Breach. DocuWare further will investigate the Breach and promptly provide to Licensee information Licensee may require to make notifications of the Breach to Individuals and/or other persons or entities (“Notifications”). DocuWare will cooperate with Licensee in addressing the Breach. DocuWare will establish and implement procedures and other reasonable efforts for mitigating any harmful effects arising from any improper use and/or disclosure of PHI.

Section 4. Use and Disclosure of PHI by Subcontractors, Agents, and Representatives.

DocuWare will require any subcontractor, agent, or other representative that is authorized to receive, use, maintain, transmit, or have access to PHI obtained or created under the Agreement, to agree, in writing, to: (1) adhere to the same restrictions, conditions and requirements regarding the use and/or disclosure of PHI and safeguarding of PHI that apply to DocuWare under this Agreement; and (2) comply with the applicable requirements of the Security Rule.

Section 5. Individual Rights.

DocuWare will comply with the following individual rights requirements as applicable to PHI used or maintained by DocuWare:

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5.1 Right of Access. DocuWare agrees to provide access to PHI, at the request of Licensee, as necessary to satisfy Licensee's obligations with regard to the individual access requirements under HIPAA. DocuWare will otherwise comply with its obligations regarding an Individual's right of access to PHI under HIPAA.

5.2 Right of Amendment. DocuWare agrees to make any amendment(s) to PHI as necessary to meet the amendment requirements under HIPAA.

5.3 Right to Accounting of Disclosures. DocuWare agrees to document any disclosures of PHI as would be required for Licensee to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA, and to provide all such documentation to Licensee or to an Individual, as necessary to satisfy Licensee's obligations with regard to an Individual's right to an accounting of disclosures. DocuWare will otherwise comply with its obligations regarding an Individual's right to an accounting of disclosures under HIPAA.

Section 6. Use and Disclosure for DocuWare's Purposes.

6.1 Use. Except as otherwise limited in this Agreement, DocuWare may use PHI for the proper management and administration of DocuWare or to carry out the legal responsibilities of DocuWare.

6.2 Disclosure. Except as otherwise limited in this Agreement, DocuWare may disclose PHI for the proper management and administration of DocuWare or to carry out the legal responsibilities of DocuWare, provided the disclosures are Required by Law, or DocuWare obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies DocuWare immediately upon discovery of any instances in which the confidentiality of the PHI has been Breached, as defined and described in Section 3 of this Agreement.

Section 7. Access to Records.

DocuWare will make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI received from, or created or received by DocuWare on behalf of Licensee, available to the federal Department of Health and Human Services ("HHS"), the Office for Civil Rights ("OCR"), or their agents for purposes of monitoring compliance with HIPAA.

Section 8. Term and Termination.

8.1 Term. This Agreement will become effective on the Effective Date. Unless terminated sooner pursuant to Section 8.2, this Agreement will remain in effect for the duration of all Services provided by DocuWare and for so long as DocuWare will remain in possession of any PHI received from Licensee, or created or received by DocuWare on behalf of Licensee.

8.2 Termination. In the event of a material breach of this Agreement, the non-breaching Party may immediately terminate this Agreement. Alternatively, in the non-breaching Party's sole discretion, the non-breaching Party may provide the breaching Party with written notice of the existence of the material breach and afford the breaching party thirty (30) days to cure the material breach. In the event the breaching Party fails to cure the material breach within such time period, the non-breaching Party may immediately terminate this Agreement.

8.3 Effect of Termination. Upon termination of this Agreement, DocuWare will recover any PHI relating to this Agreement in the possession of its subcontractors, agents or representatives. DocuWare will return to Licensee or destroy all such PHI plus all other PHI relating to this Agreement in its possession, and will retain no copies. If DocuWare cannot feasibly return or destroy the PHI, DocuWare will ensure that any and all protections, requirements and restrictions contained in this Agreement will be extended to any PHI retained after the termination of this Agreement, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.

Section 9. Miscellaneous.

9.1 Survival. The respective rights and obligations of the Parties under Sections 7 (Access to Records), 8.3 (Effect of Termination) and 9 (Miscellaneous) will survive termination of this Agreement indefinitely.

9.2 Amendments. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. It may not be modified, nor will any provision be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The Parties agree to amend this Agreement from time to time as necessary for the Parties to comply with their respective obligations under HIPAA.

9.3 Waiver. A waiver with respect to one event will not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

9.4 Compliance with HIPAA. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits the Parties to comply with their respective obligations under HIPAA.

9.5 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

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9.6 Inconsistencies. If any of the terms of this Agreement conflict with or are inconsistent with the terms of the Services agreement, the terms of this Agreement will prevail.

9.7 Notices. Any notice to be given under this Agreement to a Party will be made in accordance with Section 9 of the Maintenance and Support Agreement.

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RIDER H
DOCUWARE CORPORATION EULA

DocuWare SOFTWARE LICENSE AGREEMENT

This Agreement contains the terms upon which you (hereinafter: the Licensee) are granted the right to use software standard product (hereinafter: the Software) of its licensor DocuWare GmbH (hereinafter: DOCUWARE), represented in the USA through its subsidiary DocuWare Corporation, New Windsor, NY.

PLEASE READ THE FOLLOWING LICENSING TERMS AND CONDITIONS CAREFULLY! By installing, copying or otherwise using the Software, you agree with the following terms and conditions.

IF YOU SHOULD NOT AGREE WITH THESE TERMS AND CONDITIONS; YOU MAY NOT INSTALL OR USE THE SOFTWARE: IN SUCH CASE CANCEL THE INSTALLATION PROCESS IMMEDIATELY AND RETURN THE SOFTWARE FOR A REFUND OF THE LICENSE FEE FROM THE DOCUWARE VENDOR.

License and usage rights

1. Subject to the payment of the agreed license fee and the following conditions DocuWare grants to Customer a non-exclusive, subject to Para 12 and 13 of this Section transferable right to install and use for internal purposes software that (i) is created by DocuWare or offered under the trademark of DocuWare (hereinafter “DocuWare Software”), or (ii) is not DocuWare Software (hereinafter: “Third Party” Software) in conjunction with the documentation and any material accompanying the software (the Documentation) and the license key.
2. A DocuWare System is the entirety of software components which are technically or logically linked to each other and as such administered within one common administration instance. Each DocuWare System contains logical entities of one or more Organizations. Such Organization technically represents inside the DocuWare System the company or the public administration of the Customer. The individual DocuWare software products and modules which can be installed in a DocuWare System contain a license for usage of the Software. Such a license is specifically issued to the one Organization of the Customer who purchased the software if not otherwise stated.
3. In the event that Customer had acquired a Client License up to and including September 2017, such license can after installation either be used as one Concurrent License or converted by the system administrator into two Named Licenses. In the event that Customer had acquired Named Client Licenses in or after October 2017, each four Named Client Licenses can be converted into a Concurrent License by the system administrator. A user can use a Client License for the DocuWare Client Software and for Add-on Modules. A Client License used as a Concurrent License entitles the Customer to use the DocuWare Software on an unlimited number of workstations, provided that the multiple work-station/network system technically prevents the number of users from be-ing able to work at the same time (simultaneously) as members of the Organization in any manner with DocuWare Software which exceeds the total number of available Concurrent Licenses. Named Client Licenses entitle the Customer to assign such license to one named user and allow only this one user the exclusive usage of the DocuWare software. All workstations, especially mobile PCs which are consistently or partially of-fline from the network in which the DocuWare system is installed, re-quires a Named Client license.
4. In the event that Customer had acquired a Site License (available up to and including September 2017), such license may be used to install and use DocuWare software on an unlimited number of workstations of an Organization, provided that all users are physically located within one site. A site is defined as one building or as a group of buildings which is not divided by any public roads. Any usage of DocuWare software through users who are physically located outside such site require extra Named or Concurrent Licenses. DocuWare Software or any portion of such software may also be used temporarily but not permanently outside the site, if it is installed on a mobile computer (notebook, laptop etc.) and if this mobile computer is administered from this site.
5. A purchased Server License may be used to install and use the respective DocuWare Server Software on one server only. If such DocuWare Software requires or allows the installation and usage of portions of the DocuWare Software on different servers it

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may be installed and used on different servers on condition that no identical portion of such DocuWare Software is installed and used on more than one server. Such installed DocuWare Server Software although licensed by one specific Customer may also be used by all other Customer whose logical Organizations reside in the same DocuWare System.

6. In the event that Customer has acquired an Add-On Module License, the respective DocuWare Add-On Module may be installed and used through any user of the Customer's Organization, provided that this user in the same moment uses a valid DocuWare Client License.
7. In the event that Customer wants to acquire additional Licenses for a DocuWare System, Customer must be using the most current version of all DocuWare components in such system and a current maintenance and support subscription has to be in place.
8. In the event Customer acquires the DocuWare SDK Support, then Customer has a nonexclusive, non-transferable, non-sub licensable and royalty-free right to reproduce and distribute executable files created using the SDK. Customer is being granted a nonexclusive, non-transferable, non-sub licensable and royalty-free right to reproduce and distribute the runtime modules of the SDK provided that Customer: (a) distributes the runtime modules only in conjunction with and as a part of Customer's software product; (b) does not use DocuWare's name, logo, or trademarks to market his software product; and (c) includes DocuWare's copyright notice for the SDK as part of the sign-on message for his software product. The "runtime modules" are those files in the SDK that are identified in the accompanying written materials as required during execution of Customer's software program.
No Multiplexing – no License pooling: In any case the Customer has to ensure, that every user who gets direct or indirect access to DocuWare software components - including all server components - or to DocuWare data through usage of non-DocuWare software is also using a valid DocuWare Client License, either as Named or Concurrent License.
9. In case and to the extent Customer has acquired from DocuWare licenses to any Third Party Software, DocuWare reserves the right to limit Customer's license rights pursuant to the requirements of the licensing terms between DocuWare and the Third Party licensor. In the event a Microsoft SQL-Server license is acquired by Customer, the respective license is, in addition to the limitation set forth above, (i) for a Runtime License also runtime restricted and (ii) according to the license description within the price list may possibly only be used in conjunction with DocuWare Software. If it is limited for the use in conjunction with DocuWare, the aforementioned Third Party Software may not be used for any purpose of development and/or in conjunction with applications, databases or schedules that are not contained in DocuWare Software. However, it is permitted through the use of appropriate tools, to access those databases and schedules that are generated by DocuWare Software.
10. Nothing in the General Business Terms entitles Customer to use any name or trademark of DocuWare for any purpose whatsoever, or to use any other name or mark confusingly similar thereto, without the express written consent of DocuWare, save as expressly set forth in these terms and conditions.
11. None of the Deliverables may be modified adapted, disassembled, decompiled, reconstructed or transformed, unless and to the extent permitted by mandatory law.
12. Customer may permanently transfer any software and Documentation acquired from DocuWare to third parties, whether against consideration or free of charge, provided that (i) Customer has completely transferred the software and the Documentation to such third party, and (ii) Customer has concluded with such third party a license agreement, which license terms and confidentiality obligations shall be for the third party at least as restrictive as the respective terms of these general terms and conditions, and (iii) such third party has agreed to procure from DocuWare a new license key after compensating DocuWare for all costs incurred by DocuWare for generating such license key. In case the above requirements are met, Customer shall (i) completely transfer the Software and the Documentation by delivering all original data carriers to such third party and (ii) completely deliver any copy made thereof to such third party or, at its option, destroy any not transferred copies thereof. With the completion of transfer of the software Customer's right to use the software and the Documentation shall lapse immediately.
13. Customer shall be entitled to transfer the software and the Documentation to third parties on a non permanent basis, provided that (i) such transfer shall not be made for profit purposes (e.g. leasing, Software-as-a-Service), and (ii) Customer has concluded with such third party a license agreement, which license terms and confidentiality obligations shall be at least as restrictive for such third party as the respective terms of these general terms and conditions, and (iii) such third party has agreed to procure a new license key from DocuWare for all costs incurred by DocuWare for generating such license key. When the third party is using the software, Customer shall have no right to use the Software and the Documentation. Any non-permanent transfer of the

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software to third parties for a profit purpose (e.g. leasing, Software-as-a-Service) shall not be permitted, unless DocuWare has granted Customer its prior written consent.

14. If Customer intends to export the software in a country outside the EU, Customer shall obtain all information regarding the export regulations (Bundesausfuhramt, 65760 Eschborn/Taunus) and obtain all permits, ordinances, order or regulations covering such export.
15. Customer's right to use the software and the Documentation shall lapse with immediate effect through any use that is not in strict compliance with this Section I.

Limited Warranty and Disclaimer

1. DOCUWARE warrants for a period of ninety (90) days from delivery of the Software to Licensee (save where the domestic law requires a different period, in which case the different period will apply) that such Software, as delivered, will be free from defects in the media and will substantially conform to the specifications in the Documentation. In the event of non conformance of the Software, Licensee shall promptly notify DOCUWARE and provide DOCUWARE with all available information in written or electronic form so that DOCUWARE can reproduce the Error.

DOCUWARE's sole obligation is to undertake reasonable commercial efforts to correct the Errors reported to DOCUWARE in writing or in electronic form during the warranty period. DOCUWARE'S SOLE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY WITH RESPECT TO BREACH OF THE FOREGOING LIMITED WARRANTY WILL BE LIMITED TO ERROR CORRECTION OR PRODUCT REPLACEMENT, OR IF NEITHER IS IN DOCUWARE'S OPINION COMMERCIALY FEASIBLE, REFUND OF THE LICENSE FEE RECEIVED BY THE DOCUWARE VENDOR FROM LICENSEE FOR THE SOFTWARE THAT DOES NOT CONFORM WITH THE FOREGOING WARRANTY.

2. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, THE DELIVERABLES ARE LICENSED "AS IS," AND DOCUWARE SPECIFICALLY DISCLAIMS, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE DELIVERABLES. DOCUWARE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.

Government Matters

1. Licensee agrees and certifies that none of the Deliverables will be exported or re-exported outside the United States and/or the European Union except as authorized and as permitted by the laws and regulations of the United States, Israel and the European Union.

2. If Licensee is acquiring any Deliverable under this Agreement on behalf of any unit or agency of the United States Government, then Licensee will notify DOCUWARE in writing prior to delivery of any such materials and will obtain the Government's agreement as follows:

- (i) if the Software and Documentation are being supplied to the Department of Defense ("DOD"), they are classified as "Commercial Computer Software" and "Commercial Computer Software Documentation", and pursuant to DFARS Section 227.7202, the Government is acquiring only those rights specified in this Agreement; and
- (ii) if the Software and Documentation are being supplied to any unit or agency of the United States Government other than DOD, they are classified as "Commercial Computer Software" and "Commercial Computer Software Documentation", and pursuant to FAR Section 12.212, the Government is acquiring only those rights specified in this Agreement.

Proprietary Information

1. Licensee shall hold the Software, the Documentation, and the License Key and any and all features and know how, including information relating thereto, ("Confidential Information") confidential and shall not disclose such Confidential Information in whole or in part to any third party other than to Licensee employees whose job performance requires access to such Confidential Information in pursuance of this Agreement. Licensee shall take all reasonable steps to protect all Confidential Information from

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unauthorized or inadvertent disclosure or unauthorized use, including but not limited to all steps that Licensee takes to protect information that Licensee considers proprietary, trade secret or confidential.

2. Notwithstanding the foregoing, Licensee's confidentiality obligations hereunder with respect to the Confidential Information shall not extend to information which Licensee can demonstrate: (i) is or has become generally available in the public domain through no fault of Licensee or any third party having apparent authority to act for Licensee; (ii) is rightfully obtained by Licensee from a third party without confidentiality obligations as to use and disclosure; or (iii) is shown by written record to have been known or available to Licensee without confidentiality obligations as to use and disclosure prior to Licensee's receipt of such Confidential Information from DOCUWARE.

3. Notwithstanding the foregoing, the Parties acknowledge and agree that Licensee's confidentiality obligations are governed by the provisions of the Maine Freedom of Access Act.

General Provisions

1. This Agreement will be governed by and construed in accordance with the laws of the State of Maine, United States. Exclusive legal venue for all disputes arising out of the Agreement shall be the courts of Maine.

2. Neither this Agreement nor any rights or obligations hereunder shall be assignable or otherwise transferable, in whole or in part, by either party without the prior written consent of the other party, except for an assignment of this Agreement in its entirety to a party that acquires all of the assets, equity and operations of either party hereto, provided that prior written notice of any such assignment is provided to the other party and that the assignee and assignor in such assignment shall promptly execute all documents reasonably required by the other party to confirm the assignment.

3. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

4. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

5. The prevailing party in any action to enforce the Agreement shall be entitled to recover costs and expenses including, without limitation, reasonable attorneys' fees.

The parties agree that a material breach of this Agreement adversely affecting DOCUWARE's Intellectual Property Rights in the Software or Documentation would cause irreparable injury for which monetary damages would not be an adequate remedy and DOCUWARE shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.

Limited Liability

1. DOCUWARE'S TOTAL LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE LICENSE FEE RECEIVED FROM LICENSEE FOR THE SOFTWARE INVOLVED.

2. [Reserved]

3. UNDER NO CIRCUMSTANCES, SHALL DOCUWARE BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE USE OF THE DELIVERABLES, HOWEVER CAUSED, (WHETHER ARISING UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE); OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. THE LIMITATIONS ON DOCUWARE'S LIABILITY SET FORTH IN THIS SECTION SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY OF THE LIMITED REMEDIES AGAINST DOCUWARE.

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

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

☒ **United States. Please identify state: Maine, Connecticut
and/or New York**

☐ **Other. Please identify country: _____**

Notification of Changes to the Information

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

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RIDER I
INFORMATION TECHNOLOGY
CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

It is essential and critical that all Information Technology (IT) contractors/agents working with the State of Maine Office of Information Technology (and other State of Maine agencies which have access to systems, files, data, or documents) realize that many of these elements contain information relating to either Federal or State data, much of which is confidential in nature. For example, Maine Revenues Services, the Department of Human Services, Motor Vehicle, the Bureau of Employee Relations, to name only a few State of Maine agencies, are regulated by Federal and/or State laws pertaining to disclosure of information.

Therefore, it is essential that all information technology contractors/agents working with the State of Maine agree to recognize and conform to the following policies:

1. No contractor/agent shall disclose information relating to any data or information file accessed, viewed, provided by the State of Maine or otherwise entrusted to his/her keeping.
2. No form of data – source documents, input, hard copy, magnetic tape or disk, or other media – shall be removed from the State of Maine’s immediate possession, by anyone, without written authorization by the Chief Information Officer, Chief Technology Officer, or Director of the Agency Information Technology Applications area.
3. All data developed, accessed, viewed, or provided by the Office of Information Technology, or Agency Information Technology group, is the property of the State of Maine. Requests for copies, extracted data, etc., can only be authorized by the department that originally supplied it. All authorizations granting copy, extracting, or other permission must be in writing prior to release of the information.
4. Contractors/agents will make every reasonable effort to protect the integrity and the confidentiality of data accessed by, residing with, or entrusted to them.
5. Each contractor/agent realizes and fully understands that unauthorized disclosure or removal of information in any form may result in disciplinary action, personal fines, imprisonment, or other action, resulting from due process of the law. The contractor/provider shall comply with the Maine Public Law, Title 10, Chapter 210-B (Notice of Risk to Personal Data Act)
6. Any contractor/agent who suspects that the integrity or confidentiality of any information entrusted to them or the Office of Information Technology/Agency IT unit has been compromised is responsible for immediately notifying the State of Maine Enterprise Information Technology Security Director, Chief Information Officer, or Agency Security Officer.

ALL INFORMATION TECHNOLOGY CONTRACTORS/AGENTS HAVING ACCESS TO INFORMATION SUPPLIED BY STATE OF MAINE INFORMATION TECHNOLOGY UNITS ARE REQUIRED TO READ AND SIGN A COPY OF THIS AGREEMENT, INDICATING ACKNOWLEDGMENT AND UNDERSTANDING OF THE ABOVE.

Signature

Date

If the signatory of this Agreement is advised they will come in contact with Federal Tax Information (FTI) or State Tax information, go to <http://inet.state.me.us/oit/employeeinformation/MRS/index.html> and complete the form. This document is not required unless your job requirements are such that you would have reason to access to or contact with that information.

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RIDER J
DEBARMENT CERTIFICATION

Vendor Name: Docuware Corporation **Date:** _____

Certification Regarding
Debarment, Suspension and Other Responsibility Matters
Primary covered Transactions

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

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

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

Name and Title, Authorized Representative

Signature

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Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the Certification set out below.
2. The inability of a person to provide the Certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the Certification set out below. The Certification or explanation will be considered in connection with the Office of Information Technology determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a Certification or an explanation shall disqualify such person from participation in this transaction.
3. The Certification in this clause is material representation of fact upon which reliance was placed when the Office of Information Technology determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous Certification, in addition to other remedies available to the Federal Government, the Office of Information Technology may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the Office of Information Technology if at any time the prospective primary participant learns its Certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of Information Technology for assistance in obtaining a copy of these regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Office of Information Technology.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions” provided by the Office of Information Technology, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily

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excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Lists of Parties Excluded from Procurement or Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Office of Information Technology may terminate this transaction for cause or default.

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Rider K
SSA

Not used.

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Rider L

Application Deployment Certification Policy

1.0 Purpose

Any computer application must undergo a battery of tests to determine if it is suitable to be deployed into production. Based on the test results, the Chief Information Officer (CIO) makes the final determination whether the application should be placed into production.

As applications have become more complex, more interconnected, and more exposed to the external world, it has become even more important to thoroughly vet them before they are deployed into production. This policy establishes a uniform and objective battery of tests that enables the CIO to evaluate the suitability of an application to be deployed into production.

2.0 Definitions

2.1 Application Owners: With respect to the application considered for deployment, the Project Manager, Product Manager, and Executive Sponsor are jointly and collectively identified as the Application Owners. If any of the roles is vacant, the same person fulfills more than one role, or there is a difference-in-opinion with respect to this Policy among the three roles, for this Policy, the decision of the Associate CIO for Applications, will be final and binding.

2.2 Recovery Point Objective: The Recovery Point Objective is the point-in-time *to which* an application must be restored after a disaster or disruption.

2.3 Recovery Time Objective: The Recovery Time Objective is the duration-of-time *within which* an application must be restored after a disaster or disruption.

2.4 Software as a Service (SaaS): End-user application consumed from either the Public Cloud or OIT-Hosted infrastructure.

2.5 Use Case: A Use Case is a well-defined sequence of actions undertaken jointly by the user and the application that produces a predictable result of value to the user. Thus, a Use Case captures a discrete functionality of an application completely independent of the underlying implementation. Beyond the expected outcomes, a Use Case must anticipate errors, and therefore, incorporate robust error-handling and error-logging capabilities. The full set of Use Cases for an application constitutes the complete value added by that application.

3.0 Applicability

This policy applies to all applications under the purview of the CIO. This includes both new applications as well as modifications to existing applications, irrespective of hosting location (applies to both OIT-Hosted and Remote-Hosted).

4.0 Responsibilities

4.1 Application Directors: Enforce this Policy.

4.2 Application Owners: The Application Owners are responsible for executing this test battery. This certification consists of:

- The names and signatures of the Project Manager, the Product Manager, and the Executive Sponsor; and

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- A summary result (Passed/Failed/Not Applicable) and a short paragraph clarifying that summary result, for each of the tests specified below.

4.2.1 Any part of the testing required by this policy may be outsourced to a third-party without affecting the responsibility or the prerogative of the Application Owners. Irrespective of who executes a test, the Application Owners remain in charge of its execution. The Application Owners are not answerable to the third-party regarding the nature or the result of any outsourced test. Further, the third-party exclusively conveys the test results directly back to the Application Owners.

4.2.2 For OIT–Hosted applications, State personnel will generally perform any applicable application tests.

4.2.3 For Remote-Hosted applications, it is a generally a combination of vetting vendor-provided test results and State personnel performing applicable tests. Provided that vendor-provided results for a specific application test are deemed acceptable by the Applications Director and Subject Matter Experts (Enterprise Security Officer for Security, etc.), no further State personnel testing is required for that item. Should there be deficiencies, then additional testing must be conducted by either the vendor or by State personnel, until acceptable results are achieved.

4.3 Associate CIO for Applications: Owns and interprets this Policy.

4.4 Chief Information Officer (CIO): The CIO may delegate authority to certify or approve applications for deployment. Regardless of approving authority, certification of applications will be based on advice from the Director, PMO, the Associate CIO for Applications, and/or other subject matter experts.

4.5 Enterprise Security Officer (ESO): Interprets Security Test results, reviews vulnerability remediation plans, and determines pass/fail results for Security Test. The ESO may accept vendor-provided test results in lieu of OIT testing.

5.0 Directives

5.1 The following list defines the battery of application tests:

- 5.1.1 *Use Cases* Test: Ensures proper functioning of all the features of the application.
- 5.1.2 Accessibility Test: Ensures compliance with the Maine I.T. accessibility policies and standards.
- 5.1.3 Data Conversion Test: Ensures the accurate migration of appropriate legacy data.
- 5.1.4 Interfaces Test: Ensures proper functioning with all companion applications.
- 5.1.5 Security Test: Ensures the confidentiality, integrity, and availability of the application.
- Performance Test: Ensures responsiveness under projected average and peak processing loads.
- Restoration Test: Ensures full functioning of the application following an infrastructure rollback/restoration.
- Regression Test: Applies exclusively to modifications of existing applications. Ensures that the new version does not compromise existing functionality.

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- Operating Platform Test: Ensures proper functioning of the application across all combinations of relevant hardware and software components.

5.2 Brief general descriptions of the tests are provided below:

5.2.1 *Use Cases* Test: An application must have complete, stable, and up-to-date documentation of the full set of its Use Cases. Each Use Case must be executed individually, and verified that it indeed delivers as expected. Beyond individual Use Cases, Application Owners must also know which Use Cases are likely to be invoked simultaneously with one another. All such likely combinations of Use Case interactions must be tested. Finally, it is also important to test a representative sample of actual end-users performing their daily jobs holistically, using the entirety of an application. At the completion of the *Use Cases* Test, the end-users must be satisfied that the application meets all their expectations, or alternatively, that they are willing to accept any deficiencies. At the Associate CIO for Applications discretion, alternative requirements definition artifacts may be acceptable in lieu of Use Cases.

5.2.2 Accessibility Test: The application must be tested to ensure its compliance with the [State I.T. accessibility policies and standards](#)¹. The OIT Accessibility Team provides guidance and the final determination regarding testing tools, etc.

5.2.3 Data Conversion Test: It is likely that record structures and formats of the legacy application were modified as a result of the migration into the new application. It must be ensured via testing that all business-critical data survived the migration. It is left to the Application Owners discretion to determine exactly what constitutes ‘business-critical data.’ Once determined, it must be ensured that such data are accessible from the new application. Should the new application cause modifications to the existing workflows, then this step must also include testing the new workflows.

5.2.4 Interfaces Test: An application must have complete and up-to-date documentation of all the data and workflow dependencies between itself and all applications it interacts with. All interactions must be tested. Interfaces must anticipate errors, and therefore, incorporate robust error-handling and error-logging capabilities. While it is desirable to exclusively utilize the Test environments of the various applications when testing the interfaces, it may be necessary under certain circumstances to pair the Test environment of this application with other environments of companion applications, as long as such other applications participate in the interface on a read-only basis.

5.2.5 Security Test: The application must ensure the highest levels of Confidentiality (No unauthorized access), Integrity (No tampering), and Availability (No denial-of-service). All personal, medical and financial data, in motion, must be encrypted end-to-end, both inside and outside the State firewall. All personal, medical, and financial

data must be encrypted at rest in the Demilitarized Zone. Data hosted on servers inside the firewall are not subject to encryption, but data resident in portable computing devices must be encrypted at all

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times. A full vulnerability assessment and penetration test must be performed on the application. Applications should guard against standard security vulnerabilities (Weak Credentials, Injection Attacks, Buffer Overflows, Cross-site Scripting, etc.), and be designed to thwart denial-of-service attacks. Beyond these generic requirements, an application may also need to satisfy additional specific, statutory requirements, as set forth by CJIS, HIPAA, FISMA/FIPS, SOX, GLBA, CROMERR, USA Patriot Act, etc. By default, High/Critical vulnerabilities must be remediated prior to go-live, and Medium/Moderate vulnerabilities must have a remediation plan and an approved waiver prior to go live. In all cases, regardless of classification level (high, medium, low) the Enterprise Security Officer has the final word regarding which vulnerabilities require remediation and which require a remediation plan/approved waiver prior to go-live.

- 5.2.6 Performance Test: Performance testing determines the responsiveness of the application to its users, and therefore, its acceptance and adoption. The application must respond adequately under the projected average load and the expected peak load. The application must not cause unreasonable adverse impact on either network throughput or server loading. To safeguard against adverse user perception, the application must establish a two-tiered response time specification, one for data inquiry/lookup, and another for data modification transactions, assuming Ethernet or broadband connectivity end-to-end. For performance testing, the application may consider using automated tools that simulate user behavior, including simultaneous and staggered loading. Beyond response times, other aberrations that must be investigated include non-linear performance, i.e., response time increasing disproportionately with loading, and response time varying during periods of constant load. This is a test that requires close cooperation with the *Software as a Service (SaaS)* provider and considers joint tenancy.
- 5.2.7 Restoration Test: Subsequent to a point-in-time recovery of the entire suite of application components (the client-device, the webserver, the application server, the file server, and the database server), the application must be tested to ensure that it functions exactly as expected. The restoration test should encompass all components represented on the application's architecture diagram. This test demonstrates that in the event of a catastrophic failure, all system components ("all boxes") are recoverable. Thus, unless an application is contained wholly within the database layer, all application tiers should be included in the test. Any dependencies on enterprise components outside the application should be considered for inclusion in this test, for example secure file transfer, schedulers, reporting tools, but may be considered out of scope if their restoration has been previously certified. It is left to the Application Owners discretion to determine whether the entire suite of Use Cases or a core suite of essential Use Cases will be executed in the restoration test. Either way, the purpose is to ensure that the application functions entirely to the satisfaction of its end-users following an infrastructure rollback/restoration. Equally important is to negotiate with the infrastructure provider and the Application Owners the two metrics of recovery: *Recovery Point Objective* and *Recovery Time Objective*. This is a test that requires close cooperation with the Software as a Service (SaaS) provider.
- 5.2.8 Regression Test: This test applies whenever there is a modification to an existing application, either an upgrade to the application proper, or an upgrade to an embedded, third-party component. This is to ensure that the modification did not adversely affect previously working functionality. A two-pronged regression test strategy must be undertaken. One prong is based upon the release notes and the known module dependencies. A focused test suite must be administered for those Use Cases that are affected as part of this upgrade. At the same time, the other prong, a core suite of essential

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functions must also be tested, irrespective of whether they underwent any modification as part of this upgrade. It is left to the *Application Owners* discretion to determine exactly what constitutes a ‘core suite of essential functions.’ Such a two-pronged strategy provides a safety net against inadequate release notes and incomplete knowledge of module dependencies.

- 5.2.9 Operating Platform Test: The application must be loaded, or configured, on all combinations of hardware, operating systems, network configurations, terminal emulators, browsers, etc., that are planned for production deployment, and verified that it works as expected, end-to-end, and across the board. This includes all relevant client devices, network configurations, as well as the full complement of web, application and database servers. It will not suffice to accept the product vendors’ compliance statements in lieu of actual testing. A pre-production environment is often different from the production environment. The extent of such variance could be subtle, e.g., the pre-production environment could be Oracle on Windows, whereas, the production environment could be Oracle on AIX. Nonetheless, the application must be tested under Oracle on AIX prior to its deployment. The same holds for alternative network configurations, terminal emulators, browsers, etc. The consensus determination of the Hosting and Application Director provides the final word as to what extent this can be fulfilled in practice.

6.0 Document Information

Initial Issue Date: September 22, 2010

Last Revision Date: August 15, 2018– To update Document Information.

Point of Contact: Policy Administrator, OIT, Enterprise.Architect@Maine.Gov Approved By:
Chief Information Officer, OIT

Legal Citation: [Title 5, Chapter 163: Office of Information Technology](#)² Waiver
Process: See the [Waiver Policy](#)³.

¹ <http://www.maine.gov/oit/accessibility/policy>

² <http://legislature.maine.gov/statutes/5/title5ch163sec0.html>

³ <http://maine.gov/oit/policies/waiver.pdf>

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Rider M Web Accessibility and Usability Policy

1.0 Purpose

- 1.1 It shall be the policy of the State of Maine that information and services on Maine State Government web sites is designed to be accessible to people with disabilities.
- 1.2 Maine State Government is committed to the Guiding Principles of Universal Access to Information. This commitment is currently reflected in the existing Computer Applications Program Accessibility Standard¹, adopted in 1998. In view of enacted legislation, Title 5 MRSA~54, requiring forms to be available on the Internet; this document sets forth additional standards to insure the accessibility of Maine State Government web sites.
- 1.3 All citizens and employees, including those who have disabilities, have a right to access Maine's information resources and to that end Maine State Government's facilities, technologies, and services that are sources for information must be designed to provide universal access.
- 1.4 Compliance with the following set of standards will benefit not only our citizens with disabilities but will also provide an additional benefit to those users who require keyboard access or use text-based browsers, low-end processors, slow Internet connections and/or no multi-media capabilities on their computer. It also enhances access to Maine websites by technologies, such as smart phones, tablets and other devices with Internet connectivity.

2.0 Applicability

- 2.1 This Policy applies to all web content published by all Executive Branch and semiautonomous state agencies. It is intended for all web authors, developers, and content contributors creating or maintaining web pages for the State. The basic concepts should be understandable by anyone with a general familiarity with web technologies. Knowledge of Hypertext Markup Language (HTML) and related web languages will help in fully understanding the Implementation Guidelines. As the technology evolves, this Policy may be amended to ensure consistency in the use of technologies by state employees.
- 2.2 All Federal and State Statutes and Policies apply including:
 - Section 508 of the Rehabilitation Act Standards²
 - Americans with Disabilities Act Regulations³
 - Maine Human Rights Act⁴
 - Accessibility Policy on Effective Electronic Communications⁵
 - Information Security Policy⁶
 - Maine State Archive - Record Retention Schedules⁷

3.0 Responsibility

- 3.1 **Agency:** Agencies are directly responsible and accountable for providing equal access to information and services published through their web sites. This responsibility is not affected by waivers from some of the specifics of this Policy.
- 3.2 **Chief Information Officer (CIO):** The CIO is responsible for enforcing this Policy. [Title 5, Maine Revised Statutes, Chapter 163 §1973⁸](#), Section 1, Paragraph B authorized the Chief Information Officer to “set policies and standards for the implementation and use of

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information and telecommunications technologies, including privacy and security standards and standards of the Federal Americans with Disabilities Act (ADA), for information technology.”

4.0 Directives

Guidelines and Principles

4.1 The implementation Guidelines contained herein are necessarily technology-dependent and will be updated as technologies evolve and change. The web technologies considered the current standards as of this version include:

- Hypertext Markup Language (HTML) 5
- Hypertext Markup Language (HTML) 4.01
- Extensible Hypertext Markup Language (XHTML) 1.0 Transitional
- Cascading Style Sheet (CSS) Level 3, for enhanced display in supported browsers
- Cascading Style Sheet (CSS) Level 1 & 2
- Document Object Model (DOM) Level 1
- Synchronized Multimedia Integration Language (SMIL) 1.0
- JavaScript & Dynamic HTML (DHTML) - content must be available when JavaScript is disabled

Note: The use of other technologies (for example, Java, Flash) and other document formats (for example, Adobe Acrobat PDF, Microsoft Word, WordPerfect) is permissible if used in accordance with the standards outlined in this document. See Section 4.15 Embedded Objects and 4.16 Downloadable Objects for more information.

4.2 Coding

4.2.1 Use valid, standard web programming code.

What: The World Wide Web Consortium (W3C) sets and publishes standards for web programming languages including HyperText Markup Language (HTML/XHTML), and Cascading Style Sheets (CSS). Programming code is considered "valid" when it follows the rules and conventions specified in the published standards.

Why: Valid code is the foundation for accessibility. Screen readers and other assistive technologies most reliably interpret and interact with web pages that are built using valid, standard code.

How: For web pages, indicate the programming language you are using by starting your code with a standard document type declaration, such as:

```
<!DOCTYPE html PUBLIC "-//W3C//DTD XHTML 1.0  
Transitional//EN" "http://www.w3.org/TR/xhtml1/DTD/xhtml1-transitional.dtd">
```

See the full list of [W3C Recommended Document Type Declarations](#)⁹. Use the [W3C HTML Validation Service](#)¹⁰ to check your code.

Ref: WCAG 1.0 3.2, 11.1, 11.2; WCAG 2.0 4.1.1

4.2.2 Use appropriate markup to convey document structure.

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What: HTML includes "markup" (programming code) to identify the structural elements of a document. For example, <p> identifies a paragraph and <h1> identifies a heading.

Why: Screen readers use structural information to help make reading more efficient. For example, most screen readers can skip from heading to heading, announce the number of items in a list, and identify the current row and column in a data table.

How: Identify headings, paragraphs, lists, quotations, etc., using the appropriate markup instead of relying solely on formatting. For example, use <h1> tags to identify the top-level heading rather than simply making its text large and bold. Do not misuse structural markup for formatting effects, such as using <blockquote> to indent a paragraph. Use Cascading Style Sheets (CSS) for formatting.

Ref: WCAG 1.0 3.5, 3.6, 3.7, 5.4; WCAG 2.0 1.3.1

4.2.3 Use style sheets for formatting whenever possible.

What: Cascading Style Sheets (CSS) is a formatting language designed to complement HTML. While HTML is designed to identify a document's structure, CSS is intended for formatting and presentation. (Pages must be usable and function properly when CSS is not supported. CSS Level 2 is recommended, but it must be backward compatible.)

Why: In general, users can most easily override formatting settings made using CSS. The use of CSS for formatting also tends to facilitate the proper use of HTML to identify document structure.

How: See the W3C's Cascading Style Sheets site¹¹ for specifications, tutorials, and resources.

(Note: Some older web browsers, notably Internet Explorer 3 and Netscape 4, have problematic support for CSS. Be sure to test pages using CSS in multiple browsers.)

Ref: WCAG 3.3

⁹ <http://www.w3.org/QA/2002/04/valid-dtd-list.html>

¹⁰ <http://validator.w3.org/>

4.3 Text

4.3.1 Use text to display text, unless formatting that cannot be achieved with CSS is required.

What: Web developers often use images of text to achieve a specific style, size, or special effect.

Why: Users with limited vision rely on the ability to enlarge text or choose enhanced color combinations. However, most web browsers cannot change the size and color of images.

How: Whenever possible, use actual text instead of images of text. Cascading Style Sheets (CSS) can be used to achieve specific sizes, colors, or effects. Text that requires exact formatting, such as logos and/or other branding elements, are appropriate exceptions.

Ref: WCAG 1.0 3.1; WCAG 2.0 1.4.5

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4.3.2 Use relative sizes for fonts.

What: Font sizes can be set using "absolute" or "relative" units of measurement. Absolute units, notably pixels (px), points (pt), and inches (in), are based on fixed physical measurements; "relative" units, such as percentages (%) or keywords (e.g., small, medium, or large) are based on the user's default font size.

Why: Users with limited vision often rely on the ability to enlarge text. Most web browsers allow users to easily change the size of text that has been set with relative units (or not set at all). Using absolute font sizes generally makes it more difficult for users to change text size to meet their needs.

How: Set font sizes using relative measurements or avoid setting font sizes altogether. **Ref:**

WCAG 1.0 3.4; WCAG 2.0 1.4.4

4.3.3 Identify the language of text.

What: HTML uses the lang attribute to specify language in a web page. It can be set for any HTML element.

¹¹ <http://www.w3.org/Style/CSS/>

Why: Words written in foreign languages can be unintelligible when spoken by a screen reader. Most screen readers are able to pronounce words in their appropriate language if it is specified.

How: Use the lang attribute on the <html> element to identify the primary language of each document, for example, <html lang="en">, for English. Use the lang attribute on

 or other elements to identify words or phrases in other languages. For example, a Spanish phrase within an English document could be coded as: se habla español.

Ref: WCAG 1.0 4.1, 4.3; WCAG 2.0 3.1.1, 3.1.2

4.3.4 Use images instead of "ASCII art."

What: "ASCII art" is images created using special arrangements of text characters and symbols. For example, ":-)" is often used to create a smiley face, and "->" is often used as an arrow.

Why: Screen readers read most ASCII art literally, which can be extremely confusing. For example, ":-)" reads as "colon dash right parenthesis" and "->" as "dash greater than."

How: Use images with appropriate alternate text instead of ASCII art. **Ref:** WCAG

1.0 1.1; WCAG 2.0 1.1.1; 508 a

4.4 Colors

4.4.1 Do not convey information with color alone.

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What: Color is often used to indicate special functions or status. For example, required form fields are frequently indicated with red labels.

Why: Users with blindness, limited vision, or color-blindness may miss information presented with color.

How: Whenever color is used as an indicator, use a non-color-based indicator as well. For example, required form fields could be identified with an icon (an image with appropriate alternate text) in the label, as well as with color.

Ref: WCAG 1.0 2.1; WCAG 2.0 1.4.1; 508 c

4.4.2 Use contrasting foreground and background colors.

What: Web authors can set specific colors to be used for foregrounds (text) and backgrounds. Sometimes images are used as backgrounds.

Why: Users with limited vision or color-blindness may have difficulty reading text that is similar in color to its background.

How: For text, use dark colors on light backgrounds, or vice versa. Avoid combinations of red and green as well as busy background images. Text must have a contrast ratio of at least 3:1.

Ref: WCAG 1.0 2.2; WCAG 2.0 1.4.3

4.5 Images

4.5.1 Provide appropriate "alternate text" for all images.

What: The HTML image element () includes an "alternate text" attribute (alt) that is used to provide text that can be substituted when the image itself cannot be displayed. Alternate text is meant to be a concise replacement for an image and should serve the same purpose and convey the same meaning.

Why: Individuals who are blind cannot perceive information presented in images; screen reading software reads alternate text instead.

How: ALL images must have appropriate alternate text. As a rule of thumb, consider what you might say if you were reading the web page to someone over the telephone. You do not need to include the words "image of" or "graphic of."

Specifically:

- For images that contain words or letters - use alternate text that includes the same words or letters.
- For images links - use alternate text that identifies the link's destination or function. You do not need to include the words "link to."
- For images that are invisible, purely decorative, do not convey meaning, or are completely redundant with text that is already on screen - use alt="" (empty string) to indicate that the image can be safely ignored by a screen reader.

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- For CAPTCHA images, use alt text to indicate that the image is being used for CAPTCHA and provide an alternative test in a non-visual medium (e.g., an audio file).

Ref: WCAG 1.0 1.1; WCAG 2.0 1.1.1; 508 a

4.5.2 Provide full descriptions for graphs, diagrams, and other meaningful images.

What: "Meaningful" images are images that convey more information than can appropriately be expressed as alternate text.

Why: A full description allows a user who cannot see or understand a meaningful image to receive the same information as a sighted individual.

How: Present a full description of a meaningful image either on the page on which the image appears or through a link immediately preceding or following the image. Use alternate text to provide a concise name for the image. For example, the alternate text of a graph should state its title and the full description should summarize its trends and/or present a table of its data.

Note: The longdesc attribute of the element can also be used to provide a link to a full description. Because longdesc it is not yet supported by most web browsers, it should not be used as the only method of providing a full description.

Ref: WCAG 1.0 1.1; WCAG 2.0 1.1.1; 508 a

4.6 Image Maps

4.6.1 Provide alternate text for each area in client-side image maps.

What: Image maps are images divided into multiple "areas," with each area having its own hypertext link.

Why: Just as images must have alternate text, each area of an image map must also have appropriate alternate text for use when the image is not displayed.

How: Use alternate text that indicates the function or destination of the link for each area of a client-side image map. The image itself should have alternate text that indicates the overall function of the image map.

Ref: WCAG 1.0 1.1; WCAG 2.0 1.1.1; 508 a

4.6.2 Use client-side image maps instead of server-side image maps unless areas cannot be defined with available shapes.

What: While client-side image maps and server-side image maps look and operate similarly, they are technically very different. Because of the way server-side image maps work, all information about the image and links is stored at the web server and is not available to the user's web browser or assistive technology.

Why: Screen readers cannot identify or read the separate areas or links within server-side image maps.

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How: Whenever possible, use client-side image maps instead of server-side image maps. If server-side image maps must be used, provide an accessible alternative that includes the same content and functionality. In cases where it is impossible to create an equivalent accessible version, such as with some geographical imaging and mapping systems, exceptions may be necessary.

Ref: WCAG 1.0 1.2, 9.1; 508 e, f

4.7 Audio

4.7.1 Do not convey information with sound alone.

What: It is possible to use sound for a variety of purposes, including presenting warning signals, cues, or verbal instructions.

Why: Users who are deaf or hard of hearing may miss information provided only through sound.

How: Whenever significant information is provided by sound, include a visual indicator that provides the same information as well.

Ref: WCAG 1.0 1.1; WCAG 2.0 1.1.1, 1.2.1; 508 a

4.7.2 Do not automatically play audio.

What: It is possible for a web page to automatically play sound or music when it loads.

Why: Background sounds or music can make it difficult or impossible for screen readers user to hear their screen readers.

How: Do not automatically play audio for more than 3 seconds. Provide a means for users to start audio playback when they desire (for example, a "play" button).

Ref: WCAG 2.0 1.4.2

4.7.3 Provide text transcripts for audio containing speech when it is provided to the public and/or made available to employees.

What: "Audio containing speech" includes audio recordings or live broadcasts of speeches, seminars, conferences, etc. A text transcript is a word-for-word written record of the spoken content of such an event.

Why: Individuals who are deaf or hard of hearing may require text transcripts to access audio information.

How: Provide a link to an HTML or text transcript of any audio presented on a web site. Transcripts should be posted at the same time the audio is made available.

Communication Access Realtime Translation (CART) providers can transcribe live events.

Ref: WCAG 1.0 1.1; WCAG 2.0 1.1.1, 1.2.1; 508 a

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4.8 Multimedia

- 4.8.1 Provide synchronized captions for all multimedia that contains essential auditory information when it is provided to the public and/or made available to employees.

What: Multimedia generally refers to recorded or live media containing both video and audio tracks. Captions are essentially a text transcript of the audio synchronized with the audio/video tracks of the presentation.

Why: Individuals who are deaf or hard of hearing may require captions to access the audio information in multimedia.

How: Whenever possible, video should be posted using the accessible resources provided by the Maine State Media Gallery. Agencies can subscribe to the service at <http://media.maine.gov/cgi-bin/signup>. 3rd party video services, such as YouTube, are allowed but are required to post content with synchronized captions which have been manually evaluated for accuracy and if necessary updated to appropriately reflect the audio and visual content of the video.

Ref: WCAG 1.0 1.4; WCAG 2.0 1.2.2, 1.2.4; 508 b

- 4.8.2 Provide audio descriptions for all multimedia that contains essential visual information when it is provided to the public and/or made available to employees.

What: Audio descriptions are verbal descriptions of the actions and images displayed in a video that are inserted during pauses in the regular dialogue or audio track.

Audio descriptions are only necessary if significant information that is presented visually is not discernable from the dialogue or audio track.

Why: Individuals who are blind or low-vision may require audio descriptions to access the visual information in multimedia.

How: Carefully consider whether audio descriptions are necessary to present the significant information of a multimedia recording. Many speech-intensive events, such as speeches, lectures, or conferences, do not contain essential video and, therefore, do not need audio description. When necessary, audio descriptions are usually best implemented by a professional "audio describer."

Ref: WCAG 1.0 1.3; WCAG 2.0 1.2.3, 1.2.5; 508 b

4.9 Animation

- 4.9.1 Provide a means of pausing any moving, blinking, scrolling, or auto-updating information.

What: Animated graphics, Flash, Java, <blink> tags, <marquee> tags, and other techniques are often used to create a variety of animated effects.

Why: Some users with disabilities are not able to read text that is moving. Animation can be distracting to users with visual or cognitive disabilities.

How: Avoid animation and movement unless it provides significant additional information. If animation is used, provide a means of pausing the animation.

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Ref: WCAG 1.0 7.1, 7.2, 7.3; WCAG 2.0 2.2.2

4.9.2 Do not include content that flashes faster than 3 times per second.

What: Animated graphics, Flash, Java, <blink> tags, and other techniques can be used to cause content to flash.

Why: Flashing faster than 3 times per second can trigger epileptic seizures. How: Do not include content that flashes faster than 3 times per second.

Ref: WCAG 1.0 7.1; WCAG 2.0 2.3.1; 508 j

4.10 Links

4.10.1 Ensure that links are understandable out of context.

What: A link is understandable out of context when it clearly indicates its destination or function without requiring additional information.

Why: Screen reader users often "tab" through links (skip from link to link by pressing the Tab key) to "scan" a page. Most screen readers also offer a "links list" feature to help speed the process of navigating to specific links. Links that are not understandable out of context, such as "click here" or "more," make these techniques much less efficient. Some screen readers can be configured to read link title attributes instead of link text, however most currently read only link text by default.

How: Use link text that is clear and unambiguous. Link text should usually match the title of the page to which the link points. Ensure that links that point to the same URL use the same link text, and that links that point to different URL's use different link text. If title attributes are used, repeat the text of the link as the beginning of the title, followed by the additional information.

Note: Portions of links may be hidden visually but revealed to assistive technologies using a style such as:

```
.invisible { position: absolute; left: -10000px; width: 1px; height: 1px; overflow: hidden; }
```

Ref: WCAG 1.0 13.1; WCAG 2.0 2.4.4

4.10.2 Provide a means of skipping past repetitive navigation links.

What: Navigation links are the lists or "menus" of links to all the sections of a site that are often repeated on every page.

Why: Because navigation links are typically placed at the beginning (top left) of pages, screen reader users must read through all the navigation links before reaching the main area of the page. Individuals who use a keyboard instead of a mouse similarly must tab through all the navigation links before reaching the main area of the page.

Providing a means of skipping these links can significantly improve efficiency and usability for screen reader and keyboard users.

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How: Provide a link at the beginning of navigation lists that points to a target at the beginning of the main content area of the page. This link must be visible to screen reader and keyboard users, but can be hidden from other users, e.g.:

```
<style type="text/css"> a.skipnavigation { position: absolute; left: -10000px;
} a.skipnavigation:focus, a.skipnavigation:active { position: static; left: 0; } </style>

<a href="#content" class="skipnavigation">Skip to Content</a>

<a id="content"></a>
```

Ref: WCAG 1.0 13.6; WCAG 2.0 2.4.1; 508

4.10.3 Avoid using small links.

What: The size of the "clickable" area of a link is limited to the size of the image or text that makes up the link.

Why: Mouse-users with limited fine motor control may have difficulty pointing to and clicking on links that are small, especially if the links are close together.

How: Make sure that images used for links are reasonably large, preferably 16 pixels by 16 pixels or larger. Use standard or enlarged font sizes for text links, and avoid using text links that are shorter than 4 characters in length. Avoid placing small links close together.

Ref: n/a

4.10.4 Ensure that same-page links move keyboard focus as well as screen focus.

What: Same-page links are links that target another location on the same page. The target is usually indicated with a "named anchor" (e.g.,). When a same-page link is clicked, the screen should scroll and keyboard focus should move to the target location on the page.

Why: Users with physical or visual impairments may not be able to use a mouse. Same-page links can enable these users to more quickly and efficiently move about a page. Unfortunately, Internet Explorer 5, 6 & 7 do not reliably move keyboard focus to the target of same page links.

How: To ensure that same-page links work correctly in Internet Explorer 5, 6 & 7, set tabindex="-1" on same-page link targets.

Ref: WCAG 2.0 2.1.1

4.11 Forms

4.11.1 Provide labels or titles for all form fields.

What: HTML forms include "fields" such as text boxes (<input type="text">), check boxes (<input type="checkbox">), radio buttons (<input type="radio">), and drop-down lists (<select>). Each field is typically identified by a text label positioned above, before, or below the field. In HTML, labels are identified using the <label> tag.

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Why: Screen readers cannot always determine which label belongs to which field based on positioning alone. Proper use of the HTML <label> element and/or title attribute makes this association clear.

How: Use a <label> element whenever possible to identify each form field's label. Set the label element's "for" attribute to match the corresponding field's id, for example:

```
<label for="fieldId">Label Text:</label> <input id="fieldId" name="fieldId" />
```

Add a title attribute to any form field that cannot be associated with a <label>. Because screen readers typically recognize either the <label> or the title (not both), the title must provide the full label, and a <label> should not be associated with the field.

For buttons (<input type="submit|reset|button">), use the value attribute to provide a label; for image buttons (<input type="image">), use the alt attribute for the label.

Ref: WCAG 1.0 12.4; WCAG 2.0 1.3.1, 2.4.6, 3.3.2; 508 n

4.11.2 Position labels as close as possible to form fields.

What: Using certain layout techniques, form labels are not always positioned immediately next to their fields.

Why: When screen magnification software enlarges a web page it also reduces the field of view. If form field label is positioned far away from its field, it may be impossible for a screen magnifier-user to view both the field and the label at the same time.

How: Position labels immediately adjacent to fields, preferably in standard locations, such as on the left or above text boxes and list boxes and on the right of checkboxes and radio buttons.

Ref: WCAG 10.2; 508 n

4.11.3 Ensure that form fields are in a logical tab order.

What: Screen reader and keyboard users move between form fields (and links) using the Tab key. The order in which form fields receive focus is called the "tab order." By default, the tab order follows the order in which elements appear in a page's HTML code.

Why: Depending on the design and layout of a page, the tab order may not match the visual (or logical) order of fields on a form. Reading fields out of their intended order can be disorienting for a screen reader or keyboard user.

How: Make sure that fields appear in logical order in the HTML code or use the tabindex attribute on each field to set the appropriate order.

Note: Any element with a positive tabindex will come before all elements without tabindex in the tab order. As a result, tabindex must usually be applied to all or none of the focusable elements on a page.

Ref: WCAG 1.0 9.4; WCAG 2.0 2.4.3; 508 n

4.11.4 Avoid placing non-focusable text between form fields.

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What: Special instructions for completing form fields may be listed after or between the fields to which they apply. Usually, this text is non-focusable, that is, it does not receive focus when a user tabs through the form fields.

Why: When filling out a form, screen readers typically use a special "forms mode" in which they interact only with focusable elements, including form fields, associated labels, buttons, and links. In "forms mode," screen readers do not read non-focusable text.

How: Instructions should be given within field labels if possible. If instructions are too long to fit within labels, they should be provided in an instructions section before the beginning of the form. If neither of these approaches works, consider using a technique to make the text elements focusable.

Note that disabled form fields (disabled="disabled") are non-focusable; fields may be made read-only (readonly="readonly") to keep them focusable.

Ref: 508 n

4.11.5 Provide legends for groups of form fields.

What: In some cases, several form fields may need to be grouped together. For example, a set of radio buttons may provide different "answers" to a single "question."

Why: Screen readers need to be able to read the group name or "question" in addition to each field's individual label.

How: If possible, group related fields within a <fieldset> element and provide the group name or "question" in the fieldset's <legend>. If a fieldset cannot be used, apply a title attribute to each field in the group including the group name and the field's label. Because screen readers typically recognize either the <label> or the title (not both), the <label> elements should not be associated with their fields when using this technique. Also note that groups of radio buttons (and sometimes checkboxes) can usually be replaced by a single drop-down list or list box (<select>) with the "question" as the <label> and the "answers" as <option> elements.

Ref: WCAG 1.0 12.3; WCAG 2.0 1.3.1, 2.4.6, 3.3.2; 508 n

4.11.6 Ensure that text in form fields can be enlarged.

What: Most web browsers allow users to easily adjust the size of text on a page.

Why: Users with limited vision often rely on the ability to enlarge text. However, Internet Explorer 5, 6 & 7 do not change the size of text within form fields to match settings selected from the View, Text Size menu.

How: To ensure that text in form fields can be easily resized in Internet Explorer 5, 6 & 7, include a style rule such as the following:

input, select, textarea, button { font-size: 100%; } Ref: WCAG 2.0

1.4.4

4.12 Data Tables

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4.12.1 Identify a header cell for each column and row in simple data tables.

What: In HTML, the table element (`<table>`) is used to display data. "Simple" tables have a uniform number of columns and rows. Table header cells (`<th>`) are used to provide a label for each row and column.

Why: A screen reader can use table headers to provide row and column information while a user explores the data cells within a table.

How: Use `<th>` elements with `scope="col"` (for column headers) or `scope="row"` (for row headers) to identify column and row header cells. The cell that contains the most uniquely identifying information for the column or row should be the header; usually, this should be the first cell of each column and row. Do not include unnecessary columns or rows for formatting.

Ref: WCAG 1.0 5.1; WCAG 2.0 1.3.1; 508 g

4.12.2 Identify relationships in complex data tables using id and headers attributes.

What: Tables become complex when they have "spanned" columns or rows, multiple layers of headers, or are divided into multiple sections. The `id` and `headers` attributes can be used to associate data cells with multiple row and column headers in complex data tables.

Why: Modern screen readers can use the information provided with `id` and `headers` attributes to interpret relationships in complex tables.

How: Whenever possible, simplify complex tables by re-arranging or dividing them into separate tables. If a table cannot be simplified, use a unique `id` attribute on each header cell, for example: `<th id="header1">`, and a `headers` attributes on each data cell to list the `id` attributes of header cells that it relates to, for example: `<td headers="header1 header2 header3">`. Do not include unnecessary columns, rows, `colspans`, or `rowspans` for formatting.

See [W3C's "Tables in HTML Documents"](http://www.w3.org/TR/html401/struct/tables.html)¹² for more information on how to markup complex tables.

Ref: WCAG 1.0 5.2; WCAG 2.0 1.3.1; 508 h

4.12.3 Provide summary attributes for data tables.

What: The `summary` attribute provides the name and, possibly, a brief description of a table's content and structure. The summary is not displayed on the screen, but is read by most screen readers.

¹² <http://www.w3.org/TR/html401/struct/tables.html>

Why: By reading a table's summary, a screen reader-user can quickly decide whether to take the time to read a table in detail; it also helps to let the screen reader-user know what to expect regarding the table's structure.

How: Provide the name of the table in the `summary` attribute of the `<table>` tag. A brief description of the content and structure of the table may also be included in the summary. (No summary should be used if a table is used for layout.)

Ref: WCAG 1.0 5.5; WCAG 2.0 1.3.1

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4.13 Frames

4.13.1 Provide concise, unique, and understandable titles for frames.

What: HTML frames and iframes are used to divide web pages into separate areas, each displaying a separate web page. Each frame is identified by its title attribute and each page contained within a frame is identified by its <title> element.

Why: To navigate pages with frames, users who are blind must be able to identify the different frames and understand the purpose of each frame. Most screen readers identify frames by speaking the title of each frame.

How: Give each frame and iframe a concise, unique, understandable title attribute that indicates the frame's function and is unique within the frameset. Do not include the word "frame." Set the <title> element of each page contained within a frame to match its title attribute or to identify the current content of that frame.

Ref: WCAG 1.0 12.1; WCAG 2.0 4.1.2; 508 i

4.14 Scripts

4.14.1 Ensure that scripted functions are usable with assistive technologies.

What: Scripting languages such as JavaScript are simple programming languages that can be used within a web browser to automate tasks and enable pages to respond to user input. Scripts are often used to dynamically show or hide the content that appears on a web page or to perform important functions, such as checking that entries in form fields are valid.

Why: Assistive technologies may interact with scripts in unexpected ways. For example, some assistive technologies may not be able to trigger some script events, and other assistive technologies may not recognize changes to content made using scripts. However, assistive technology users need to be able to access the same essential content and functionality whether scripts are fully, partially, or not supported. It is not safe to assume that users with disabilities will have scripting support turned off.

How: Whenever scripts are used, it is the responsibility of the page developer to thoroughly test using assistive technologies to ensure that all information and functionality is accessible. Testing should confirm that content is usable with system large fonts and high contrast display settings, that interface elements are focusable and operable using the keyboard, that tab and reading order are appropriate, and that all content can be identified and operated with leading assistive technology tools. If there is any doubt, err on the safe side by ensuring that the essential elements of the page do not rely on scripts.

Scripting features that are purely decorative and do not present any significant information or functionality do not need to be made accessible.

Ref: WCAG 1.0 6.2, 6.3, 6.5, 8.1; WCAG 2.0 1.3.1, 4.1.2; 508 i

4.14.2 Ensure that significant interactions can be performed with both keyboard and mouse.

What: Scripts can trigger changes when the user performs specific actions. For example, an image can change color when the mouse pointer hovers over it (i.e., the onmouseover event). Different events are triggered by either mouse or keyboard actions.

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Why: Users with physical impairments may be able to use the keyboard but not the mouse. Individuals who cannot see the mouse pointer on the screen must use the keyboard for all interactions. Scripts that can only be triggered by the mouse are not accessible to these individuals.

How: Whenever using a mouse-only event (for example, `onmouseover`, `onmouseout`) to trigger a significant script action, use the corresponding keyboard event (for example, `onfocus`, `onblur`). Ensure that scripts are attached to elements that can receive keyboard focus, such as links and form fields.

Also, make sure that keyboard events do not unintentionally trigger script actions. For example, when a keyboard user arrows through the options in a drop-down list (`<select>`), the `onchange` event fires once for each option; if a script attached to this event reloads the page (or causes some other significant change), it may be impossible for a keyboard user to operate the control.

Ref: WCAG 1.0 6.4, 9.2, 9.3; WCAG 2.0 2.1.1 ; 508 1194.21 a

4.14.3 Avoid changing focus unexpectedly.

What: Scripting can be used to move focus from one element to another, load a new page, or open a new window.

Why: Users may be disoriented by changes that they do not expect.

How: In most cases, changes to focus, location, or the current window should be initiated by a user activating (clicking) a link or button. If changes are initiated by other actions, make sure that there is an obvious cause-and-effect relationship between the action and the change. If changes are not likely to be expected, it may be necessary to provide explicit instructions to users before the changes occur.

Ref: WCAG 1.0 8.1; WCAG 2.0 3.2.1, 3.2.2; 508 1

4.14.4 Avoid changing content unexpectedly.

What: Scripting can be used to add or change content on a web page.

Why: Users, especially those using screen readers and screen magnifiers, may not notice that content has changed on a different part of the page. If changes occur in parts of the page that have already been read, the user is not likely to "back up" to find the new content.

How: In most cases, content should only be changed or added after the current point of focus in the tab/reading order. For example, if entering a value in a field causes text to appear, the text should appear after that field in the tab/reading order. It is also important to ensure that changes happen quickly enough that they are complete before the user reaches the changed element. For example, if selecting an item from a list box changes the value in a subsequent field, the change must be complete before the focus moves to the subsequent field. If content is changed above the user's focus, or if changes occur slowly enough that a user may move past the changed element before the change is complete, it may be necessary to provide an alert box or other instruction to direct the user to the changed element.

Ref: WCAG 1.0 8.1; 508 1

4.15 Embedded Objects

4.15.1 Use accessible embedded objects whenever possible.

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What: "Objects" include a variety of non-HTML technologies, such as Java and Flash, that can be embedded within web pages. These technologies require additional software to be downloaded, installed, and run before the content can be viewed or used. Embedded objects operate with their own user interfaces, which are separate and different from that of standard web pages.

Why: Because embedded objects have their own interfaces, they must be accessible in and of themselves. If essential content or functionality is presented using an object that is not accessible, it will not be usable by individuals with disabilities.

How: Check with the manufacturer and/or developer to determine if and how the technology can be made accessible.

Ref: WCAG 1.0 8.1; WCAG 2.0 4.1.2; 508 m

4.16 Downloadable Objects

4.16.1 Provide accessible HTML or text versions of non-accessible downloadable documents whenever possible.

What: Downloadable documents are often provided in formats such as Adobe Acrobat Portable Document Format (PDF), Microsoft Word, Microsoft PowerPoint, etc. Each document format has its own accessibility issues and may or may not provide appropriate techniques to address accessibility. A document is considered natively accessible if it follows the accessibility techniques for its format.

Why: Because non-HTML documents cannot implement HTML accessibility techniques, they must be accessible in and of themselves. If essential content or functionality is presented in a downloadable document that is not accessible, it will not be usable by individuals with disabilities.

How: Check with the manufacturer and/or publisher of the format of a downloadable document to determine if and how it can be made accessible. If accessibility techniques exist, ensure that the downloadable

Note: See [Adobe's Accessibility Resource Center](#)¹³ for information about PDF accessibility.

Ref: n/a

4.16.2 If a downloadable document cannot be made natively accessible, provide an accessible alternative that includes the same content and functionality.

What: If a downloadable document cannot be made natively accessible, it may be possible to provide both the original document and an equivalent accessible alternative.

Why: By providing both the original and accessible versions, the same content and functionality can be available to all users.

How: Wherever a link is provided to an inaccessible document, also provide a link to an accessible version, preferably in HTML format. Make sure that the information and functionality is completely equivalent and up-to-date. Be sure to consider whether the inaccessible version is necessary. If an accessible alternative cannot be provided electronically, provide information on how to obtain an alternate format (for example, large print, Braille, audio recording) in a timely manner.

Ref: WCAG 1.0 11.1, 11.4; WCAG 2.0 1.1.1; 508 k

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4.17 Timing

4.17.1 Notify users of time limits and provide a means to extend time if possible.

What: Some web pages, frequently those that require a user to log in, time-out after a certain period of inactivity and require the user to start over.

Why: Users with visual, physical, or cognitive disabilities may require more time than average to read and interact with a web page.

How: Provide a clear explanation of any time limits. If possible, offer the user a way to extend or remove the limits. Avoid using time limits unnecessarily.

Ref: 508 p; WCAG 2.0 2.2.1

4.17.2 Do not automatically refresh the current page.

¹³ <http://www.adobe.com/accessibility>

What: It is possible to cause web pages to automatically re-load their content on a certain interval. For example, a page containing news headlines might refresh every few minutes to present the most current items.

Why: When a page automatically refreshes, it can cause a screen reader to re-start reading from the beginning of the page.

How: Do not use `http-equiv="refresh"`. If necessary, provide a link or control to allow the user to refresh a page at his or her discretion.

Ref: WCAG 1.0 7.4, 7.5; WCAG 2.0 2.2.1

4.17.3 Avoid automatically opening new windows.

What: It is possible to cause hypertext links to open pages in a new browser window, or to automatically open additional windows when a page loads or unloads.

Why: It may not always be obvious to users, especially those with limited vision, blindness, or cognitive disabilities, when a new window has opened. It can be confusing when features such as the browser's "back" button no longer work as expected.

How: Clearly identify any links that will open new windows by providing an indication in the link text or title attributes. In more complex web sites or applications, you may want to consider allowing users to select their preference for whether links are opened in new windows or not.

Ref: WCAG 10.1

4.18 Page Layout

4.18.1 When using tables for layout, ensure that reading order is logical.

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What: HTML tables are sometimes used to lay out web pages in multiple columns and sections (instead of actually presenting data). "Reading order" refers to the order in which a screen reader would read through the table.

Why: Screen readers read through tables in the order in which cells are defined in the HTML code, which can be very different from the order that someone reading visually would follow. It is essential that the reading order match the logical flow of the document so that a screen reader user would hear the document in the same order that a visual reader would read it.

How: Avoid using tables for layout whenever possible. If tables are used for layout, check the reading order by following the order in which the table cells appear in the code. If necessary, restructure the table to achieve an appropriate reading order.

Ref: WCAG 1.0 5.3; WCAG 2.0 1.3.2

4.18.2 When using style sheets for layout, ensure that reading order is logical.

What: The positioning features of Cascading Style Sheets can be used to position elements visually almost anywhere on a web page.

Why: Screen readers read through the elements on a web page in the order in which they appear in the page code, regardless of how they are positioned using style sheets. It is essential that the reading order match the logical flow of the document so that a screen reader user would hear the document in the same order that a visual reader would read it.

How: Check the reading order by following the order in which elements appear in the HTML code. Adjust the reading order by rearranging the order in which elements are defined in the code.

Ref: WCAG 1.0 6.1; WCAG 2.0 1.3.2; 508 d

4.18.3 Avoid horizontal scrolling.

What: If a web page is wider than the window or screen in which it is viewed, most browsers will display a horizontal scroll bar and require the user to manually scroll to see the entire page.

Why: When a screen magnifier enlarges a web page, it also reduces the field of view so that the user must pan (scroll) to see the entire page. When the web page being viewed also requires horizontal scrolling, the combination can be awkward or unusable. Keyboard users may also find repetitive scrolling fatiguing and inefficient.

How: Design pages so that they can resize to fit the width of the user's browser. Use relative widths and check for horizontal scrolling using a screen resolution of 800 by 600 pixels. If scrolling cannot be avoided, place the least important content in the rightmost part of the page.

Ref: WCAG 2.0 1.4.8

4.19 Page Content

4.19.1 Use the clearest, simplest, and most concise language appropriate for a page's subject matter.

What: "Clearest, simplest, and most concise language" refers to the words and grammar used in the content of a web page. It is a subjective goal that depends on the subject matter and intended audience of each web page.

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Why: Clear and simple language is easier for all readers, and especially those with cognitive or learning disabilities. Simple language also helps individuals whose primary language is American Sign Language, which differs significantly from written English.

How: Be concise and avoid jargon. Have someone else proofread your text. Do user testing with people from your intended audience if possible.

Ref: WCAG 14.1

4.20 Alternative Accessible Versions

4.20.1 Use separate accessible versions only as a last resort.

What: Separate accessible or "text-only" versions are often offered instead of providing a single accessible site.

Why: Manually developing and maintaining a separate "text-only" version of an entire site is tremendously demanding of time and resources. In practice, "text-only" versions are rarely kept complete or up-to-date. Given advances in accessibility techniques and assistive technologies, "text-only" sites are simply not necessary in most cases.

How: Follow these standards to develop a single site that is universally accessible and efficient to maintain.

Ref: WCAG 11.4; 508 k

4.21 Contact Information

4.21.1 Provide contact information.

What: Contact information should be identified. Contact information should include email, telephone, TTY, and mailing address.

Why: Individuals with disabilities may need to report accessibility problems or request information in an alternate accessible format.

How: List accessibility contact information on the home page or contact page. Inquiries about accessibility, especially requests for materials in alternate format, need to be handled in a timely manner.

Ref: n/a

4.22 Testing

4.22.1 Test for accessibility.

What: Testing includes functional tests with assistive technology, browser and operating system functionality as well as automated testing software.

Why: Testing will determine whether accessibility has been accomplished.

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How: Use browser and operating system accessibility features and leading assistive technology software such as screen readers and magnifiers to test for functional accessibility. Use an automated testing tool to identify common accessibility problems. If possible, do user testing with people with disabilities.

Ref: n/a

5.0 References

IT Policies, Standards and Procedures¹⁴

6.0 Document Information

Initial Issue Date: May 1, 2012

Latest Revision Date: August 3, 2018 – To update Document Information.

Point of Contact: Policy Administrator, OIT, Enterprise.Architect@Maine.Gov Approved By: Chief Information Officer, OIT.

Legal Citation: [Title 5, Chapter 163: Office of Information Technology](#)¹⁵ Waiver Process: See the [Waiver Policy](#)¹⁶

¹⁴ <https://www.maine.gov/oit/policies/>

¹⁵ <http://legislature.maine.gov/statutes/5/title5ch163sec0.html>

¹⁶ <https://www.maine.gov/oit/policies/waiver.pdf>

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Rider N
State of Maine Information Technology Security Policy

Maine State Government
Dept. of Administrative & Financial Services
Office of Information Technology (OIT)

Information Security Policy

1.0 Purpose

The Information Security Policy establishes the *minimum* benchmark to protect the security of State *Information Assets* through a layered structure of overlapping controls and continuous monitoring.

State information is a valuable asset that must be secure, both at rest and in transit, and protected from unauthorized use, disclosure, modification, and destruction. Appropriate controls and procedures must be instituted to ensure that its confidentiality, integrity, and availability are not compromised.

2.0 Definitions

2.1 Agency Data Custodian: Agency official, who, based on their position, is fiduciary owner of specific Agency Information Assets. For instance, the Labor Bureau of Unemployment Compensation Director (or designee) is the Agency Data Custodian for Unemployment Compensation Information Assets, and the Health & Human Services Office of Family Independence Director (or designee) is the Agency Data Custodian for Benefits Information Assets.

2.2 Authorized User: An individual who has approved access to an Information Asset in order to perform job responsibilities.

2.3 Information Assets: Business applications, system software, development tools, utilities, hardware, infrastructure, paper records, etc.

2.4 Personally Identifiable Information (PII): information which can be used to distinguish or trace the identity of an individual (e.g., name, social security number, biometric records, etc.) alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual (e.g., date and place of birth, mother's maiden name, etc.). Source: NIST CSRC Glossary¹. Maine State law also has a more specific definition in 10 M.R.S. §13472

2.5 Principle of Least Privilege: A security principle where users are assigned the minimal access necessary to perform their job responsibilities. Access is granted for the shortest duration possible.

2.6 Privileged User: The user granted the rights that go beyond that of a typical business user to manage and maintain IT systems. Usually, such rights include administrative access to networks and/or devices. This does not include users with administrative access to their own workstation.

2.7 Rules of Behavior: Behavioral standards to facilitate information security, especially relevant to Privileged Users.

2.8 Sensitive Information: Information that has the potential to cause great harm to an individual, government agency, or program if abused, misused, or breached. Sensitive information may include PII

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and is protected against unwarranted disclosure and typically carries specific criminal and civil penalties for an individual convicted of unauthorized access, disclosure, or misuse (e.g., Federal Tax, Protected Health, Criminal Justice, or Social Security information). Protection of sensitive information usually involves specific classification or legal precedents that provide special protection for legal and ethical reasons.

3.0 Applicability

This Policy applies to all Information Assets under the purview of the Chief Information Officer (CIO), irrespective of where the Information Assets are hosted.

4.0 Responsibilities

- 4.1 The Chief Information Officer (or designee) executes this Policy for all Information Assets.
- 4.2 The Chief Information Security Officer (CISO) (or designee) owns, interprets, and enforces this Policy.
- 4.3 The *Agency Data Custodian* executes this Policy for all Information Assets under their purview.

5.0 Directives

- 5.1 **Access Authorization:** Access to any State Information Asset must be authorized by the Agency Data Custodian.
- 5.2 **Access Control:** Access to any State Information Assets must be based upon each user's access privileges. This access may be restricted by day, date, and time, as appropriate. Access privileges shall be granted based on the *Principle of Least Privilege*.
- 5.3 **Access – Non-State Entities:** OIT is responsible for analyzing the security risks whenever non-State entities access State information, and ensuring that such access is in full compliance with ALL relevant OIT policies, practices, and procedures.
 - 5.3.1 Any contract with a non-State entity involving access to State Information Assets must include an explicit provision binding the non-State entity to full compliance with ALL relevant OIT policies, practices, and procedures.
 - 5.3.2 Non-State access privilege must be based on Least Privilege Access, commencing as late as practically possible and terminating as soon as the underlying business requirement ceases to exist.
 - 5.3.3 The burden of justification rests entirely on the Agency Data Custodian, who is responsible for applying to the ESO for said access. Access is contingent upon explicit approval from the ESO, and is subject to revocation by the ESO at any time. It remains the burden of the Agency Data Custodian to apprise the ESO re: any change in business requirement and/or the status of the non-State entity.
- 5.4 **Access Rights Review:** Periodic log reviews of user access and privileges must be performed by the Agency Data Custodian in order to monitor access to State Information Assets, as well as deviations from authorized usage.

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5.5 Background Checks: OIT will comply with any Federal/State background check requirements for its employees and contractors.

5.6 Backups: Backups of all State Information Assets must be routinely created and properly stored to ensure prompt restoration, when necessary. Backups must be handled with exactly identical care and precaution as the original Information Asset itself. Recovery Time Objective (RTO) and Recovery Point Objective (RPO) must meet customer expectations on a per Information Asset basis, consistent with any applicable Federal or State regulatory requirements.

5.7 Data Classification: Agency Data Custodians must collaborate with the Chief Information Security Officer in adopting and adhering to an information classification system, the purpose of which is to ensure that all Information Assets are operated in a manner compliant with any and all applicable State and Federal regulations.

5.7.1 *High Risk:* Information Assets for which there exist legal regulations and/or penalties for disclosure. Data covered by Federal and State legislation, such as CJIS, FERPA, HIPAA, IRS 1075, or the Data Protection Act, are in this class. In general, criminal justice, health, payroll, personnel, and financial data belong in this class. Other data included in this class include information that, if compromised, would cause severe damage to the State. The Agency Data Custodian makes this determination.

5.7.2 *Restricted:* Data that may not cause severe damage to the State if it were to be compromised, but the Agency Data Custodian still desires to protect against unauthorized disclosure and/or modification. Again, the Agency Data Custodian makes this determination.

5.7.3 *Public:* Information that may be freely disseminated.

5.7.3.1 Agency Data Custodians must determine the data classification and must ensure that data is protected in a manner commensurate with its classification, consistent with any applicable federal or state requirements.

5.7.3.2 No Information Asset must be exposed to the Internet without the means to protect it in a manner commensurate with its classification.

5.8 Discipline: State and Agency-specific discipline will be executed against users who violate this Policy.

5.9 Documentation: All Information Assets must include sufficient documentation to meet any applicable Federal or State regulatory requirements, and satisfy any applicable audit and security policy requirements.

5.10 Education & Training: Information security education and training directives are identified in the Security and Awareness Training Policy and Procedures (AT-1)³. Agency Data Custodians will ensure that their Agency employees and contractors comply with any other applicable Federal/State requirements for security awareness, education, and training.

5.11 Incident Reporting: Any OIT employee or contractor that becomes aware of a *potential* security incident should immediately notify their management. Non-OIT State employees or contractors who suspect an information security incident should immediately notify OIT Customer Support (624-7700) and follow any applicable Agency-specific procedures.

Information Security Policy

5.12 Information Asset Maintenance:

- 5.12.1 All products must be fully supported by the original product vendor (or an accountable other-party). This includes "Extended Support", not just "Service Pack" or "Mainstream Support".
- 5.12.2 Any systems hosting State information must be current with all security patches.
- 5.12.3 All connections to the Internet must go through a properly secured access point provided by OIT to ensure that the State network is protected.

5.13 Interconnection Security Agreements: Specific agreements enforcing appropriate information security controls must be instituted for any information exchange among Agencies, as well as other external entities. These agreements outline the roles, responsibilities, and data ownership between the parties. At a minimum, the sender of the information must impose upon the receiver the very same stipulations that the sender is subject to vis-à-vis the information.

5.14 Malwares:

- 5.14.1 Awareness, prevention, detection, and neutralization controls must be utilized to protect State Information Assets against malwares (rogue applications that disrupt the normal functioning of computers).
- 5.14.2 Willful introduction of malwares into the State network is prohibited.
- 5.14.3 Any device that connect to the State network must be protected with an approved, licensed anti-malware that it is kept updated according to the anti-malware vendor's recommendations.
- 5.14.4 All State infrastructure Information Assets must be hardened, and logs monitored, to protect against malwares.

5.15 Passwords: Access to any State Information Asset must be through individual and unique logins, and must require authentication. By default, shared accounts must not be used. Authentication includes the use of passwords, smart cards, biometrics, challenge-response questions, or such other industry-accepted best practices. Any device used for authentication (SecurID token, etc.) is to be used by the assigned individual only, and must not be shared. Users must select, employ, and manage passwords to protect against unauthorized discovery or usage. All users of high-risk or restricted data must have a strong password, the definition of which is established and documented by OIT, considering such features as length, complexity, unpredictability, expiration frequency, etc. Credentials for empowered accounts (such as administrator, root, or supervisor) must be changed frequently, consistent with guidelines established by OIT. Credentials for empowered accounts must be modified any time the underlying system is installed, rebuilt, or reconfigured. Service accounts that do not allow login are not considered empowered accounts. All default passwords must be modified immediately post-installation. Passwords must never be stored or transmitted without first having been hashed or encrypted.

5.16 Physical Protection: Where applicable, State infrastructure Information Assets must be protected from physical and environmental threats in access controlled environments.

- 5.16.1 Both OIT and Agencies must institute appropriate measures to prevent and detect unauthorized access or damage to facilities that contain State Information Assets. Facilities that house State infrastructure Information Assets must utilize physical access controls designed to permit access by Authorized Users only.

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5.17 Remote, Mobile, and Wireless Access (Safeguarding Portable and Mobile Devices): Agencies must comply with the Remote Access methods provided by OIT when remotely accessing the State network. Agencies must comply with the Wireless Access methods⁴ provided by OIT when wirelessly accessing the State network.

5.17.1 When Agencies approve teleworking for their personnel, they must ensure that the security of State Information Assets is not compromised.

5.17.2 Agency Data Custodians will safeguard high-risk and restricted data stored on portable devices (laptops, pocket personal computers, hand-held devices, USB thumb drives, smart phones, etc.) by:

5.17.2.1 Properly classifying any data stored on personal devices

5.17.2.2 Using encryption to safeguard data and prevent unauthorized access

5.17.2.3 Requiring written authority to copy data to portable devices

5.17.2.4 Ensuring that all Agency personnel (employees and contractors) who use portable devices are aware of, and comply with this policy and any other applicable Federal or State legislation regarding data on portable devices.

5.18 **Risk Assessments:** State Information Assets will be assessed for security risks and priority risks will be promptly addressed. The Chief Information Security Officer will:

5.18.1 Ensure that applicable security tests as defined in the Application Deployment Certification Policy⁵ are performed.

5.18.2 Ensure that applicable security tests as defined in the Infrastructure Deployment Certification Policy⁶ (if OIT-Hosted), or as defined in the Remote Hosting Policy⁷ (if Remote-Hosted) are performed.

5.18.3 Authorize random and scheduled information security risk assessments to evaluate State computer devices, operating systems, and applications, including websites, for risk vulnerabilities pertaining to confidentiality, integrity, and availability.

5.18.4 Coordinate security risk assessments with the Account Manager of the agency who owns the system to minimize disruptions to operations. When the CISO identifies a potential high-risk situation, these assessments may be conducted without advance scheduling.

5.18.5 Alert the Account Manager and applicable OIT Leadership whenever a critical information security deficiency is discovered. The Account Manager serves as the communication liaison to key Agency personnel.

5.18.6 In the event of a significant security risk, at their discretion, remove the computer device or application from service until the risk is mitigated or until an approved waiver is in place.

5.18.7 Prepare and provide a report of the security risk findings to key OIT personnel, including the Account Manager. The Account Manager will handle any dissemination to the agency.

5.19 **Rules of Behavior for All Users:** All users must comply with the following standards:

5.19.1 Must not attempt to access any Information Asset for which they do not have express authorization.

5.19.2 Must not divulge remote connection methods and protocols.

5.19.3 Must not share their credentials.

5.19.4 Must not use non-standard software or equipment.

5.19.5 Must exercise caution when accessing emails, attachments, hypertext links, etc. from unknown sources.

5.19.6 Must not make unauthorized changes.

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- 5.19.7 Must not insert any removable media into a State device without ensuring that it does not contain malware.
- 5.19.8 Must not allow others to use their account or access other users' accounts.
- 5.19.9 Must comply with agency-specific procedures and protocols while transferring files. They must also report any security weakness to the appropriate agency personnel. Security weakness includes unexpected system behavior, which may result in unintentional disclosure of information or exposure to security threats.
- 5.19.10 Must not engage in activity that may degrade the performance of Information Assets, deprive an Authorized User access to resources, obtain extra resources beyond those allocated, or circumvent other security measures.
- 5.19.11 Must not download, install, or execute utilities such as password crackers, packet sniffers, or port scanners that reveal or exploit security weaknesses.
- 5.19.12 Must sign and comply with agency-specific non-disclosure and confidentiality agreements
- 5.19.13 Must adhere to additional requirements stipulated by OIT regarding personal devices.
- 5.19.14 Must not download/transfer sensitive information to any non-State device.
- 5.19.15 Must comply with supplemental rules, beyond the ones listed above, for specific systems, as needed.
- 5.19.16 System utilities will be made available only to those who have a legitimate business case for a specific utility.

5.20 Rules of Behavior for *Privileged Users*: Due to privileged access rights, these users must also comply with standards higher than ordinary users. Applies only to server-class devices.

- 5.20.1 System Administration account (i.e. 'root') access must be limited to as small a group as possible and based on the Principle of Least Privilege. For example, the 'root' account should not be used for tasks that can be completed via a non-privileged account.
- 5.20.2 Any administrators must first login as themselves (ordinary user) before escalating privileges to that of an administrator.

5.21 Session Timeout: The session activity timeout is 15 minutes. Any session that is inactive for more than 15 minutes must either log off the user or lock the session until fresh re-authentication.

5.22 Static Storage (Data at Rest): Static storage of state information outside the state firewall that contains *Personally Identifiable Information*, (or other high-risk data) must be encrypted to at least the current NIST-approved standard for encryption of static data.

5.23 Storage Media Disposal: When no longer required, ALL storage media (both fixed and removable) must be permanently scrubbed or destroyed or rendered unrecoverable in accordance with applicable State, Federal, or Agency regulations.

- 5.23.1 Media may be scrubbed by being degaussed.
- 5.23.2 Alternatively, media may be sanitized in accordance to NIST Special Publication 800-88⁸. A simple wiping method maybe implemented in the following way: Pass 1: Writes a zero and verifies the write; Pass 2: Writes a one and verifies the write; Pass 3: Writes a random character and verifies the write.
- 5.23.3 Physical destruction of media should be conducted by a qualified vendor.

5.24 Transport Security (Data in Flight): Any transmission (including E-Mail, file transfer, etc.) of *Personally Identifiable Information* (or other high-risk data) must be encrypted to at least the current

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standard for Transport Layer Security (such as NIST or FIPS or per the specific Agency's State/Federal requirements).

5.24.1 Any application that has end-users (portal-type application, etc.) requires a commercial-grade certificate. Self-signed certificates may be used for applications without end-users (device to device connectivity) if they have trusted endpoints.

5.24.2 Authentication must be conducted under an encrypted tunnel to at least the current NIST-approved standard for Transport Layer Security.

5.25 Unknown Custody Device:

5.25.1 All personnel must maintain safe custody of all State devices, including removable media (such as memory sticks).

5.25.2 When device custody cannot be verified, including a found device, it must be sent to Chief Information Security Officer (State House Station #145) for verification.

5.25.3 If, and only if, the Chief Information Security Officer green-lights the subsequent use of that found device should it be put back into State use.

5.26 Vulnerability Management: Vulnerabilities in networks, devices, and applications present a risk to State Information Assets. Vulnerability Management is the formal procedure of identifying, classifying, remediating and/or mitigating vulnerabilities. The CISO is responsible for classifying vulnerabilities. They are classified as follows:

5.26.1.1 High-Risk (Critical): Allows a remote attacker to gain administrative control.

5.26.1.2 Medium-Risk (Severe): Allows a remote attacker to gain user-level control, or to cause shutdown/reboot/instability.

5.26.1.3 Low-Risk: Unlikely to directly compromise security but might still provide a remote attacker with a springboard for privilege-escalation.

5.26.2 When a patch or known workaround is discovered, by default vulnerabilities must be handled accordingly:

5.26.2.1 High-Risk (Critical) - Within 30 days

5.26.2.2 Medium-Risk (Severe) - Within 60 days

5.26.3 While no specific timeline is listed for Low-Risk vulnerabilities, these should not be ignored. The CISO will determine whether any vulnerability (high, medium, or low) represents an escalated risk and requires more immediate attention.

5.26.4 Typically, vulnerabilities are addressed by applying vendor supplied patches. However, compensating controls can alternatively be used to address identified vulnerabilities given potential flaws in patches, potential difficulties removing flawed patches from systems, and potential scheduling issues patching production systems.

5.26.5 If utilized, compensating controls must provide the same or greater level of defense as would be attained through patching. Compensating controls can be used as an interim solution (until the next maintenance/patching schedule) or as a longer-term solution.

6.0 Document Information

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This policy replaces the Policy to Safeguard Information on Portable Computing and Storage Devices, the Standard to Safeguard Information on Portable Computing and Storage Devices, the Security Awareness Training Policy and the Policy to Govern Information Security Risk Assessments of State Computer Systems and To Ensure the Prompt Remediation of Deficiencies.

Initial Issue Date: May 1, 2012

Latest Revision Date: March 18, 2019.

Point of Contact: Enterprise.Architect@Maine.Gov

Approved By: Chief Information Officer, OIT.

Legal Citation: Title 5, Chapter 163: Office of Information Technology⁹.

Waiver Process: See the Waiver Policy¹⁰

STATE OF MAINE

GENERAL TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES UNDER BUYER PURCHASE ORDERS (BPOs) AND MASTER AGREEMENTS (MAs)

- 1. DEFINITIONS:** The following definitions are applicable to these standard terms and conditions:
 - a. The term “Buyer” or “State” shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
 - b. The term “Department” or “DAFS” shall refer to the State of Maine Department of Administrative and Financial Services.
 - c. The term “Bureau” or “BGS” shall refer to the State of Maine Bureau of General Services.
 - d. The term “Division” shall refer to the State of Maine Division of Purchases.
 - e. The term “Contractor”, “Vendor”, or “Provider” shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
 - f. The term “Contract” or “Agreement” shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.
- 2. WARRANTY:** The Contractor warrants the following:
 - a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and
 - b. That all goods and services covered by this Contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and
 - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
 - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
 - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

3. TAXES: Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

4. PACKING AND SHIPMENT: Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest

transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. DELIVERY: Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, the Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

6. FORCE MAJEURE: The State may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that 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, or 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. The State may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

7. INSPECTION: All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Division of Purchases, at its option, may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.

8. INVOICE: The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars, must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.

9. ALTERATIONS: The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreements, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

10. TERMINATION: The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.

In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

11. NON-APPROPRIATION: Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

12. COMPLIANCE WITH APPLICABLE LAWS: Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are

contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

13. INTERPRETATION: This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

14. DISPUTES: The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

15. ASSIGNMENT: None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.

16. STATE HELD HARMLESS: The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

17. SOLICITATION: The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

18. WAIVER: The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.

19. MATERIAL SAFETY: All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

20. COMPETITION: By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.

21. INTEGRATION: All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.

State of Maine Waiver of Competitive Bidding Request Form

Form Instructions: Please provide the requested information in the white boxes below. This form is to precede all contract requests that are not the direct result of a competitive bid process.

DHHS/DCM Contract Administrator:	Dawnna Pease	Office/Division/Program of Contract Administrator:	OIT/Document Management/Imaging Services – Docuware		
Est. Contract Amount:	\$0.00, Based on Usage	Contract or RQS Number:	RQS 18B 20190423*1118		
		Purchasing Maine ID:	PM-16100		
Proposed Start Date:	5-1-2019	Proposed End Date:	12-31-2023		
Vendor/Provider Name, City, State	Docuware Corporation 4 Crotty Lane, Suite 200 New Windsor, NY 12553 Vendor Code: VC0000203987				
Short Description of Good or Service:	Enterprise Document Management and Content Solution (Docuware)				
Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Procurement Services website for a period of seven consecutive calendar days.		To be completed by the Division of Procurement Services Posting dates on Division of Procurement Services website: From: 4/26/2019 To: 5/2/2019			
Notice of Intent to Waive Competitive Bidding Number:		NOI# 0420190505			
1. Statutory Justification State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification which applies to this specific request.					
A.	The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;				
B.	The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services;				
	<i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the Governor's "designee") sign and date on the right.</i>	<i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i> Signature: <table style="width: 100%;"> <tr> <td style="width: 60%;">Printed Name:</td> <td>Date:</td> </tr> </table>		Printed Name:	Date:
Printed Name:	Date:				
X	C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;				
	D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;				
	E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs;				
	<i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Procurement Services "GOVCOOP" form, found here: http://www.maine.gov/purchases/info/forms/govcoop.doc.</i>				
	F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids;				

State of Maine Waiver of Competitive Bidding Request Form

	G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.	
	If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:	

Please note that the following four points below (#2 through 5) all require a response.

2. Description of Specific Need

Please identify, and fully describe, the specific problem, requirement, or need the resulting non- competitive contract would address and which makes the goods or services necessary. Explain how the requesting Department determined that the goods or services are critical and/or essential to agency responsibilities or operations.

The State of Maine enterprise document management system operates Fortis software created/supplied by DocuWare. There are 2,500+ agency users of Fortis and over 100 million documents are managed by the OIT Document Management team.

The following departments and programs are dependent upon the Fortis document management solution:

Accounts & Control (Invoices, Reports, and Security Documents)

Conservation (Landowner Reports, Notifications, Maps)

Department of Environmental Protection (Tanks and Manifest Documents) – Has a public Portal

DHHS Licensing (Childcare licensing, Children's Residential, Out-of-Home Investigations and CNA Records) – Has a public Portal

DHHS Center for Disease Control (Foster Care Licensing Files)

DHHS Drinking Water (Documents pertaining to Public Water Systems and Individuals Licensed)

DHHS HealthCare (Healthcare Records)

DHHS Human Resources (HR Records)

DHHS Center for Disease Control (Medical Marijuana Licenses)

DHHS of Family Independence (Client Records)

Bureau of Business Management (Medical Review Records for Clients)

DHHS Office of Child and Family Services (IE-V Eligibility Documents, Adoption Records, and CCSP Files)

DHHS Vital Records (Birth, Death, Marriage and Divorce Certificates)

Department of Labor – Bureau of Unemployment Compensation (Benefit and Tax Documents)

Department of Labor – Bureau of Labor Statistics (Workplace Safety Documents, Wage Detail Records, General Documents, TRIPS Records, and MERITS Reports)

Department of Purchases (Contracts, RFP's, and Appeals) – Has a public Portal

Department of Education – Teacher Applications, Home School Applications, Program Approvals, and Transcripts)

Employee Health & Benefits (Deferred Compensation Files and General Documents)

Bureau of General Services (Postal Meter Cards)

Department of Public Safety (Fire Marshal Records)

Department of Public Safety – Highway Safety (Trooper Records)

Department of Public Safety (Human Resource Records)

Maine Revenue Services (TRIPS records, MERITS Notices and Reports, and Postal Records)

Office of State Treasury (Check Images, Unclaimed Property Records and General Records)

Professional and Financial Regulation – (Licensing Files, Cases, Complaints) – Has public Portal

General Government Service Center (Cash Receipts and other Non-Invoice Documents, Human Resource Records)

Health & Human Services Service Center (Cash Receipts and other Non-Invoice Documents, Documents for Foster Care Payments)

Corrections Service Center (Cash Receipts and other Non-Invoice Documents)

Natural Resources Service Center (Cash Receipts and other Non-Invoice Documents, Human Resource Records)

Security and Employment Service Center (Cash Receipts and other Non-Invoice Documents, Human Resource Records)

Docuware purchased Westbrook Technologies in 2013. Docuware has retired Fortis effective June 2019. Docuware is working with customers to upgrade/convert them to their current software platform.

OIT requires Docuware professional service, software support and maintenance to execute the complex application migration from Fortis to Docuware software and to support application customizations. These professional services are

State of Maine Waiver of Competitive Bidding Request Form

only available from Docuware.

3. Availability of other Public Resources

Please explain how the requesting Department concluded that sufficient staffing, resources, or expertise is not available within the State of Maine's government, or other governmental entities (local, other state, or federal agencies) external to the requesting Department, which would be able to address the identified need more efficiently and effectively than the identified vendor.

No other department within the State, or other government entities, can supply the professional services necessary to migrate Fortis software to Docuware. Docuware is a COTS software product.

4. Cost

Since a waiver of competitive bidding is being requested for this procurement, please explain how the requesting Department concluded the negotiated costs, fees, or rates are **fair and reasonable**.

OIT is in the process of re-negotiating a master contract with Docuware. Hourly professional service rate is under \$200 per hour. OIT is using standard State travel rates. The cost of annual support for an enterprise document management system has been very attractive, less than \$100,000 per annum, an excellent value for an enterprise document management system.

5. Future Competition

Please describe potential opportunities which may be available to foster competition for these goods or services in the future.

All agency requirements for document management are being met by Docuware. There is no business interest in a costly project to change document management products. Should that change in the future, there will be a joint OIT-Agency competitive procurement of an alternative document management product.

Please note that only one of the two points below ("Uniqueness" or "Timeframe") requires a response. Requesting Departments are not required to respond to both points.

6. Uniqueness

Please explain if the goods or services required are unique to a specific vendor. Describe the unique qualifications, abilities, and/or expertise of the vendor and how those particular unique factors address the specific need identified above. If the vendor has unique equipment, facilities, or proprietary data, also explain the necessity of these particular unique assets.

The Docuware migration professional service is only available from the product vendor, Docuware. No other party has experience and a successful history of providing this service.

In order to maintain uninterrupted customer support, it is critical to initiate the migration by May 2019, and have it completed by during calendar year 2019.

Some Docuware/Fortis unique customizations supported by Docuware include:


- FedCap/DHHS OFI Project. This produces a result file using a VB Program that reads the log from Fortis Script Manager and matches it up against the CSV File that was sent and supplies results of success/failure.
- PEGA – FortisWeb Services Application supported directly by Docuware – Pega changes will require Docuware assistance using other programming languages.
- Custom Portals for Veterans Services, DEP, Accounts & Control, DHHS DLRS, DHHS Vital Records, DHHS OCFS, Conservation, Purchases, and PFR.
- SQL Triggers for MRS, DHHS OFI, DOL, PFR, DHHS DSER, DHHS Drinking Water, DEP. These are customized scripts to call the backend Oracle Databases for indexing data in Fortis written by Docuware. Some triggers include Stored Procedures that work from an additional table to populate multi-value fields.

State of Maine Waiver of Competitive Bidding Request Form

- Docuware supports Planet Press Processes written for MRS, DOL, Accounts & Control, Treasury. This deals with all 140 departments for A&C and uses Forms and imports directly to Fortis currently.
- DHHS OFI Daily Activity Report for what was scanned and touched by case workers. The script runs against SQL Server daily.
- MRS Feedback File for DOL-Trips project. This script provides a daily feedback file of what was received by DOL for MRS so MRS can reconcile the information they sent.
- Nightly Aces Feed –DHHS OFI populates their task lists in Seibel/ACES.
- DOL BUC Project – Docuware wrote and supports the SQL jobs to import data to a SQL Table in the DOL Database.

7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)

Please explain if time is of the essence and an emergency exists which requires the immediate procurement of goods or services. Describe the nature of this emergency, provide the date by which the goods or services must be delivered, and explain how that date was determined and its significance (i.e. impact if delayed beyond this date). Also, provide information as to how it was determined this vendor is the best option to address this time-sensitive procurement.

Signature of requesting Department's Commissioner or Chief Executive (or designee within the Commissioner's Office):	<i>By signing below, I signify that my Department requests, and I approve of, this Waiver of Competitive Bidding.</i>
	
Printed Name:	DICK THOMPSON
Date:	4/17/19

FB - 4-11-19