

MODIFICATION

State of Maine



Master Agreement

Effective Date: 03/14/08

Expiration Date: 06/30/20

Master Agreement Description: InforME Service Level Agreement Services & Development

Buyer Information

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

Issuer Information

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

Requestor Information

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

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor ID

VC1000057820

Vendor Name

MAINE INFORMATION NETWORK LLC

Alias/DBA

DBA INFORME

Vendor Address Information

45 COMMERCE DRIVE SUITE 10

AUGUSTA, ME 04330

US

Vendor Contact Information

MICHELLE BOIVIN

621-2600X21 ext.

Payment Discount Terms

Discount 1: % 0 Days

Discount 2: % 0 Days

Discount 3: % 0 Days

Discount 4: % 0 Days

Commodity Information

Vendor Line #: 1

Vendor Name: MAINE INFORMATION NETWORK LLC

Commodity Line #: 1

Commodity Code: 92037

Commodity Description: InforME Service Level Agreements Services & Development

Commodity Specifications: This Master Agreement authorizes the payment of Development & Services provided to agencies of the State of Maine by the Maine Information Network LLC (MIN) pursuant to Master Contract #CT18B2008031710214. The specifics of development and services are valid only after they have received the explicit approval of the agency, MIN and the InforME Board. See attached specifications.

Commodity Extended Description: Agency to obtain Quote/Invoice from vendor - then create DO against the MA. (make sure to attach copy of vendor's quote/invoice.) If your order is under \$5000.00, agency must e-mail it to the vendor. If it is over \$5000.00, Purchases Buyer will e-mail to the vendor. Agency instructions for creating the DO against this agreement are attached to the header.

Quantity	UOM	Unit Price
0.00000		\$0.00
Delivery Days	Free on Board	
Contract Amount	Service Start Date	Service End Date
\$0.00	03/14/08	06/30/20
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Commodity Terms and Conditions

Vendor Line #: 1

Commodity Line #: 1

T&C #: 165

T&C Name: Payment Terms

T&C Details: Net 30

Master Agreement for InforME SLA Services

Master Agreement

This Master Agreement authorizes the payment of services provided to agencies of the State of Maine by the Maine Information Network LLC (MIN) pursuant to Service Level Agreements (SLAs) as defined or implied in the InforME Network Management Services Master Contract #CT18B2008031710214. The specifics of these services are defined within the aforementioned SLAs which are valid only after they have received the explicit approval of the agency, MIN and the InforME Board.

InforME Board

Ultimately is through the authority of the InforME Board and the policies and the procedures of the Division of Purchases that activities authorized in the Master Agreement take place. The Board is established in Title 5, section 12004-G, subsection 30-A . The duties and powers of the Board are defined in Title 1 §534. Questions to the Board should be directed to the Board's designee as defined in the Master Contract: Kathy Record, Associate CIO of the State of Maine, 36 Anthony Avenue, Augusta Maine 04333 (tel. 624-7573).

Scope of the Master Agreement

For the purposes of this Master Agreement, SLAs may be developed to govern activities which include transactional services, subscription services and hosting services. The terms of the SLAs are negotiated between the agency and MIN and must be approved by the InforME Board. Other services, not defined in the Master Contract referenced above or specified in the InforME Public Information Access Act, 1 MRSA chapter 14 are not covered by this Master Agreement

Transactional Services

Called Premium Services in the Master Contract, these are services electronically delivered through InforME for which a fee is charged either to the recipient of the service or to the

Master Agreement for InforME SLA Services

agency delivering the services.¹ These services are delivered by InforME at the behest of the agency. Generally, the recipient of the service has not entered into a formal relationship with InforME or the agency in advance of service delivery.

Subscription Services

This is special class of recurring transactional services. In these cases the entity receiving the service enters into a subscription relationship in advance of service delivery. The subscription process allows for a predetermination of eligibility for the services as well as a streamlined fee collection process.

Hosting Services

These services all relate to hosting services for content, applications and equipment as well as related maintenance and Internet delivery services.

Application Hosting Services

These services involve placing and executing agency owned programs and applications on MIN servers.

Content Hosting

These services involve placing static content on or passing through MIN servers to facilitate its delivery over the Internet. Static content refers non-executable digital data including but not limited to web formatted text, images and audio/video multimedia data.

IT Infrastructural Services

This refers to the service of placing state equipment in MIN's computer facility(s) as well as associated air conditioning, power and Internet connectivity.

Maintenance Services

Maintenance services are explicitly applicable to elements hosted in MIN's computer facility. It includes updates to content, code, equipment and infrastructure for purpose preserving the security, integrity and currency of hosted elements. Development services are explicitly not included.

Term of the Master Agreement

This Master Agreement shall be for a term that coincides with the term of the InforME Network Management Services Master Contract #CT18B2008031710214 commencing March 14, 2008 and terminating at 11:59pm March 14, 2012.

¹ In the former case the monies collected through MIN are deposited with the State via a State Treasurer supplied merchant account. On a periodic basis, usually monthly, MIN invoices the agency for payment for services rendered.

Informe Development Services

The business process for the development should be:

1. Agency submits development request to Informe.
2. Informe creates a statement of work outlining the deliverables and cost.
3. Agency, Informe and Informe Board/P.Sandlin-OIT accept SOW (SOW may be changed to reach mutual agreement of parties).
4. Delivery Order is submitted/approved (by Agency) against MA 18P-081022*089 to fund and encumber the project work. Statement of Work is attached to DO header page. Appropriate Advantage Object Code for software development is either '5312 – DP Consulting non-state' or '5319 – Web Site Maintenance' (not 4099)
5. Work is performed by Informe/MIN per SOW.
6. Work is accepted by agency and Informe issues invoice(s) quoting the project and DO number.
7. Agency payment made using Delivery Order.

STATE OF MAINE
Department of Administrative and Financial Services
Agreement to Purchase Services

THIS AGREEMENT, made this 29th day of June, 2012, is by and between the State of Maine, Department of Administrative and Financial Services, hereinafter called "Department," and Maine Information Network LLC, located at 45 Commerce Drive, Suite 10 Augusta, Maine 04330, telephone number (207) 621-2600, hereinafter called "Provider", for the period of June 29, 2012 to July 1, 2014.

The AdvantageME Vendor/Customer number of the Provider is _____

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

- Rider A - Specifications of Work to be Performed
- Rider B-IT - Payment and Other Provisions
- Rider C - Exceptions to Rider B-IT
- Rider D - Other Terms and Conditions
- Rider G - Identification of Country in Which Contracted Work will be Performed

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.

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

Handwritten signature: Amy McKeon

DEPARTMENT OF Administrative and Financial Services

By: *Paul Sandlin*
Paul Sandlin, Manager eGovernment Service, OIT, DAFS

and

By: *Kelly Hokkane*
Kelly Hokkane, General Manager Maine Information Network, LLC.
Name and Title, Provider Representative

Total Agreement Amount: \$ 0

Approved: _____
Chair, State Purchases Review Committee
BP54 (Rev 9/07) - (Rev Rider B-IT 7/15/09)

AdvantageME ACCOUNT CODING

VC NUMBER	DOC TOTAL	FND	DEP T	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

VC NUMBER	DOC TOTAL	FND	DEP T	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

Department Account Coding And Approval For Use by OIT
(As needed, Department completes applicable fields)

Department Name: _____

Department Contact Name and Phone Number: _____

Address: _____

Department Internal Agreement Number (if applicable): _____

Agreement Start Date: _____

Agreement End Date: _____

RFP Number: _____

Service/Program Name: _____

Fixed Asset Name (if applicable): _____

Fixed Asset Improvement (Y/N) _____

Type of Agreement

New Amendment

ACCOUNT #	FY 2010 Encumbrance	FY 2011 Encumbrance	Agreement Total
Example: 010.18F.0291.01.5312			
Total			

Approval Signatures:

Program Administrator: _____

Date: _____

Finance Approver: _____

Date: _____

Department Approver: _____ Date: _____

Specifications for Work to be Performed

1. Elements of the Contract

The following documents constitute the State of Maine Contract for Special Services with **Maine Information Network LLC** and are herein incorporated into the Contract Provisions:

1. State of Maine Contract for Special Services, Page 1;
2. State of Maine Contract for Special Services, Rider A, Specification of Work to be Performed
3. State of Maine Contract for Special Services, Rider B-IT, Payment and Other Provisions;
4. State of Maine Contract for Special Services, Rider C, Exceptions to Rider B-IT
5. State of Maine Contract for Special Services, Rider D, Other Terms and Conditions and Rider D Appendix A "Portal Software License Agreement"
6. DAFS Office of Information Technology Request for Proposals #507007 for InforME Network Manager Services (incorporated by reference)
7. Maine Information Network's Proposal in response to the RFP identified in 6, above. (Incorporated by reference)

2. Contract Interpretation - Controlling Term

It is mutually understood and agreed that in the event of any conflict among the provisions for the documents, attachments, and/or exhibits that constitute the State of Maine Contract for Special Services with **Maine Information Network, LLC** listed in Article 1 above, the conflict shall be resolved by giving precedence to the documents in the order listed:

- State of Maine Contract for Special Services Page 1, having the highest precedence
- Item 4, Rider C, Exceptions to Rider B-IT
- Item 3, Rider B-IT, Payment and Other Provisions
- Item 2, Rider A, Specification of Work to be Performed
- Item 5, Rider D, Other Terms and Conditions
- Item 6, DAFS OIT RFP #507007 for InforME Network Manager Services
- Item 7, MIN, LLC's Proposal being subordinate to all other listed documents.

3. Term of Contract

This Contract is hereby renewed, exercising the first of three 2-year extension options with an updated expiration at 11:59 p.m., July 1, 2014 unless earlier terminated by the Board for cause.

This Contract may be renewed, or amended and renewed as follows:

- By January 1, 2013 the Board will inform MIN of the decision on whether or not to extend the contract period through July 1, 2016.
- By January 1, 2015 the Board will inform MIN of the decision on whether or not to extend the contract period through July 1, 2018.

4. Information Resource of Maine

The Information Resource of Maine, referred to as "InforME", was established by the InforME Public Information Access Act, 1 MRSA chapter 14. Its purposes, as defined in §533, include but are not limited to serving as a self-supporting and cost effective electronic gateway to provide and enhance access to the State's public information for individuals, businesses, and other entities and to provide public services. It is the responsibility of the InforME Board, described below, to carry out the purposes of InforME.

4.1. InforME BOARD

The duties of the InforME Board are as set forth in the InforME Public Information Access Act. The terms "InforME Board" and "Board" are used interchangeably throughout this Contract; both are defined as the "InforME Board." Included in its duties are approving the criteria and specifications for this contract for the services of a private entity to act as Network Manager to fulfill the purposes of InforME through the establishment and administration of the InforME Network.

The InforME Board will set Network policies, regulate fees, and set the priorities of all portal activities.

For the purpose of this Contract, the Director of eGovernment Services in the Office of Information Technology is a designee of the InforME Board.

4.2. InforME Network Manager

The goal of this contract is to specify the terms by which the Maine Information Network (MIN) will provide InforME Network Manager services required to serve the purposes of the Information Resource of Maine. In exchange for these services MIN will have the opportunity to earn a profit from the Network's fee services.

MIN will develop and operate the InforME Network as Network Manager in a manner consistent with InforME Public Information Access Act. Additionally the Network Manager will work with the CIO to develop procedures to ensure that executive branch agencies and

semiautonomous state agencies comply with standards and policies adopted by the Chief Information Officer of the Office of Information Technology with the Department of Administrative and Financial Services. The Network Manager will invest in technology necessary to capture public data and make the information available to the public on the Internet via Fee and Free services. Free services will be funded from the proceeds of the fee services. Much of the Network services will be provided free to all users. State agencies working with the Network Manager and the InforME Board will determine the Service Level Agreement (SLA) nature and charge to users or the agency of the information that will be offered through this gateway.

The InforME Network will be self-supporting with the Network Manager receiving its compensation from the net proceeds of fee services delivered under the auspices of this contract. The InforME Board has agreed that the Network Manager will act as an agent for the InforME Network allowing MIN to legitimately collect the service fee, pay State agencies fees determined through SLAs, and disburse funds.

4.3. InforME Services

In all cases service agreements, fees, and charges for services shall be negotiated and determined by a Service Level Agreement (see section 4.5) between the data custodian (state agency) and the Network Manager and are subject to the approval and ongoing monitoring of the Board.

The Network Manager, the State of Maine through its agencies, and the Board will work in conjunction to determine all fees and charges for services to provide adequate revenue for the Network.

4.3.1. Fee Services

The Network Manager will propose fee services to users and the timetable to deploy them via the Network for approval by the InforME Board. For the purposes of this contract, fee services are any services for which there is a fee attached as defined in 1 MRSA §532 .

Fee services that are provided to InforME subscribers (monthly account holders) are referred to as premium services as defined in 1 MRSA §532 . Other fee services will be one-time activities, such as paying a traffic ticket online. Customers of these services will be using their credit card or electronic check (as determined in the related SLA) to perform this single activity and therefore will not need to become subscribers.

Note: The Board may choose to establish fee schedules that include no charge for designated services for one or more specified classes of users.

4.3.2. Subscriptions

Subscribers will be required to enter into an agreement for recurring services. Customers will apply for subscriptions and receive from InforME a user name and password in order to access the services they desire. Once a subscriber has been authorized and is given an account, they will choose a billing method for payment.

4.3.3. Hosting Services

For public access systems and applications consistent with the goals and mission of InforME, the Network Manager may provide hosting and/or housing services under the terms of this Contract. These services will be detailed in and provided for Service Level Agreements (SLAs) which will be coterminous with this Contract.

4.3.3.1. Static Content

The Network Manager will host agency developed static content pages on their servers at fees determined by the Board. Fees for maintenance of this content may apply and will be negotiated through the Service Level Agreement process.

4.3.3.2. Application Hosting

The Network Manager may host state agency developed applications on its servers that are related to the portal and accessible to the Web. Fees for hosting of such applications may apply and will be negotiated through the Services Level Agreement process.

4.3.3.3. Server Housing

The Network Manager may house state agency servers at its facility.

4.3.4. Development Services

The Network Manager may provide development services based on Time and Materials estimates as an extension of this contract as follows:

MIN, working with the agency, will perform a requirements analysis, and develop a Statement of Work (SOW) that describes the work needed to meet the agency's requirements. The development of simple SOW's may be undertaken as a free service upon consultation with eGovernment Services. The development of complex SOW's that require significant portal resources must undergo prioritization in a process to be developed with the Board. SOW development itself may be undertaken for a fixed fee under terms described in this clause.

The SOW must have the following characteristics:

- Be in a Board approved format.
- Fully describe the deliverables necessary to meet the agency's requirements.
- Fully describe the agencies' obligations required for the successful completion of the work.
- Detail the resource requirements of the Network Manager to complete the work
- Include appropriate milestones and approximate start and completion dates.
- Include a fixed price quote.

Subject to Board approval and prioritization the agency may choose to accept the Network Manager's fixed price quote. The SOW will be incorporated as a Service Level Agreement (SLA) to this contract after it has undergone the State proscribed contract review.

For projects less than \$50,000, eGovernment Services as the designee of the Board may approve these efforts. The Network Manager will report projects so approved at the next Board meeting. Projects over \$50,000 must be presented to the Board for review and approval.

The completed SOW is the property of the State of Maine. If the agency does not accept the terms offered the agency may use the SOW to acquire the services it describes elsewhere.

Time and Materials statements of work may include change orders that provide a scope statement for application changes, fee changes, and changes in timeline. Any adjustments to the fixed price quote must be made prior to contract review.

After execution of the SLA and contract execution for a time and materials service, any agency request that may materially change the utility, efficiency, functional capability, or application of the software ("Enhancements") may be undertaken on a project basis, subject to the review and approval of the InforME Board. In order to complete a SOW change request and amend the SLA, the agency will submit a written change request. InforME will then evaluate the request, seek additional information if necessary, notify the Agency of cost and scheduling impacts, and prioritize it in consideration of other ongoing development projects, with the

approval of the InforME Board and SOM contract review.

4.4. Instrumentalities of the State

As allowed in the InforME statute, the Network is authorized to provide services to Instrumentalities for the State, including but not limited to Maine municipalities, counties and the University of Maine (as defined in 20-A MRSA §10901). The Board must approve all services provided to these entities whether those services are self supporting, subsidized, or provided under some other contractual terms.

The Network Manager will submit all service proposals for review under the Board's service prioritization policy. All service requests will be subject to the Board's policy priorities for Network services within the self funded model. A Board-approved SLA with the specific entity to be served will be a requirement of providing services.

Specifications for Work to be Performed – Other Terms and Conditions located in Rider D.

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$0

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

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

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

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

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

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

The charges described in this Agreement are the only charges to be levied by the Provider for the products and services to be delivered by it. There are no other charges to be made by the Provider to the

Department, unless they are performed in accordance with the provisions of Section 5, Changes in the Work. The Provider shall maintain documentation for all charges against the Department under this Agreement.

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

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: Paul Sandlin_
Title: Manager, eGovernment Services_
Address: 26 Edison Drive, Augusta, Maine 04333
Telephone: 207 624-9427
E-mail address: paul.sandlin@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: Paul Sandlin_
Title: Manager, eGovernment Services_
Address: 26 Edison Drive, Augusta, Maine 04333
Telephone: 207 624-9427
E-mail address: paul.sandlin@maine.gov

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

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

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

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

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

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

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

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

2. The Provider shall, in all solicitations or advertising for employees placed by, or

on behalf of, the Provider, relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

3. The Provider shall send to each labor union, or representative of the workers, with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section, and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.

4. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against itself by any individual, as well as any lawsuit regarding alleged discriminatory practice.

5. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment, and in the provision of service, to include accessibility and reasonable accommodations for employees and clients.

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

7. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

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

of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement, so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

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

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

12. ACCOUNTING, RECORDS, AND AUDIT

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

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

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

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

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

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

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

shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

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

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

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

8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

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

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

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

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

17. **LIMITATION OF LIABILITY** The Provider's liability for damages sustained by the Department as the result of Provider's default or acts or omissions in the performance of work under this Agreement, whether such damages arise out of breach, negligence, misrepresentation, or otherwise, shall be no greater than:

1. Damages for violation or infringement of any copyright or trademark;
2. Damages for bodily injury (including death) to persons, and damages for physical injury to tangible personal property or real property; and
3. The amount of any other actual direct damages up to the greater of \$500,000 or three times the value of the Product or Service that is the subject of the claim, up to a maximum of \$25,000,000. For example, if the Product or Service that is the subject of the claim was valued at \$15,000,000, then the Provider would be liable for no more than \$25,000,000. For purposes

of this subsection, the term "Product" would typically include the following, but not be limited to, Materials, Source Code, Machine Code, and Licenses.

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

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

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

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

1. **Minimum Coverage**

1. Commercial general liability (including products, completed operations, and broad-form contractual): \$1,000,000 per occurrence;

2. Workers' Compensation and employer's liability: as required by law;

3. Professional liability: \$1,000,000; and

4. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence.

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

1. The Provider's insurance coverage shall be the primary insurance. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.

2. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3. The Provider shall furnish the Department with certificates of insurance and with those endorsements, if any, effecting coverage required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.

4. All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason including nonpayment.

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

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

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

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

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

26. INTERPRETATION OF THE AGREEMENT

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.

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

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

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

31. LOBBYING

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

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

The certification the Department has been required to sign provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and

that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Provider understands and agrees to the Federal requirements for certification and disclosure.

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

32. PROVIDER PERSONNEL

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

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

3. During the course of this Agreement, the Department reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Department. In considering the Provider's employees' acceptability, the Department shall act reasonably and in good faith.

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

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

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

34. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS

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

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

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

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

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

cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

38. ACCESSIBILITY All IT products must be accessible to persons with disabilities, and must comply with 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/oitpolicies) effective at the time this Agreement is executed

40. CONFIDENTIALITY

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

41. OWNERSHIP

1. All data (including Geographical Information Systems data), notebooks, plans, working papers and other works produced, and equipment and products purchased in the performance of this Agreement are the property of the Department, or the joint property of the Department and the Federal Government, if Federal funds are involved. The State (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish

for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement, or equipment and products purchased pursuant to this Agreement. The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable Federal and State laws.

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

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

1. The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.

2. A fundamental obligation of the Provider is the delivery to the Department of all ownership rights to the complete system, free of any claim or retention of rights thereto by the Provider. The Provider acknowledges that this system shall henceforth remain the sole and exclusive property of the Department, and the Provider shall not use or describe such software and materials without the written permission of the Department. This obligation to transfer all ownership rights to the Department on the part of the Provider is not subject to any limitation in any respect.

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

1. This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the OTS software supplied by the Provider, installed at the Department's site, at mutually agreed upon times. In the event that a separate license agreement accompanies the OTS software, then the terms of that separate license agreement supersede the above license granted for that OTS software.

2. This Agreement does not transfer to the Department the title to any intellectual property contained in any OTS software. The Department will not decompile or disassemble any OTS software provided under this Agreement, or modify any OTS software that bears the copyright notice of a third party. The Department will make and maintain no more than one archival copy (for back-up purpose) of each OTS software, and each copy will contain all legends and notices, and will be subject to the same conditions and restrictions as the original.

3. If the CPU on which any OTS software is licensed becomes temporarily unavailable, use of such OTS software may be temporarily transferred to an alternative CPU until the original CPU becomes available.

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

1. The Provider, as depositor, shall enter into an escrow contract, upon terms acceptable to the Department, with a recognized software Escrow Agent. The escrow contract must provide for the Department to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of the Department's data, and all updates thereof (the "Deposit Materials"), in electronic format. Deposits will occur no less frequently than once a month.

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

a. The Provider has failed to carry out its obligations set forth in the this Agreement; or

b. A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or

c. The Provider has filed a voluntary petition in bankruptcy, or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or becomes subject to an involuntary petition in bankruptcy, which petition or proceeding is not dismissed or unstayed within sixty (60) days from the date of filing; or

d. The Provider is in material breach of its maintenance and support obligations and

has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or

e. A condition has occurred that materially and adversely impacts the Provider's ability to support the software and the Provider has failed to cure such condition within thirty (30) days from the date of receipt by the Provider of written notice of such condition.

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

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

45. PRICE PROTECTION

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

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

OR

45. THIS ITEM IS INTENTIONALLY LEFT BLANK

46. IRREVOCABLE LETTER OF CREDIT In order to assure the Provider's faithful adherence to the terms and conditions of this Agreement, the Provider shall submit an irrevocable letter of credit, acceptable to the Department, that is payable on demand. This letter of credit will be procured at the expense of the Provider, naming the Department as the beneficiary, in the entire Agreement amount. In lieu of this requirement, the Department will accept a commitment letter from a recognized financial institution or investment fund stating that the Provider has sufficient capital to fund the obligations, and has legally committed such capital to fund the obligations, in accordance with this Agreement. The letter of credit, or the

equivalent commitment letter, shall specifically refer to this Agreement, and shall bind the parties to all the terms and conditions of this Agreement. The Provider shall have fifteen (15) calendar days from the date of execution of this Agreement to furnish the letter of credit or the equivalent commitment letter. Should the Provider fail to comply with this section, then the Department shall have the right to terminate this Agreement without liability.

OR

46. THIS ITEM IS INTENTIONALLY LEFT BLANK

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

Exceptions to Rider B-IT

Notwithstanding any other provisions of this Contract to the contrary, the parties hereby agree that Rider B-IT shall be modified as follows:

1. **The first paragraph of Section 6 is deleted in its entirety and replaced with the following:**

6. SUBCONTRACTORS The Provider may not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees or to third party contracts between Provider and any affiliate of Provider that is directly or indirectly wholly owned by NIC Inc.

2. **Section 13 is deleted in its entirety and replaced with the following:**

13. TERMINATION This Agreement may be terminated by the Department in its entirety, 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 date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

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

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;
2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. 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;
5. 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.

Provider may terminate this Agreement upon sixty (60) days' notice to the Department in the event that:

1. legislation materially alters the authority or duties of Provider to the extent that operation of the Network as currently envisioned, cannot be supported;
2. the financial base upon which Provider relies for solvent network operations does not materialize or is remove in the future; or
3. any material breach or evasion, subject to sixty (60) days cure, by the Department of the terms and conditions of this Agreement and its amendments, if any.

3. Section 17.3 is deleted in its entirety and replaced with the following:

3. The amount of any other actual direct damages up to the greater of \$500,000 or two times the total payments received by Provider under this Agreement during the 12 months immediately preceding the claim, up to a maximum of \$25,000,000. For example, if the Product or Service that is the subject of the claim was valued at \$15,000,000, then the Provider would be liable for no more than \$25,000,000. For purposes of this subsection, the term "Product" would typically include the following, but not be limited to, Materials, Source Code, Machine Code, and Licenses.

4. Section 20 is deleted in its entirety and replaced with the following:

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

1. Minimum Coverage

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

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

1. The Provider's general liability insurance coverage shall be primary and non-contributory to any insurance or self- insurance maintained by the Department for its officers, agents, and employees.
2. The Provider's insurance shall apply on a per occurrence or per claim basis, depending on the type of insurance.
3. The Provider shall furnish the Department with certificates of insurance evidencing compliance with these insurance requirements. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All

certificates are to be received and approved by the Department before this Agreement commences.

4. All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation, and ten (10) days notice in the event of non-payment of premium.

5. Section 39 is deleted in its entirety and replaced with the following:

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/oitpolicies) effective at the time this Agreement is executed. Notwithstanding the preceding sentence, the specific manner and extent to which such State IT Policies, Standards and Procedures apply to InforME is set forth in the OIT InforME Network Services Policy. In the event of any conflict between the InforME Network Services Policy and any other State IT Policy, the terms and conditions set forth in the InforME Network Services Policy shall control.

6. Section 41.1 is deleted in its entirety and replaced with the following:

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

7. The first paragraph of Section 42 is deleted in its entirety and replaced with the following:

42. CUSTOM SOFTWARE Any custom software delivered by Provider under this Agreement shall be clearly identified as "Custom Software" in the applicable Statement of Work. In the interest of clarity, "Custom Software" is identified as "State Modules" in the License Agreement set forth on Rider A. For all custom software furnished by the Provider as part of this agreement, the following terms and conditions shall apply:

8. Section 43 is deleted in its entirety.

9. The first paragraph of Section 44 is deleted in its entirety and replaced with the following:

44. SOFTWARE-AS-A-SERVICE (CONTRACTOR MODULES). Any software that is owned, hosted, and operated by the Provider and the Department uses said software remotely over the Internet and identified as a "Contractor Module" (as that term is defined in the Rider A Portal Software License Agreement) shall be clearly identified as "Contractor Module" in the applicable Statement of Work. For all Contractor Modules provided under this Agreement, the following terms and conditions shall apply:

10. Section 45 is deleted in its entirety and replaced with the following:

THIS ITEM IS INTENTIONALLY LEFT BLANK.

11. Section 46 is deleted in its entirety and replaced with the following:

THIS ITEM IS INTENTIONALLY LEFT BLANK.

12. Section 48 is added to Rider C.

48. SOFTWARE-AS-A-SERVICE (SAAS SOFTWARE). Any software that is owned, hosted, and operated by the Provider and the Department uses said software remotely over the Internet and identified as SaaS Software shall clearly be identified as "SaaS Software" in the applicable Statement of Work. For all SaaS Software provided to the Department 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 SaaS Software and related documentation for its business purposes during the term of this Agreement. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the SaaS 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 SaaS Software, then the terms of that separate license agreement supersede the above license granted for that SaaS Software.
2. This Agreement does not transfer to the Department the title to any intellectual property contained in any SaaS Software. The Department will not decompile or disassemble any SaaS Software provided under this Agreement, or modify any SaaS 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 SaaS 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 SaaS Software is licensed becomes temporarily unavailable, use of such SaaS Software may be temporarily transferred to an alternative CPU until the original CPU becomes available.

Specifications for Work to be Performed – Terms and Conditions

1. Service Level Agreements, Finances and Remuneration

1.1. Service Level Agreements

The Network Manager will create Service Level Agreements (SLA) for each service provided as part of the Network. Agencies of the Judicial and Legislative branches may sign Service Level Agreements with the Network Manager without approval of the Board. All other agreements must be signed by the agencies' authorized representative(s) and must be approved by the InforME Board. Only information that is legally and ethically distributable, as determined by the state agency, which is the legal custodian of the respective data, will be included on the Network. The SLA will detail what information will be accessed or transaction completed how it will be accessed and provided to the public, any service fees, and what, if any special requirements must be satisfied by the individual customers to qualify for access to the information as well as instructions to the Network Manager on how to forward to the agency reported concerns the information appears to be inaccurate. The agency and the Network Manager will agree on a schedule for collection and payment of any fee required. Once an agreement has been reached, the public information application will be developed according to the SLA.

eGovernment Services is authorized to negotiate the terms and conditions of SLAs for fee/free services that are used in common. Special requirements for agencies will be governed under separate SLAs.

1.2. Finances and Records

The Network Manager will collect and disburse all revenue from Network operations according to the SLA with respective agencies.

The Network Manager will establish one or more accounts in financial institutions which are federally insured for deposit of revenue from Network operations and shall furnish the Board with the names of the institutions, the account numbers, and the names of those persons having signatory authority.

As the Network Manager designs payment processes for departments/programs, baseline requirements should always include reconciled, batch reporting on the payments processed and transmitted to the bank. In the event that payment engine batch totals are not in balance with state banking reports, the Network Manager shall, in cooperation with the State, reconcile the two.

For services provided for Executive Branch and semi-autonomous agencies involving instant-access payment transactions, the Network Manager shall grant access to payment transaction reports for financial reconciliation purposes to the Office of the State Treasurer or their designees. These reports shall not include sensitive payment card/account data. Reports may identify InforME service users and thus should be treated as confidential in accordance with the InforME statute.

1.2.1. Audits and the Inspection of Records

All documents and records pertaining to operation of the Network will be available for inspection, auditing, and copying by the Board or other authorized representatives designated by the Board, at any reasonable time. MIN corporate records remain property of the corporation and are not subject to public or the Board's inspection. Monthly income statements and balance sheets for the Network will be provided to the Board by MIN.

The Network accounting system is to include a numbered chart of accounts, books of original entry of all transactions, appropriate subsidiary ledgers, a general ledger which includes to date postings and an audit trail through financial statements. Such books may either be maintained on paper or on computer with appropriate backup. MIN will adopt the calendar year January 1 through December 31 for reporting purposes.

MIN also agrees to make other changes requested by the Board to comply with recommendations which are agreed to by MIN and the Board, resulting from any audit. Any such audit will be performed by a competent and reputable licensed CPA.

To the extent an audit report discloses any discrepancies in MIN charges, billings, or financial records, and following a period of review and verification of the amount by MIN, MIN will adjust the monthly bill within 90 days. MIN will cooperate to assure that verification is completed in a timely manner.

1.3. Funding Model

InforME is self-supporting and may not receive an appropriation or allocation from the General Fund or other state funds.

The Network Manager will be responsible for all costs associated with the creation, development, and operation of the InforME Network including all costs related to connectivity between the Network Manager and State agencies and InforME Board expenses.

Revenue is generated through fees or surcharges on services paid by subscribers or other users, from contracts with other state departments and agencies and from money, goods or in-kind services donated or awarded to carry out the purposes of the InforME Public Information Act.

The Network Manager will request approval from the Board if/when seeking grants or supplemental funding acting as an agent for the State of Maine.

1.3.1. Network Manager Remuneration

Payments by the Network Manager to itself shall be made in accordance with procedures set forth below and approved by the InforME Board.

Within the framework of the fee setting procedure the disbursement of funds received by the Network Manager as a result of operations under this Contract will be as follows unless otherwise mutually agreed to between the Network Manager and the Board in writing:

- Payment of all Network operating expenses and costs of sale,
- Transfer of funds to data custodians or the state treasurer for payment of statutory fees in accordance with Service Level Agreements between the InforME Network and respective data custodians,
 - Payment of reasonable and necessary expenses of the Board as agreed by the Board and the Network Manager and stated in the Board's budget plan
 - Distribution of revenues collected on behalf of data custodians shall be made in accordance with procedures approved by the InforME Board and affected agency
- All remaining funds will be retained by Network Manager.

2. Service Management Plan

The Service Management Plan is detailed in section 12 of this Agreement from MIN's proposal and is subject to the requirements of 1 MSRA chapter 14, and the following:

2.1. Administrative

MIN will direct, supervise, and manage the day-to-day operations and expansion of InforME.

2.1.1. Contractor Personnel

MIN will employ staff sufficient to: a) manage the Network, b) provide and document necessary systems and programming services necessary to supply data and process electronic transactions for subscribers, c) bill, collect and issue payments and exercise all other fiscal activities necessary to operate a financially sound Network, and d) prepare marketing, training and other documents to the extent permitted by the Network finances.

MIN must commit dedicated, highly skilled personnel to perform the contracted services. The hiring, recruitment, management, training, and firing of MIN employees will be the responsibility of MIN. No officer, employee, or director, of MIN shall receive a salary, except as and for services performed by such officer, employee, or director, or member for MIN on behalf of InforME. MIN will be responsible for all required employer costs attributable to its officers and employees, including but not limited to, workers' compensation premiums and deductible, unemployment compensation tax withholding contributions, tax withholding contributions, and similar items.

2.1.2. Insurance and Bonds

In addition the insurance requirements specified in Rider B-IT sec. 20 Insurance Requirements, MIN will provide certificates of coverage for the following:

- Liability coverage for damages suffered as a result of inadvertent release of confidential information, in the form of an errors and omissions policy.
- Commercial crime insurance in the amount of \$1,000,00.00 for the actual loss sustained per incident. The policy may include a deductible that may be no larger than \$10,000 for each loss and is additionally limited by the capacity of MIN to meet its cost as determined by the designee of the InforME Board in consultation with the Division of Risk Management in the Bureau of General Services within DAFS.

2.1.3. Irrevocable Letter of Credit

See Rider B-IT.

2.1.4. Reporting Requirements

MIN will report activities to the InforME Board as follows:

2.1.4.1. InforME Strategic Plan

Develop and regularly update, in cooperation with the Board and data custodians, an InforME Strategic Plan. The plan must include proposed measurable performance criteria regarding growth in customer services. The plan should map out a path to improve access to, and the utility of the public information and transactions available through InforME by exploring and recommending ways to:

- o Expand the amount and kind of public information available free of charge;
- o Increase the utility of the public information provided and the form in which it is provided;
- o Expand the base of users who access the public information; and
- o Improve individual and business access to public information through implementing improvements in technology;

In preparation for the development of the plan MIN should conduct and document a determination of needs study of citizens, State of Maine (SOM) agencies and businesses to determine potential applications, features and services desired. Focus groups, surveys (telephone, mail, online and mall intercept), interviews and secondary research shall be used to gain insight to foster the development of the State of Maine's eGovernment services. The results of the determination of needs study must be formatted in such a way that the Board and OIT can assign appropriate priorities and develop appropriate implementation plans.

2.1.4.2. Annual Report to Legislature

Draft the annual report to the Legislature for InforME Board review and submission by January first of each year. The report will include a complete list of services offered through the InforME network, the fees associated with fee services and the criteria used to determine which services are offered as fee services.

2.1.4.3. Annual financial report and audit

In addition to the requirements specified in Rider B-IT, MIN will annually submit, within 120 days after the close of InforME's fiscal year, to the Commissioner of the Department of Administrative and Financial Services InforME's annual financial report and audit. These reports must be certified by an independent certified public accountant (selected by MIN) who may be the accountant or a member of the firm of accountants who regularly audit the books and accounts of MIN. The

submitted audit information must include, but is not limited to, the audited financial statements, auditor opinions, reports on internal control, findings and recommendations and management letters. In addition, InforME is subject to any further audit and review determined necessary by the Board.

Provide access to the Board of the financial records at any time including the ability to submit to a CPA of the Board's choice

2.1.4.4. Business Plan

MIN will submit an annual Business Plan to the Board that details its plan to administer the financial requirements related to the InforME Network and Board

2.1.4.5. Monthly Operations Reporting

On a monthly basis MIN will prepare a network operations report that includes the following elements:

- The collections of the portal on a per service basis.
- A statement of operations which demonstrates how the net income of the portal is derived from gross receipts.
- A performance report that includes access, hits, transactions, response time and adoption rate reports in summary and broken out by service with an analysis of growth trends and usage of the Network

2.1.4.6. Portal Customer Feedback

- Make available for inspection by eGovernment Services logs of all contacts and copies of all emails of the customer survey/feedback responses regarding Maine.gov.
- Regularly provide the Board with a summary of customer and agency feedback.

2.1.4.7. Online and Real time Reporting

2.1.4.7.1. Service Development Queue

MIN will work with eGovernment services to develop a process for tracking agency projects that are rejected, under consideration and accepted with a status indicator and an explanation of the status.

2.1.4.7.2. Service outages

MIN and SOM eGovernment Services will coordinate and execute a service outage notification and response plan. The plan shall include reporting procedures, monitoring requirements and incident reporting processes. The plan is subject to quarterly review by eGovernment Services and MIN.

2.2. Technical

MIN will:

- Provide technical support to assist subscribers in the use of Network services.
- Work with OIT/eGovernment Services to procure, develop or adapt Network software which will provide a standard user interface that is consistent across State services, easy to use and is accessible via browsers in common use by the public.
- Provide hardware/software etc. adequate for establishing the InforME Network.
- Consult with hardware and software vendors to identify and correct problems.
- Schedule preventative maintenance to minimally impact Network users.
- Provide a back-up system that will supply reasonable levels of redundancy for critical systems in the event the InforME MIN provided network hardware or software cannot be restored to an operational mode within 2 hours.
- Alert the OIT/eGovernment Services of all performance issues and system failures.
- Take reasonable and prudent measures to ensure that the data is protected from unauthorized alteration while in the InforME Network's possession.
- All hosting and housing services provided by MIN must meet the following minimum requirements/service levels:
 - MIN must create and fully execute SLAs with state agencies using hosting or housing services, detailing the selection of options to meet the state agency's requirements.
 - MIN must provide and detail the requesting state agency's selected serviceability and management options within each hosting and/or housing SLA.
 - MIN must house all servers in a secure, environmentally appropriate environment.

The hosting or applications and/or housing of servers cannot negatively impact or reduce the portal services, or the free services MIN provides under this Contract.

2.2.1. Availability

The availability of the portal will meet all State of Maine standards as set forth by the InforME Board.

2.2.2. Portal Location

MIN will maintain the primary site for the State portal at a data center approved by the InforME Board. In addition, MIN will create and maintain or otherwise acquire a secondary State portal at an alternative location for disaster recovery purposes. The geographic location of the second site, as well as that of the primary if it is necessary to place it elsewhere, is subject to the approval of the Board or designee.

MIN will facilitate access to all facilities for periodic inspection by the Board or the Board's designee. Travel and lodging required for remote site visits by State personnel will be at the State's expense.

2.2.3. Backup

Backup media will be stored offsite in a secure, environmentally-controlled environment and rotated out on a regular basis. Specific provisions shall be described in the Network Disaster Recovery Plan.

2.2.4. Disaster Recovery

MIN will develop and maintain a Network Disaster Recovery Plan to be approved by the Board. Once the plan is approved, MIN will review it and provide updates on a semi-annual basis or in the event of major changes to process or plan elements. All updates to the plan will be submitted to the Contract Administrator for review and approval. A copy of the plan will be provided to the State for off-site storage.

The Disaster Recovery Plan will cover all issues that must be resolved to restore operations and return to business and will provide a step by step process on how the plan will be implemented. The plan will be updated and/or corrected as the plan elements, including the processes, are tested.

The Disaster Recovery Plan will include the following issues:

- Off-site Backups in controlled environment
- Timeframes for source code and backups, schedule and event driven
- Redundancy in skill sets within MIN
- Redundancy in technology
- Redundancy in power supplies including generators, battery backups and regular refreshment
- Network Monitoring (including tools and frequencies)
- Official site designated as Disaster Recovery site, with proper agreements in place including:
 - Testing to be performed every six (6) months with/at alternate site
 - Testing to be performed when event driven at either the State or the Recovery site

2.2.5. Maintenance

MIN will provide all network and system maintenance and upgrades for the InforME Network throughout the life of the Contract. Unless absolutely necessary all maintenance that might impact services will be scheduled during non-peak hours.

2.3. Infrastructure

MIN will provide hardware, and provide or develop software as specified in MIN's Proposal and/or such other software as may be necessary to design, develop, and operate the InforME information Network to be approved by the InforME Board or its designee prior to any installation or implementation. Any exception to the MIN proposal must likewise be approved by the InforME Board or its designee.

2.3.1. Hardware, Software and Fixtures

The installed Network hardware, software, and fixtures will be inventoried on a quarterly basis and the inventory documentation will be provided to the State's Contract Administrator.

MIN will work with the State to add or delete equipment and software to take advantage of new technology which can increase the effectiveness and performance of the Network, consistent with the goals of InforME. The Board may require MIN to acquire, install, and support additional platforms in compliance with the State's interoperability requirements. MIN will request approval from the Board for any technology platform changes proposed, and will submit notifications to the Board of normal additions and deletions or approved platform hardware and software only if changes alter or affect the provision of services.

2.3.2. Infrastructure Implementation Plan

MIN will replace the portal infrastructure as described in their proposal and as modified in the attached work plan. Significant modifications to the plan going forward are subject to Board review and approval.

2.3.3. Software Licensing

The perpetual license of the portal software is governed as described in the agreement entitled "Portal Software License Agreement". The license is granted pursuant to this Contract and is intended to survive the Contract.

2.4. Service Level Agreements

2.4.1. Service Level Agreement Template

With the Board's designee, MIN will develop a new Service Level Agreement template for submission to the Board for review.

2.4.2. Renegotiating Service Level Agreements

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2.5. Additional Specified Portal Requirements

MIN's proposals for the following requirements are accepted:

- Development Environment
- Web Content Management System
- Streaming Video/Audio
- Web Site Trend Analysis

MIN will submit its final plans for each of these elements for Board approval as specified in the SMP Schedule of Deliverables.

2.5.1. Project Management

MIN will work with the Office of Information Technology to adapt its Project Management methodology and practices to be compatible with those adopted by the State of Maine from the Project Management Institute (PMI). The InforME Board will exercise approval over changes to MIN's current project management methodology.

2.6. Security

2.6.1. Implement State of the Art Cryptographic Protocols

The security infrastructure of the InforME Network should conform to the State of Maine IT Security Policy as well as any additional measures necessary to satisfy the requirements of the InforME statute. Upon initiation of the contract the Network Manager shall implement state of the art cryptographic protocols for a secure communications including but not limited to:

- Systems, application, and content administration.
- All user authentication events
- Subscriber-portal activities involving non-public information.

2.6.2. Security Planning

MIN will:

- Identify an officer or other individual whose duties include serving as the point of contact with responsibility for the management of portal security.
- Develop and keep current a portal security plan. The plan should be annually evaluated by the Network Manager and the Board's designee for currency. The plan will be developed with the involvement and approval of the InforME Board and the Chief Information Officer. The security plan will be based on industry best practices, commercial reasonableness and the State's IT Security Policy, including but not limited to the following strategy and process elements:
 - Strategies designed to secure the collection, use, sale, other dissemination, and maintenance of Personal Information. A key goal will be to prevent identity theft and to avoid or minimize the storage of Personal Information. When Personal Information must be stored in any form, the plan will include the protection strategy employed;
 - Strategies designed to prevent or minimize a security breach;
 - Managing a security breach should such an event occur;
 - Strategies designed to protect the portal infrastructure;
 - Strategies designed to protect portal data in electronic form during storage and manipulation.
- Develop a process for identifying and assessing any reasonably foreseeable vulnerability in the portal and the security plan on a periodic basis. The vulnerabilities and any actions taken to remedy the same will be communicated periodically to such contacts as the State may designate in writing, who shall be required to preserve the confidentiality of the same in a manner designed not to compromise the security of the

- Portal.
- Develop a process for taking preventive and corrective action to mitigate against any vulnerabilities identified in the process required by the previous paragraph, which may include encryption or truncation of such data, implementation of any necessary changes to security practices or to the system architecture, and installation or implementation of network or operating software.
 - Ensure the plan, policies, and processes are reviewed with a frequency reasonably sufficient to address the security requirements of the portal.

2.6.3. Security Breach Management

2.6.3.1. Security Breach Defensive Action Authorization

Upon the discovery of a security breach which results or appears to have resulted in the compromise of Personal Information or any perceived threats placing the portal in any imminent danger of a security breach, the Network Manager is authorized by the State to take immediate defensive action to protect the portal and its resources, up to and including shutting down portal services. The Network Manager shall use its judgment to determine the action most appropriate to protect State and client resources. If time permits prior to taking defensive action, the Network Manager will consult with the State to determine mutually a plan of action.

2.6.3.2. Notification of Information Security Breach

Promptly after the taking of immediate defensive action, if any, following discovery of a Security Breach which results or appears to have resulted in the compromise of Personal Information, the Network Manager will notify the Contract Administrator or the OIT Security Officer or both, at the telephone numbers furnished to the Portal for such notice, irrespective of day of the week or time of day. If neither of these two people can be reached, the Network Manager will notify the OIT Customer Support Center, which shall be instructed in advance to treat any such notification as confidential and to continue trying to notify the two state people indicated.

As soon as possible, but within two (2) hours of the detection of any Security Breach, which results or appears to have resulted in the compromise of Personal Information, the Network Manager shall provide the Contract Administrator, the State Security Officer, and affected agencies of the State with the first details of available information to aid the State in examining the matter. More complete and detailed information will be provided to the State as it becomes available.

The report must include:

- Description of breach, including, date, time, specific systems affected and specific data accessed during breach. The State understands that the report may change as forensic analysis is pursued.
- Recommendations for remedy, if not already implemented.
- Effect on other network operations, if any.

2.6.3.3. Notification of Information Security Breach Threat

The Network Manager shall notify the Board's designee and the OIT Security Officer of any perceived threats placing the portal in any imminent danger of breach of security. The speed of notice shall be at least commensurate with the level of threat, as perceived by the Network Manager.

2.6.3.4. Notification of Information Security Breaches and Threats at non-Maine.Gov Sites

If the Network Manager becomes aware of information he or she deems credible regarding any unique or unusual threats or security breaches at non-Maine.Gov sites that warrant due diligence to protect the portal and to ensure awareness on behalf of the State, the Network Manager shall take prudent steps to counter such threat or mitigate such breach, and shall notify the Board's designee and the OIT Security Officer as provided above. If the State becomes aware of information it deems credible regarding any such threat or breach, the State will promptly provide notice to the Network Manager. These may be actual events or potential events occurring in the industry that could pose a threat to the portal if not addressed. Routine notification from third parties concerning the existence of common vulnerabilities and exposures and remedies for the same, including, but not limited to viruses, worms and Trojan horses are excluded from such threat notification by the Network Manager to the Board's designee and the OIT Security Officer or vice versa.

2.6.4. Communications Management

In the event of a Security Breach, which results or appears to have resulted in the compromise of Personal Information, the Network Manager will coordinate with the Chief Information Officer or the CIO's designee, at the telephone numbers previously furnished to the Network Manager for purposes of notification, the development of an event-specific communications plan for public communications. The Chief Information Officer will be the communicator for the State unless this role is delegated to another by the Chief Information Officer. The Network Manager will keep the Chief Information Officer apprised of all public communications it has made.

The Network Manager and the Chief Information Officer may choose to develop a plan in advance to be followed for specific events.

2.6.5. Post Breach Actions

If the Portal or any of its applications have been taken off-line because of a Security Breach, the Portal and/or applications shall not be returned to an on-line status until the Network Manager and the State agree it is safe to do so.

Following a Security Breach of the Portal and any of its systems, the State may choose to conduct an audit of the information security practices of the Network Manager. The State will conduct

additional audits as needed to determine that the security practices of the Network Manager are in compliance with the requirements of the security plan and that they are reasonably calculated to prevent further breaches of security.

No post-breach audit precludes the State from conducting other Portal audits as it judges appropriate in accordance with this Contract.

2.7. Updated Service Management Plan

MIN will deliver an **updated** Service Management Plan (schedule and deliverables) within 30 days of Contract signing indicating changes (if any) to the original Service Management Plan submitted in the Proposal as modified by the Contract. The updated Service Management Plan will be submitted to the InforME Board for review and approval. Any changes to the approved updated plan and/or deliverables must be approved by the InforME Board or designee.

Note: It may be necessary to update the Service Management Plan (schedule and deliverables) due to delays beyond the control of MIN such as third party providers and/or reaching agreements with State agencies which could include changes in the services to be provided and/or the order in which the deliverables are performed.

3. Performance

MIN's performance will be measured against the updated original and subsequent modifications of the Service Management Plan schedule and deliverables.

Project status will be reported to the InforME Board each month. MIN will closely monitor the schedule and report any anticipated delays to the InforME Board at least 2 weeks prior to the scheduled completion of applications expecting to be delayed and all other task delays as soon as they are suspected regardless of the status of the monthly report.

4. Changes in the Information Network

Network development and operations will be in accordance with this Contract.

MIN will provide to the Board at least thirty (30) days prior written notice of a Planned Material Change in Network Operations.

A Planned Material Change in Network operations cannot be made by MIN without the prior written consent of the Board. A "material change" includes, but is not limited to, a change which is substantial and which increases response time to inquiries, adds to the complexity of Network use, diminishes services provided to users, or results in a comparable impact on operations noticeable by users.

5. InforME Board Expenses

The InforME Board will meet at least quarterly.

MIN will pay the agreed upon reasonable InforME Board expenses from Network revenue including the following:

- travel for non-state employee members at the current federal rate,
- lodging for non-state employee members in the performance of their duties,
- miscellaneous expenses for non-state employee members in the performance of their duties,
- meeting refreshments if required,
- meeting room rent,
- mailing, and,
- other expenses (such as video conferencing) related to meeting expenses to be mutually agreed to by the InforME Board and MIN.

MIN may elect to pay for other expenses of InforME Board member(s) in the performance of their duties (e.g. a conference on electronic commerce), if MIN so chooses.

6. Privacy and Confidentiality

Only information that is legally and ethically distributable, as determined by the data custodian, state, and federal law will be included on the Network. All public information applications that MIN provides will require that a Service Level Agreement be executed with the data custodial agency. The InforME Board must approve such agreements.

For applications where data is delivered to MIN by an agency, all nonpublic data will be removed or masked either by the agency or MIN prior to the data being made available on the Network. Additionally, MIN will employ firewall technology that is designed to prevent any InforME user from accessing any system or account that they have no legitimate right to access.

Since MIN's software developers creating applications may see some confidential information while working with agency representatives in determining which data fields are required, MIN's employees must satisfy any privacy and confidentiality requirements that the agency may require prior to beginning work.

7. Accessibility

All computer applications and websites are required to be accessible to people with disabilities and comply with the Americans with Disability Act as well as the requirements established in the policies and standards approved by the Chief Information Officer.

The standard with which agencies must comply for software application development can be found on the following website:

Computer Application Program Accessibility Standard

<http://www.maine.gov/oit/accessiblesoftware>

The policies and standards with which agencies must comply for web development can be found on the following websites:

Maine State Web Standards

<http://www.maine.gov/oit/webstandard>

Website Accessibility Policy of the State of Maine

<http://www.maine.gov/oit/accessibleweb>

8. Dispute Resolution

In the event of any dispute arising during the term of the Contract concerning performance of the Contract, either party shall serve notice of such dispute on the other party. If the dispute is not informally resolved by the Network Manager and the Contract Administrator, the dispute shall be decided by the InforME Board who shall reduce its decision to writing and serve a copy on the Contractor. The InforME Board's decision in the event of any written notice of dispute shall be subject to the Contractor's right to relief under applicable law.

9. Continuation of Operations During a Transition Period

If for any reason this Contract is terminated or upon expiration of the Contract without extension, or at the end of any extension, MIN will, at the option of the Board, continue to operate under this Contract as Network Manager in accordance with all terms and conditions of this Contract, together with any amendments or modifications in existence at such time, for a period of up to twelve (12) months from the time of expiration or notification of termination from the Board to MIN.

The intent of this provision is to ensure continuation of Network operations while a successor Network Manager is chosen and a Network installed. The Board will notify MIN at the earliest possible opportunity that it will continue operations, but in no event, later than the date of notification of termination, or the notification dates set forth under "Terms of Contract", whichever is earlier.

Within 30 days of notification of termination, MIN will work with the State and the successor Network Manager to develop and propose a plan for a successful turnover of the InforME Network system and all operations under this Contract to ensure there is no service disruption to the user community. Under the plan, MIN's required turnover activities will include planning, timely transfer files, software, and documentation, as well as training and professional support to the State and the successor vendor during the transition period.

All fees earned by MIN during the course of the Contract and the Transition Period will be disbursed, as described in the Terms & Conditions within the current contract with any amendments, to MIN after all related expenses have been paid. The fees earned for all prior periods of time and not yet paid to MIN at the end of the transition period will be disbursed to MIN within 45 days after they are paid to and received in by the Portal. No monies will be disbursed prior to receipt of funds by the Portal predecessor.

10. Notices

After contract award, all notices under this contract shall be deemed duly given: 1) upon delivery, if delivered by hand against receipt, or 2) three days after posting if sent by registered or certified mail, return receipt requested and shall be addressed as follows:

State of Maine:

Paul Sandlin
State of Maine
Office of Information Technology
26 Edison Drive
Augusta, Maine 04333

MIN:

Kelly Hokkanen
Maine Information Network, LLC.
45 Commerce Drive, Suite 10
Augusta, Maine 04330

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.

11. Definitions

The following definitions are added to the Contract:

"Board": InforME Board.

"CIO": State of Maine Chief Information Officer.

"Commissioner": The Commissioner of the Department of Financial and Administrative Services.

"Confidential Information": Confidential Information includes any proprietary or confidential information of the other party or its agents, including, but not limited to, each party's financial and business information, marketing plans, business opportunities, personnel, research and development, software, tools, methodologies and know-how; provided that such information is either marked as "confidential" or should have been reasonably understood by recipient to have been confidential or proprietary to the disclosing party. Confidential Information shall not include information which (i) shall have otherwise become publicly available other than as a result of

disclosure by the receiving party in breach hereof, (ii) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party, (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party, (iv) is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or any other administrative or legal process, or by applicable regulatory or professional standards, or (v) is disclosed with the written consent of the disclosing party.

"Day": A calendar day.

"DAFS": The Department of Administration and Financial Services.

"Data in Electronic Form": Any data stored electronically or digitally on any computer system or other database, and including recordable tapes and other mass storage devices.

"Data Custodian": Data Custodian is any branch, agency or instrumentality of State Government or any agency or instrumentality of a political subdivision of the State that gathers, stores or generates public information.

"Department": The Maine Department of Administrative and Financial Services.

"Division of Purchases": The State Division of Purchases, located at 161 Capitol Street, Augusta, Maine, with a mailing address of 9 State House Station, Augusta, Maine 04333-0009.

"Encryption": The protection of data in electronic form in storage or in transit using an encryption algorithm implemented within a validated cryptographic module, rendering such data generally indecipherable in the absence of associated cryptographic keys necessary to enable decryption of such data. Encryption includes appropriate management to reasonably safeguard encryption keys to protect the integrity of the Encryption.

"Fee Services": For the purposes of this contract "Fee Services" as defined in 1MRSA §532.

"GUI": Graphical user interface, a term to describe a type of interface in computing.

"Hosting": The actual installation and running of software applications, developed by the Contractor or by state agencies, on the Contractor's production server.

"Housing": The provision of Contractor space with a connection to the portal to allow state agencies to place and operate their agency's servers at the Contractor's facility.

"Identity Theft": The unauthorized assumption of another person's identity for the purpose of engaging in commercial transactions under the name of such other person.

"OIT": The Office of Information Technology as defined in 5 MRSA Chapter 163.

"Personal Information": An individual's first name, or first initial, and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted:

- Social security number;
- Driver's license number or state identification card number;
- Account number, credit card number or debit card number, if circumstances exist wherein such a number could be used without additional identifying information, access codes or passwords;
- Account passwords or personal identification numbers or other access codes; or
- Any of the data elements contained in paragraphs A to D when not in connection with the individual's first name, or first initial, and last name, if the information if compromised would be sufficient to permit a person to fraudulently assume or attempt to assume the identity of the person whose information was compromised.

Personal Information does not include publicly available information that is lawfully made available to the general public from federal, state or local government records or widely distributed media.

"Portal": The Internet/Web site operated by InforME.

"Portal Content": The information generated by or furnished to a government to populate the Portal web pages and online functions; for example, static information (e.g., mostly "read only," not changed very often) describing an agency and its functions or a state park and its facilities and programs, or dynamic information (e.g., involving user input, or subject to change from time to time) furnished by a Portal user in connection with obtaining or renewing a license or permit, an the license or permit granted in exchange.

"Premium Services": For the purposes of this contract "Premium Services" as defined in 1MRSA §532.

"Public Information": Any information that is stored, gathered or generated in digitized form by a data custodian and either 1) a public record or 2) otherwise expressly authorized to be released as specified by law.

"Security Breach": The unauthorized acquisition of (1) data from the Portal in electronic or other form, containing Personal Information that establishes a reasonable basis to conclude that there is a significant risk of identity theft to an individual to whom the Personal Information relates or (2) Portal information that establishes a reasonable basis to conclude there is a significant security risk to the physical security or electronic integrity of the Portal and its infrastructure, data, or resources, or some combination thereof.

"RFP": Request for Proposals.

"SOM": State of Maine.

"State": State of Maine.

"Subcontractor": Any person on in the employ of the vendor, or any organization not owned by the vendor, performing work which is the responsibility of the vendor under a contract resulting from this solicitation.

"Subscriber": A person who receives premium services.

"Truncation": To shorten a number to a specified length by storing and displaying all but the first and last four digits of a credit and/or debit card account number or a bank account number.

12. Service Management Plan Schedule of Deliverables

Periodic and Recurring Schedule

Item	Deliverable Description	Deliver To	Period
Disaster Recovery Plan	Review and Update (Section 2.2.4)	Designee	Annually (June)
Security Plan	Review and Update (Section 2.6)	Designee	Annually (February)
Business Plan		Board	Annually (November)
InforME's Annual Financial Report and Audit		Board	Annually (April)
Annual Report	Statute	Legislature	Annually (Jan)
InforME Strategic Plan	Statute	Board	Biennially
Income statements / balance sheets & Monthly Operations Reporting	(Sections 1.2 & 2.1.4.5)	Board	Quarterly upon meeting of the InforME Board
Hardware Inventory		Designee	Quarterly Jan/April/July/Oct
Alternative DR Site Testing		Designee	Semiannual

Appendix A - **Portal Software License Agreement**

This Amended and Restated Software License Agreement (the "**Agreement**") made effective as this 14th day of March, 2008, by and between Maine Information Network, LLC, a Maine corporation ("**Contractor**"), and The Department of Administrative and Financial Services of the State of Maine ("**Department**").

WHEREAS, the parties desire to enter into a Portal License Agreement that clarifies the rights and privileges of each party with respect to software developed under the terms of this contract. Additionally, this agreement establishes the Department's rights to use third party contractors to operate and maintain the Portal, and make modifications on behalf of the Department to Software used on the Portal in the event the Contractor or its subsidiaries are no longer operating the Portal.

WITNESS that in consideration of the mutual covenants herein contained other good and valuable consideration (the receipt and sufficiency of which consideration is hereby acknowledged), the parties hereto agree as follows:

1. **Definitions.**

In this Agreement, unless the context otherwise requires:

- (a) "Confidential Information" shall include any proprietary or confidential information of the other party or its agents, including, but not limited to, each party's financial and business information, marketing plans, business opportunities, personnel, research and development, software, tools, methodologies and know-how; provided that such information is either marked as "confidential" or should have been reasonably understood by recipient to have been confidential or proprietary to the disclosing party. Confidential Information shall not include information which (i) shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach hereof, (ii) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party, (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party, (iv) is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or any other administrative or legal process, or by applicable regulatory or professional standards, or (v) is disclosed with the written consent of the disclosing party. For greater certainty, Confidential Information of Licensor is deemed to include the Software;
- (b) "Portal" means the Internet/Web site operated by InforME as described in the Amendment to this Contract between the Contractor and the State of Maine, as it exists on the date of this License or as same may be reconstructed or redesignated at any time and from time to time;
- (c) "Portal Content" means the information generated by State Government or furnished to State government to populate the Portal Web pages and online functions; for example, static information (i.e., mostly "read only," not changed very often) describing an agency and its functions or a state park and its facilities and programs, or dynamic information (i.e.,

- involving user input, or subject to change from time to time) furnished by a Portal user in connection with obtaining or renewing a license or permit, and the license or permit granted in exchange.
- (d) "Software" means all computer programs (including source code and object code and documentation and user instructions relating thereto), all as they existed on the Effective Date, used in connection with the Portal as of the Effective Date. For software developed by third parties (typically commercially available; off-the-shelf software) and used in the operation of the Software Modules, it means all license rights granted to the Contractor by such third parties and which are capable of being transferred by the Contractor to the Department. For modifications made to the Software by Licensee, such modifications are the property of Licensor as derivative works when made and are included in the definition of Software under this section. Software specifically excludes State Modules.
 - (e) "Effective Date" means the last day of the original term of the Contract, namely, June 30, 2014.
 - (f) "Contract" means that contract for Portal Services between the Contractor and the Department dated March 14, 2008, and numbered by the State of Maine as _____, together with any extensions or amendments thereto.
 - (g) "Authorized Contractor" means any third party contractor engaged by the Department to operate and maintain the Portal, or to make modifications to the Contractor Modules on behalf of the Department, (in each case subject to the limitations of this Agreement), which has executed a written Confidentiality Agreement and Assignment in the form of the attached Attachment A.
 - (h) "State Module" means: (i) Software developed for solely direct compensation from the Department by the Contractor which interfaces with the Software used in the Portal; (ii) does not incorporate any Software or Confidential Information of the Contractor which is integral and essential to the basic functionality of the Software; and (iii) which is clearly designated in writing as a "State Module" in the associated agreement authorizing the development of such Software.
 - (i) "Contractor Module" means Software developed for the Portal by the Contractor under the transactional funding model or Software developed for the Portal by Contractor regardless of funding origin that incorporates Software or Confidential Information of the Contractor.

2. Interpretation.

In this Agreement, unless the context otherwise requires:

- (a) a word importing the masculine, feminine or neuter gender includes members of the other genders;
- (b) a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa;
- (c) the headings to each Section are inserted for convenience of reference only and do not form part of the Agreement;
- (d) "including", whenever used, means "including but not limited to".
- (e) "Licensor", whenever used in the context of State Modules means the Department.
- (f) "Licensor", whenever used in the context of Contractor Modules means the Contractor.
- (g) "Licensee", whenever used in the context of State Modules means the Contractor.
- (h) "Licensee", whenever used in the context of Contractor Modules means the Department.

3. Grant of License.

- (a) State Modules License Grant. Subject to all of the terms and conditions of this Agreement, the Department as Licensor hereby grants to the Contractor as Licensee, a cost free, personal, transferable, non-exclusive, perpetual license to use State Modules. Licensee may modify the Software for purposes outside those of the Portal. Once applied to purposes outside the Portal, said modified State Modules will be considered a new work and the property of the Contractor; provided however, that any such modifications, when made, are licensed back to the Department under the Contractor Modules License Grant below if such improvements are deemed by the Department to be of benefit to the Portal.
- (b) Contractor Modules License Grant. Subject to all of the terms and conditions of this Agreement, the Contractor as Licensor hereby grants to the Department as Licensee, a cost free, personal, non-transferable, non-exclusive, perpetual license, without the right to grant sublicenses, to use Contractor Modules solely in connection with the operation of the Portal.
- (c) Additional Rights of the Department as Licensee of Contractor Modules. Licensee may: (i) make copies of the Software for archival or back-up purposes related to the specific uses herein otherwise permitted; (ii) modify the Software as required for the maintenance or enhancement of the Portal; provided however, that any such modifications, (excluding State Modules) when made, are the property of Licensor as derivative works and are licensed to Licensee in accordance with the terms of this Agreement; and the Licensee agrees to provide a copy of modifications to Licensor upon Licensor's request; (iii) load the Software on any central processing unit for the specific uses herein otherwise permitted; and (iv) use Authorized Contractors to operate and maintain the Portal, and modify the Software as required for the maintenance or enhancement of the Portal on behalf of the Licensee, subject to the limitations and terms and conditions of this Agreement.
- (d) Reservation of Rights. Except for Software transferred in "Additional Rights of Contractor as Licensee" above, all intellectual property rights contained in State Modules and Contractor Modules, including all concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, user interfaces, screen designs, software, source and object code, utilities and routines contained therein, and all information and material relating thereto (other than the Portal content) of any kind whatsoever, shall be the sole property of Licensor. Licensor reserves all rights therein not expressly granted to Licensee under this Agreement.
- (e) Delivery of Software. The Contractor acknowledges delivery of the Software on or prior to the Effective Date hereof in a manner satisfactory to the Department. The Contractor shall have no obligation under this Agreement or otherwise to provide to the Department any modifications, enhancements or improvements for the Software, to make available technical support or maintenance for the Software, or to deliver anything or do anything else in relation to the Software or the Portal save and except as herein specifically provided. So long as the Contractor is engaged by the Department or another Entity of the State of Maine to operate the Portal, then any modifications, enhancements or improvements for the Software made by the Contractor shall be governed by the Contract. The Contractor acknowledges and agrees that all rights, title, and interest in and to the State Modules shall belong to the Department, or its third party contractor, as the case may be.

4. Infringement.

- (a) For a period of one (1) year following the termination or expiration of the Contract and any amendment or renewals thereof, and provided that the Contractor is notified promptly in

writing of any judicial action brought against the Department based on an allegation that the Department's use of the Software infringes a patent, copyright, or any right of a third party, or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property ("Infringement"), and provided that the Department cooperates in all reasonable respects with the Contractor in connection with any such claim, the Contractor will hold the Department harmless and defend such action at its own expense. The Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that the Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action), brought against the Department based on an allegation that the Department's use of the Software constitutes Infringement, the Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that the Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

- (b) In the event that final injunction is obtained against the Department's use of the Software by reason of Infringement, or in the Contractor's opinion the Department's use of the Software is likely to become the subject of Infringement, the Contractor may at its option and expense: (i) procure for the Department the right to continue to use the Software as contemplated hereunder, (ii) replace the Software or any part thereof with non-infringing, functionally equivalent substitute software, or (iii) suitably modify the Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Software. If none of these options is reasonably available to the Contractor, then this Agreement may be terminated at the option of either party.
- (c) The Contractor shall have no obligation hereunder with respect to an infringement to the extent arising out of, in connection with or with respect to (i) any modification to the Software made by the Department or its agents or any Authorized Contractors; (ii) use of the Software on or in conjunction with hardware other than such hardware on or in conjunction with which the Software is used on the Effective Date; or (iii) use of the Software in conjunction with other software other than such other software which is used in conjunction with the Software on the Effective Date.
- (d) Save and except as herein specifically set forth, the Contractor makes no other representations or warranties to the Department.

5. No Disclosure of Confidential Information.

- (a) To the extent either party comes into possession of Confidential Information of the other party or its agents, whether on, before, or after the date hereof, each party agrees to use such Confidential Information solely for the purposes of this Agreement, and will not, save and except as herein specifically permitted, disclose such Confidential Information to any third party without the other party's consent. The Contractor consents to the disclosure of Confidential Information to Authorized Contractors to the extent necessary for the operation, maintenance, and/or modification of the Portal on behalf of the Department. Each party shall maintain the Confidential Information of the other party in confidence using at least the same degree of care as it employs in maintaining in confidence its own proprietary and confidential information, but in no event less than a reasonable degree of care.
- (b) Save and except as herein specifically permitted, and except as required otherwise by Maine law, the Licensee shall not disclose or produce for any purpose, including in response to a

subpoena or other court or governmental order, any Confidential Information of Licensor without giving the Contractor ten days' written notice and an opportunity to object to the disclosure or production. In the event such disclosure is ordered, the remainder of the restrictions upon disclosure shall continue to apply, and shall be relaxed only to the extent necessary to comply with such subpoena or other court order.

- (c) The Department shall forthwith notify the Contractor in writing of any known unauthorized use, possession or disclosure of Confidential Information of the Contractor. The Contractor shall have the sole right (but shall be under no obligation) to take legal or other action against any third party with respect to any such unauthorized use, possession or disclosure of Confidential Information of the Contractor, and the Department shall cooperate with the Contractor in such effort.

6. Rights on Termination.

- (a) **Survival of Obligations.** The covenants contained in this Agreement, which by their terms require performance by the parties after the termination of this Agreement, shall be enforceable notwithstanding the termination of this Agreement for any reason whatsoever. In addition, all terms and conditions herein relating to ownership, licenses, warranties, disclaimers of warranties, limitations on damages, limitations on actions, and waiver shall survive the termination of this Agreement.

7. Notices.

All notices, demands, and requests required or permitted to be given in connection with this Agreement must be in writing and must be delivered personally, charges prepaid, return receipt requested, and shall be deemed to be received on the day actually delivered to the following addresses or such new addresses with respect to which written notice is provided to the other party in the manner herein required:

If to Licensee: Attn: Contract Administrator

Paul Sandlin, Manager of eGovernment Services, or designee
State of Maine
Office of Information Technology
26 Edison Drive
Augusta, Maine 04333-0145

Kelly Hokkanen
Maine Information Network, LLC
45 Commerce Drive, Suite 10
Augusta, Maine 04330

With a copy to: NIC, Inc.
25501 West Valley Parkway, Suite 300
Olathe, Kansas, USA 66061
Attention: General Counsel

8. Governing Law.

This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Maine, without giving effect to the choice of law principles thereof. Each of the parties (i) hereby irrevocably consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of, this Agreement shall be brought and maintained exclusively in any competent court in Maine, and (ii) by execution and delivery of this Agreement irrevocably submits to and accepts, with respect to any such action or proceeding, for such party and in respect of such party's properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts, and irrevocably waives any and all rights such party may have to object to such jurisdiction under the laws of any other jurisdiction whatsoever.

9. No Partnership or Agency.

This Agreement does not create any partnership or joint venture between the parties. Nothing contained in this Agreement shall constitute either party the agent or legal representative of the other for any purpose. No provision of this Agreement grants either party any express or implied right to assume or create any obligation or responsibility on behalf of, or in the name of, the other party, or to bind the other party in any manner or thing whatsoever. Licensee shall use the Software in the manner herein permitted on its own account and not as agent for Licensor.

11. No Assignment.

For State Modules and Contractor Modules, neither this Agreement, nor any part or portion hereof shall be assigned, sublicensed, delegated (except as herein provided), encumbered or otherwise transferred without the express written consent of Licensor.

10. No Third Party Rights.

Except as permitted in Section 3(c)(iv), no person other than the parties hereto and their respective successors and permitted assigns may rely on or derive any rights pursuant to or under this Agreement.

12. Entire Agreement.

This Agreement, including any documents incorporated by reference, constitutes the entire agreement of the parties and supersedes all other prior written or oral contracts between the parties with respect to the subject matter hereof, *provided however*, that the parties recognize and agree that separately from this Agreement, the parties may continue in a contractual relationship pursuant to the Contract. This License is intended to survive the Contract.

13. Waiver.

No term or condition of this Agreement shall be held to be waived, modified, or deleted, and no breach of this Agreement shall be held to have been waived except by a written instrument signed by the parties hereto. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach.

14. Time of Essence.

Time shall be of the essence of each and every part of this Agreement.

15. Severability.

All of the terms and conditions of this Agreement are severable, and if any one of them shall be held invalid by any competent court having jurisdiction herein, to the extent that the purpose of this Agreement is not defeated, this Agreement shall be interpreted as if such invalid term or condition were not contained therein.

16 Enurement.

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto and execute this Agreement under seal as of the date first above written.

Maine Information Network, LLC

**The Department of Administrative and
Financial Services of the State of Maine**

By:

By:

Title:

Title:

This Confidentiality Agreement and Assignment ("Agreement") is made and effective as of the ____ day of _____, 20__, by and between The Department of Administrative and Financial Services, of the State of Maine ("State") and _____, a _____ ("Contractor").

WHEREAS, the State has received from NIC, Inc., ("Licensor") a perpetual, limited license to certain programs pursuant to the contract for Portal Services between Maine Information Network, LLC on behalf of NIC Inc., this specifically applies to those identified as "Contractor Modules" in that contract;

WHEREAS, a condition of the license is that the State obtain a written agreement from any contractor engaged by the State to assist in the Permitted Use (as defined below) of the Software, that (i) protects the Software from unauthorized use or disclosure, and (ii) provides that any Modifications to the Software (excluding State Modules, as defined below) shall be owned by Licensor. Contractor is willing to agree to execute this Agreement as a condition of its engagement by the State;

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants herein contained, the parties agree as follows:

1. Definitions.

"Confidential Information" means any proprietary or confidential information of the Licensor or its affiliates, including, but not limited to, financial and business information, marketing plans, business opportunities, personnel, research and development, software, tools, methodologies and know-how; provided that such information is either marked as "confidential" or should have been reasonably understood to have been confidential or proprietary. Confidential Information shall not include information which (i) shall have otherwise become publicly available other than as a result of unauthorized disclosure, (ii) was disclosed to the Contractor on a non-confidential basis from a source other than the State or Licensor, or (iii) was known by the

Contractor prior to any disclosure of such information by the State or Licensor. For greater certainty, Confidential Information of Licensor is deemed to include the Software and the source code, whether or not marked as confidential.

"License Agreement" means that certain Amended and Restated Portal Software License Agreement by and between Licensor and State.

"Permitted Use" means the Modification of the Software for use by the State in the Portal as permitted by the License Agreement, or the use, modifications and enhancements of the Software in the management and operation of the Portal on behalf of the State as permitted by the License Agreement.

"Modifications" means modifications, enhancements, improvements, corrections, translations, or other changes to the Software which constitute derivative works. Modifications do not include State Modules.

"Portal" means the Internet/Web site as described in the contract for Network Manager Services, between New England Interactive, LLC. and the State, which Portal is located at www.maine.gov.

"Software" means all the computer programs (including, without limitation, source code and object code, as applicable), documentation and Modifications to the software modules licensed by Licensor to the State under the License Agreement, as more specifically set forth in Schedule A, and all intellectual property rights contained or embodied in the Software, including all concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, user interfaces, screen designs, utilities and routines.

"State Modules" means separate software modules developed by the State or on behalf of the State by a third party which interface or integrate with the Software and are used in

the Portal, but which do not incorporate any Software, documentation or Confidential Information of Licensor.

2. Confidential Information. The Contractor acknowledges and agrees that the Software is proprietary information of Licensor, which is a special, valuable, and unique asset of Licensor and which is considered a trade secret. The Contractor agrees to take all steps necessary to protect the Software from unauthorized disclosure, use or copying, including, but not limited to, by obtaining written agreements, and instructing its employees with respect to the proprietary nature of the Software and the restrictions on the use granted to the State. Any and all copies of the Software made by the Contractor shall be made only if required to for the Permitted Use for the State and shall bear Licensor's notice of copyright, and other restrictive legends contained on the Software. The Contractor shall safeguard such copies of the Software to ensure access and use only by Contractor on behalf of the State in a manner consistent with this Agreement. The Contractor shall not disclose the Software to any third party.

3. Retention of Rights. The Contractor agrees that all rights, title, and interest in the Software, in all formats and media, including copyrights therein, are and shall continue to be the exclusive property of Licensor, and the Contractor agrees to make only Permitted Use of the Software on behalf of the State. No other use of the Software is permitted, and all other rights are reserved by Licensor. In the event the Contractor makes or has made any Modifications to the Software as permitted under this Agreement, the Licensor shall own the code it writes or develops, and Contractor hereby assigns its rights to such Modifications to Licensor. The State may provide a copy of Modifications to Licensor upon Licensor's request. Ownership, use and confidentiality of State Modules shall be governed by the agreement between Contractor and the State.

4. Unauthorized Acts.

The Contractor shall notify the State and Licensor immediately of the unauthorized use, possession, or disclosure of any of the Software, and cooperate with any suit brought to prevent continued unauthorized use, possession, or disclosure of the Software or the Confidential Information. In the event the disclosure of the Software or Confidential Information is, or becomes the subject of a judicial order by a court of competent jurisdiction, Contractor shall notify the State and Licensor immediately of the order and cooperate with attempts to obtain a protective order.

5. Enforceability by Licensor. Contractor acknowledges that it may not use or refer to the Software or the Confidential Information of Licensor to develop software modules, applications or other products, except as otherwise provided in this Agreement. Contractor and the State agree that Licensor is a third party beneficiary of this Agreement. In the event of a breach or threatened breach of this Agreement by Contractor, Licensor shall be entitled to bring an action at law or in equity in its own name against Contractor to enjoin such breach or threatened breach, in addition to its other remedies at law and in equity. Licensor shall be entitled to recover from the Contractor all damages and reasonable attorney fees in the event of a breach by Contractor. Contractor additionally agrees that upon the request of Licensor, Contractor shall provide Licensor a list of the individual employees of Contractor who were given access to the Software through Contractor.

6. Injunctive Relief.

If the Contractor breaches the provisions of this Agreement restricting the use and disclosure of the Software intended to safeguard the right, title and interest of Licensor in the Software, State and Licensor shall, in addition to any other rights or remedies arising under this Agreement, in law or in equity, be entitled to injunctive relief and recovery of damages, including but not limited to reasonable attorney's fees.

7. Limitation of Damages and Indemnification.

The Licensor and its affiliates and their directors, officers, and employees shall not be liable for any losses, costs, expenses, including reasonable attorneys fees, arising out of any claim, suit or proceeding related to the use or Modification of the Software by the State, by Contractor or any third party; and any modifications or changes to the operating platform or environment on which, or with which, the Software is operated.

8. General Provisions.

Neither this Agreement, nor any part or portion hereof shall be assigned, sublicensed, encumbered, or otherwise transferred by the Contractor without the express written consent of the State.

9. Entire Agreement.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter and understandings, agreements, representations, or warranties not contained in this Agreement or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, or other provisions of this Agreement shall be effective without the written consent of the parties.

10. Governing Law.

This Agreement shall be construed in accordance with and governed in all respects by the law of the State of Maine.

11. Severability.

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, conditions, or application; to this end, the terms and conditions of this Agreement are declared severable.

12. Waiver.

Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be waived, modified, or deleted except by a written instrument signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto, having read this Agreement in its entirety, do agree in each and every particular and have thus set their hands hereunto.

Contractor:

The Department of Administrative and Financial Services
of the State of Maine

By: Kelly Holban

Title: General Manager
Maine Information Network

By: Paul [Signature]

Title: MANAGER eGov Svcs

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, Kansas_____**
- Other. Please identify country: Poland_____**

Notification of Changes to the Information

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

Department of Administrative and Financial Services
CONTRACT FOR SPECIAL SERVICES - AMENDMENT

BY AGREEMENT of both parties this 5th day of March, 2012, the Contract for Special Services between the State of Maine, Department of Administrative and Financial Services hereinafter called "Department," and Maine Information Network LLC hereinafter called "Contractor," is hereby amended as follows:

1. The termination date is extended from March 14, 2012 to June 29, 2012
(old term date) (now term date)
Reason Provide additional time to negotiate the terms of a scheduled contract renewal

2. The dollar amount of the contract is increased by \$ n/a from \$ n/a to \$ n/a
Reason _____

3. The Scope of Services in Rider A is amended as follows:

No changes to the Rider A.

All other terms and conditions of the original contract dated 3/14/2008 remain in full force and effect.

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.

IN WITNESS WHEREOF, the Department and Contractor, by their duly authorized representatives, have executed this amendment in _____ originals as of the day and year first above written.

Dmy Mayoral

Department: Administrative and Financial Services

By: *Paul Sanolha*
(Name & Title, Dept. Representative)

Paul Sanolha, DAFS, DCIP, eGov Services
and

Contractor Maine Information Network LLC

By: Kelly Hokkanen, General Manager,
(Name & Title, Contractor Representative)

Kelly Hokkanen 3/12/12

Approved, State Purchases Review Committee _____

Date: _____

(note: this section must be completed by using agency)

Encumbrance Number: _____

Vendor Code: 010522581

Old Contract Amount: 0

Account Codes: _____

Amount of Increase: 0

New Contract Amount: 0

New Termination Date: 6/29/2012

File

Contract for Special Services - Amendment

BY AGREEMENT of both parties this 28th Day of March 2013, the Contract for Special Services between the State of Maine (Administrative & Financial Services/OIT) Hereinafter called "Department" and Maine Information Network, LLC Hereinafter called "Contractor" is hereby amended as follows:

The following language changes are made to the Contract CT# 18B2008031710214:

1. Rider B section 6 is amended to read:

6. **CONTRACT ADMINISTRATOR:** All progress reports, correspondence and related submissions from the Contractor shall be submitted to:

Eric Stout, IT Project Manager
State of Maine, Department of Administrative Services
Office of Information Technology, Office of the Chief Information Officer
145 State House State of Maine
51 Commerce Drive
Augusta, Maine 04330-0145

who is designated as the Contract Administrator on behalf of the Department for this Contract, except where specified otherwise in this Contract.

All other terms and conditions of the original contract dated 3/14/2008 Remain in full force and effect.

In WITNESS WHEREOF, The Department and the Contractor by their duly authorized representatives have executed this amendment in 4 originals as of the day and year first above written.

Department: Administrative & Financial Services/OIT
By: *[Signature]*
Paul Sandlin, Associate Chief Information Officer, State of Maine, DAFS, OIT
(Name and Title)

And *[Signature]*
G. McNeal - CTO

Approved, Purchases Review Committee
Date: _____

Contractor: Maine Information Network, LLC (MIN)
By: *[Signature]*
Paul VandenBussche, General Manager, MIN, LLC
(Name and Title)

Encumbrance #: <u>MA 18P-081022-089</u>	Vendor Code: <u>010522581</u>
Old Contract Amount: <u>\$ 0.00</u>	Account: _____
Amendment Amount: <u>\$ 0.00</u>	Account: _____
New Contract Amount: <u>\$ 0.00</u>	Termination Date: <u>July 1, 2014</u>

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY
AMENDMENT TO AGREEMENT TO PURCHASE SERVICES**

Previous Agreement Amount:	\$0.00	Encumbrance #:	MA 18P 081022*0089
Amount of Increase or (Decrease):	\$0.00		
Revised Agreement Amount:	\$0.00	Termination Date:	07/01/2016
Appropriation:		Vendor/Customer #:	VC1000057820

The Agreement made June 29th, 2012 by and between the State of Maine, Department of Administrative and Financial Services, Office of Information Technology, hereinafter called "Department," and Maine Information Network LLC, hereinafter called "Provider", located at 45 Commerce Drive, Suite 10, Augusta Maine 04330, telephone number (207) 621-2600 is hereby amended as follows:

1. The Termination Date of the Agreement shall be extended from July 1st, 2014, to July 1st, 2016, per original contract terms, Rider A, Specifications for Work to be Performed, Section 3.
2. The service(s) to be provided by the Provider specified in Rider A of the Agreement shall be amended to include the following changes: No Changes Specified in this Renewal Period.

All other terms and conditions of the original agreement shall remain in effect. The Department and Provider, by their duly authorized representatives, have executed this amendment to the said original agreement on this 25 day of July, 2013.

WITNESSETH, that this contract is consistent with Executive Order 01 FY 11/12 or a superseding Executive Order, and complies with its requirements.

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY**

By: Greg McNeal
Greg McNeal,
Chief Technology Officer (CTO)

PROVIDER: Maine Information Network LLC
(Provider Name)
By: Paul VandenBussche
Paul VandenBussche
General Manager

Approved, State Purchases Review Committee
Date:

By: Michael Alan Wanzel

AUG 14 2013

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY
AMENDMENT TO AGREEMENT TO PURCHASE SERVICES**

Previous Agreement Amount:	\$0.00	Encumbrance #:	MA 18P 081022*0089
Amount of Increase or (Decrease):	\$0.00		
Revised Agreement Amount:	\$0.00	Termination Date:	07/01/2018
Appropriation:		Vendor/Customer #:	VC1000057820

The Agreement made 25 July, 2013 by and between the State of Maine, Department of Administrative and Financial Services, Office of Information Technology, hereinafter called "Department," and Maine Information Network LLC, hereinafter called "Provider", located at 45 Commerce Drive, Suite 10, Augusta Maine 04330, telephone number (207) 621-2600 is hereby amended as follows:

1. The Termination Date of the Agreement shall be extended from July 1, 2016, to July 1, 2018, per original contract terms, Rider A, Specifications for Work to be Performed, Section 3.
2. The service(s) to be provided by the Provider specified in Rider A of the Agreement shall be amended to include the following changes: No Changes Specified in this Renewal Period.
3. Rider B-IT and Rider C from the contract dated 29 June 2012 are amended to restate Section 3 in its entirety to read as follows:
 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, except to the extent agent authority is granted to Network Manager in the InforME Public Information Access Act.
4. Rider B-IT and Rider C Section 20 Insurance Requirements from the contract dated 29 June 2012 is replaced with the following term.

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), the provider will endeavor to secure 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) Acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) with a limit not less than \$1,000,000 per claim, and in the 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 with a limit not less than \$1,000,000 per claim, and in the aggregate;

C) Data breach expenses, with a limit not less than \$10,000,000 per claim and in the aggregate, 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.

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. Notwithstanding any interpretation to the contrary, in no event shall the aggregate amount payable under the insurance policies for claims described in subsections A, B and C above exceed \$10,000,000 in the aggregate.

- 2. Workers' Compensation and employer's liability, as required by law;
- 3. Property (including contents coverage for Provider's tangible property maintained pursuant to this Agreement);
- 4. Hired and Non-Owned Automotive Liability with a limit of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
- 5. Commercial Crime, with a limit of not less than \$1,000,000.00 per loss;
- 6. Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss; and
- 7. Commercial General Liability for bodily injury and property damage with a limit of \$1,000,000 per occurrence and in the aggregate.

3. **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 non-contributory. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.
- 2. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3. The Provider shall furnish the Department with certificates of insurance, and with those endorsements, if any, affecting coverage, required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.

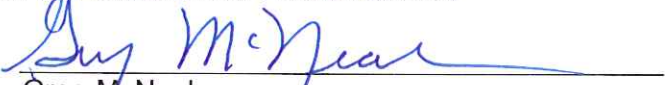
4. Provider will provide thirty (30) days notice to the Department in the event of cancellation for any reason, including nonpayment.

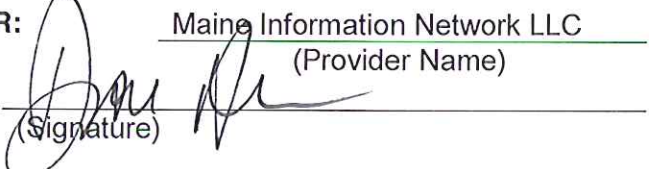
5. The Department will not grant the Provider, or any sub-contractor of the Provider, "Additional Insured" status and the Department will not grant any Provider a "Waiver of Subrogation".

All other terms and conditions of the original agreement and subsequent amendments shall remain in effect. The Department and Provider, by their duly authorized representatives, have executed this amendment to the said original agreement and subsequent amendments on this 10th day of September, 2015.

WITNESSETH, that this contract is consistent with Executive Order 01 FY 11/12 or a superseding Executive Order, and complies with its requirements.

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY**

By: 
Greg McNeal,
Chief Technology Officer (CTO)

PROVIDER: Maine Information Network LLC
(Provider Name)
By: 
(Signature)
Dan Andrews, General Manager
(Typed Name and Title)

Approved, State Purchases Review Committee
Date:
By: _____

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY
AMENDMENT TO AGREEMENT TO PURCHASE SERVICES**

Previous Agreement Amount:	\$0.00		Encumbrance #:	MA 18P 081022*0089
Amount of Increase or (Decrease):	\$0.00		Termination Date:	6-30-2020
Revised Agreement Amount:	\$0.00		Vendor/Customer #:	VC1000057820
Appropriation:	Varies			

The Agreement made June 29, 2012 by and between the State of Maine, Department of Administrative and Financial Services, Office of Information Technology, hereinafter called "Department," and Maine Information Network LLC, hereinafter called "Provider", located at 45 Commerce Drive, Suite 10, Augusta Maine 04330, telephone number (207) 621-2600 is hereby amended as follows:

1. The Termination Date of the Agreement shall be extended from December 31, 2018, to June 30, 2020.

Reason: The Office of Information Technology is preparing a Request for Proposals for procuring these services. The InforME Board wishes to involve state agencies and new State government agency leadership in this process. The 18-month extension will allow time for completion and award of the RFP, contract negotiation time, and provide some service transition time, as required.

2. The service(s) to be provided by the Provider as specified in the Agreement are unchanged.

All other terms and conditions of the original agreement and subsequent amendments shall remain in effect. The Department and Provider, by their duly authorized representatives, have executed this amendment to the said original agreement and subsequent amendments on this 19th day of October, 2018.

WITNESSETH, that this contract is consistent with Executive Order 01 FY 11/12 or a superseding Executive Order, and complies with its requirements.

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY**


By:



Ande Smith, OIT Chief Information Officer

PROVIDER: Maine Information Network LLC

By:



Dan Andrews, General Manager

Approved, State Purchases Review Committee
Date:

By: _____

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.

Requesting Department's Contract Administrator:	Eric Stout	Office/Division/Program of Contract Administrator:	DAFS / OIT
Est. Contract Amount:	NA – Master Agreement, Based on service	Contract or RQS Number:	MA 18P-081022-0089
Proposed Start Date:	1-1-2019	Proposed End Date:	6-30-2020
Vendor/Provider Name, City, State	Maine Information Network (InforME)		
Short Description of Good or Service:	Maine State Government Website / Portal and Application Hosting		
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: <u>10/9/2018</u> To: <u>10/15/2018</u>	
Notice of Intent to Waive Competitive Bidding Number:		NOI# 1020181655	
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.			
<input type="checkbox"/>	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;		
<input type="checkbox"/>	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:	
		Printed Name:	Date:
<input checked="" type="checkbox"/>	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;		
<input type="checkbox"/>	D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;		
<input type="checkbox"/>	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>		
<input type="checkbox"/>	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;		
<input type="checkbox"/>	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.		
<input type="checkbox"/>	If a different authorization specifically allows for this non-		

State of Maine Waiver of Competitive Bidding Request Form

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 Contract is being amended to extend it for 18-months to execute a competitive RFP for services. The InforME Board and Office of Information Technology, which direct the contract, will collect State agency input and seek direction from new State Agency leadership (who are appointed effective Q3, FY19). The additional 18 months will allow time for the RFP, contract negotiations, and some service transition time. No contract scope or service changes are being implemented.

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.

The contract extension continues current contracted state internet portal operations, without change, while a RFP is executed and awarded.

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**.

The contract for operation of the State internet portal was competitively bid and awarded to Maine Information Network in 2008. Service Level Agreements and service rates, which provide revenue to MIN, are established and governed by the InforME board. The Board is a 17-member group, a combination of government, private business, education and association representation, focused on creating the policy that will drive the comprehensive gateway network.

5. Future Competition

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

The RFP is under development. The RFP will be fully executed and awarded during the 18-month contract extension. The team meets weekly. To identify portal service/structure change ideas the team is surveying other States about present and future service features of their portal contract. The team is analyzing current types of Maine portal usage to better understand and forecast demand.

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.

Maine Information Network supports and hosts the InforME portal consisting of over 150 individual government services. Continued support and operation of the portal, per service level agreement terms, is required while the RFP and resulting contract are put in place. If portal operations were disrupted, requiring manual services or alternate electronic services to be established, State government service to the public would severely degrade.

State of Maine Waiver of Competitive Bidding Request Form

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):**

By signing below, I signify that my Department requests, and I approve of, this Waiver of Competitive Bidding.



Printed Name:

ANDREW SMITH

Date:

5 OCT 18