

MODIFICATION

State of Maine**Master Agreement****Effective Date:** 05/30/13**Expiration Date:** 12/14/19**Master Agreement Description:** Software Licenses, Maintenance and Professional Services**Buyer Information**

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

Issuer Information

DEANNA LEFEBRE 207-624-7384 ext. DEANNA.LEFEBRE@MAINE.GOV

Requestor Information

Doug Averill 207-557-3082 ext. douglas.b.averill@MAINE.GOV

Authorized Departments

ALL

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

VS0000016754

Vendor Name

Pegasystems Inc.

Alias/DBA

Pegasystems Inc.

Vendor Address Information

1 Rogers Street

Cambridge, MA 02142

US

Vendor Contact Information

Rory Douglas

617-866-6538 ext.

Rory.Douglas@pega.com

Commodity Information

Vendor Line #: 1

Vendor Name: Pegasystems Inc.

Commodity Line #: 1

Commodity Code: 92045

Commodity Description: Software Licenses & Maintenance/Support

Commodity Specifications: This Agreement has been issued for Software Licenses, Maintenance and Professional Services as per the attached Contract Agreement. Agency must obtain quote from vendor, create Delivery Order against MA (attach quote to DO). If order is under \$5K Agency must email to vendor. If over 5K, Purchases will approve and send to vendor.

Commodity Extended Description: Software Licenses & Maintenance/Support

Quantity 0.00000	UOM	Unit Price \$0.00
Delivery Days	Free on Board	
Contract Amount \$0.00	Service Start Date 05/30/13	Service End Date 12/14/19
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

Commodity Information

Vendor Line #: 1

Vendor Name: Pegasystems Inc.

Commodity Line #: 2

Commodity Code: 91800

Commodity Description: Consulting Services

Commodity Specifications:

Commodity Extended Description: Consulting Services

Quantity 0.00000	UOM	Unit Price \$0.00
Delivery Days	Free on Board	
Contract Amount \$0.00	Service Start Date 05/30/13	Service End Date 12/14/19
Catalog Name	Discount 0.0000 %	
	Discount Start Date	Discount End Date

Commodity Information

Vendor Line #: 1

Vendor Name: Pegasystems Inc.

Commodity Line #: 3

Commodity Code: 91838

Commodity Description: Training Services

Commodity Specifications:

Commodity Extended Description: Training Services

Quantity 0.00000	UOM	Unit Price \$0.00
Delivery Days	Free on Board	
Contract Amount \$0.00	Service Start Date 05/30/13	Service End Date 06/14/19
Catalog Name	Discount 0.0000 %	
	Discount Start Date	Discount End Date



PegaCloud Subscription Schedule No. 8

CR-22457

This PegaCloud Subscription Schedule No. 8 ("Schedule No. 8"), dated December 15, 2014 (the "Effective Date"), is subject to the terms and conditions of the State of Maine Department of Administrative and Financial Services Agreement to Purchase Services (the "Agreement") between the State of Maine ("Customer") and Pegasystems Inc. ("Pegasystems"), dated June 18, 2013. Where there is a conflict between this Schedule No. 8 and the Agreement, this Schedule No. 8 will govern. The terms defined on Exhibit 1 will apply to this Schedule No. 8.

Customer desires to receive a subscription to Pegasystems' PegaCloud service (the "Subscription") to develop, test, and deploy into production PRPC based applications on the Cloud under the terms described in this Schedule.

1. Description of the Subscription:

During the Term specified below, Pegasystems will provide Customer the following

Pegasystems Software	<ul style="list-style-type: none"> • Pega for Government (PFG) • Autonomic Event Services (AES) • Certification and Licensing Framework (CLF) • Internet Application Composer (IAC) • Test Management Framework (TMF) • Project Management Framework (PMF) • Customer Process Manager (CPM)
Definitions	<p>"DHHS" means the Maine Department of Health and Human Services, including all of its staff.</p> <p>"Production Application" means a software application in support of Maine government processes that are currently providing services.</p>
Number of Development/Test Instances included	35
Number of Pre-Production Environments included	7
Storage Included for Dev/Test and Pre-Production Environments	2 TB in aggregate
Maintenance for the Subscription	Maintenance for the Subscription is fully described on Exhibit 2, and Exhibit 2 supersedes the Maintenance Schedule under the Agreement, with respect to this Subscription. Maintenance will be provided 24x7.
Security	256 Bit Encryption of Data at rest
Includes VPN	Yes
Number of Services and Connectors included with the Subscription	All services and connectors generally available as of the Effective Date
PegaCloud Production Environments	7
Storage Limits for Production	1 TB of Storage for each Production Environment

2. Usage Rights. Customer may use the Subscription on the following terms:

Superseded PegaCloud Schedules	This Schedule No. 8 supersedes and supplants all prior PegaCloud Schedules ("Superseded Schedules") between Pegasystems and Customer.
Licensed Purpose	State of Maine staff other than DHHS, and citizens and businesses doing business with the state of Maine other than DHHS, may use the Software for Maine government processes.
Licensed Metric	Production Applications
Licensed Usage of Metric	Unlimited during the Baseline Period. The Baseline Number of Production Applications is set at the end of the Baseline Period which sets the usage volume for this Schedule as of that date.
Setting the Baseline and Post Baseline Fee Calculations	<p>Until December 14, 2019 (the "Baseline Period"), this license will allow Customer to develop and deploy an unlimited number of Production Applications. Customer will identify and document all Production Applications at the end of the Baseline Period in a form similar to the Superseded Schedules, including each applicable Licensed Purpose to set the total number of licensed Production Applications (the "Baseline Number"). Starting on December 15, 2019, Customer will then be licensed to process those Production Applications.</p> <p>Starting on December 15, 2019, within thirty days of the start of development of a new Production Application beyond the then current Baseline Number, Customer shall notify Pegasystems of that new Production Application and the parties will negotiate in good faith to document the new Production Application in a form similar to the Superseded Schedules, including an applicable Licensed Purpose, and to set an applicable additional fee for that new Production Application, and the applicable additional fee will be added to the then current Subscription Fee to set the Subscription Fee for this Schedule No. 8 going forward.</p> <p>For calendar quarters in which the usage is below the Baseline Number Customer will not be required to pay any additional Subscription Fee.</p>
Development and Testing	Customer may use a copy of the Software on the Development and Test Instances for developing, testing, and concept-proving Applications. Development/Test Instances that are idle for more than 8 hours may be Hibernated by Pegasystems.
Timing of Usage Purchases	When Customer begins development of a new Application in a Development and Test Instance after the Baseline Period, it will follow the procedure described in the "Setting the Baseline and Post Baseline Fee Calculations" row above.

3. **Term:**

The initial term of this Schedule will be 60 months, beginning on the Effective Date (the "Initial Term"). The Initial Term will automatically renew for additional 60 month terms (each, a "Renewal Term") unless either party provides written notice of termination at least 90 days prior to the expiration of the then-current term. The Initial Term and any Renewal Terms are together referred to as the "Term."

4. **Subscription Fees, Credits and Payment Schedule.**

- a. In consideration for providing the Subscription, Customer will pay Pegasystems \$425,000.00 per quarter during the Term, subject to annual inflation adjustments in accordance with the Agreement.
- b. Fees for the period beginning on the Effective Date through September 30, 2015 will be invoiced on July 1, 2015 and will be payable by July 30, 2015. Thereafter, fees will be invoiced quarterly at the beginning of the quarter and will be payable forty-five days from the date of the invoice. Once due, all fees are nonrefundable and non-cancelable.
- c. This special pricing in this Schedule will remain valid only if both parties sign this Schedule by December 15, 2014.

- d. If this Schedule No. 8 is signed by December 15, 2014, Pegasystems will provide Customer with an unlimited number of credits that Maine may use towards the costs due to Pegasystems to obtain Pega Academy non-mentored self-study training. These credits must be used by December 14, 2019 and will expire to the extent unused by that date.

5. Additional Purchase Options.

- a. During the Term, Customer may purchase additional usage as follows:

Additional Usage	Additional Fees
Additional storage 100GB/month	\$500/month
Development/Test Instances in blocks of 3	\$6,000/month

- b. Customer as an option during the Initial Term, for an additional \$200,000.00 per quarter during the Term to add DHHS to this Schedule No. 8 by removing the current Licensed Purpose in its entirety and expanding the Licensed Purpose by replacing it with the following: "State of Maine staff, and citizens and businesses doing business with the state of Maine, may use the Software for Maine government processes." If Customer exercises this option, the PegaCloud Infrastructure Environment will increase from the current capacity as follows: Number of Development/Test Instances included will increase to 50 (from the current 35); Number of Pre-Production Environments included will increase to 10 (from the current 7); and PegaCloud Production Environments included will increase to 10 (from the current 7).
 - c. Purchases of additional usage will be exercised by sending a purchase order or written notice to Pegasystems. The term for any additional usage purchased will be co-terminus with the Term of this Subscription. The fees for additional usage set forth above are subject to adjustment as provided in Section 6 of the Agreement. The terms of the Agreement will govern any purchase order, and any terms that may be printed on the purchase order will be of no force and effect.
6. Pegasystems Responsibilities. Pegasystems will:
- a. Use commercially reasonable efforts to make the Subscription available 24 hours a day, 7 days a week, other than as described in Section 9 below.
 - b. Provide the Subscription in accordance with all applicable laws and government regulations.
 - c. Provide Customer with VPN connectivity capability between the cloud and Customer's datacenter.
 - d. Provide encryption of data at rest using 256 bit AES.
7. Customer Responsibilities. Customer will:

- a. Be responsible for the accuracy, quality, integrity and legality of Customer's Applications, content and data and for the quality and configuration of the Applications and the performance of such Applications. Customer may engage Pegasystems for performance tuning services upon fees and terms mutually agreed upon by the parties.
 - b. Use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription, and notify Pegasystems promptly of any such unauthorized access or use.
 - c. Use the Subscription only in accordance with its documentation and applicable laws and government regulations.
 - d. If Customer desires to do so, migrate Customer Applications to newer releases of the Software (provided that Customer may engage Pegasystems' professional services department to assist in this area by separate written agreement).
 - e. Be responsible for the costs of any other software (e.g., application server or database) or architecture configuration not included in the Standard Architecture.
 - f. Bear sole responsibility for the security and protection of its Application in the development and testing environments.
 - g. Not include any confidential or sensitive data in its application log files.
 - h. not (i) sell, resell, rent, outsource, timeshare or otherwise lease the Subscription, or (ii) use the Subscription to store or transmit content or data that is invasive of privacy, infringing, obscene, libelous, or that is otherwise unlawful or tortious or to carry out infringing or unlawful activities.
 - i. Indemnify Pegasystems from, and defend Pegasystems against, any failure by Customer: (i) to comply with section 7.e.(ii) above, or (ii) to appropriately protect confidential or proprietary information related to Customer's use of the Subscription
8. Service Levels.
- a. Pegasystems will use commercially reasonable efforts to make the Subscription available within the SLA. In the event the Subscription does not meet the SLA for any Subscription Month, Customer will be eligible to receive a Subscription Credit equal to 10% of the fees for such Eligible Credit Period as described below.
 - b. Pegasystems will apply Subscription Credits against fees due under this Schedule for the Subscription in future months. Subscription Credits will not entitle Customer to any refund for fees paid for the Subscription, or for any credit against fees due for any other software or services provided by Pegasystems. Customer's sole and exclusive remedy for any Unavailability or failure to meet the SLA is the receipt of a Subscription Credit as described in this section. Any downtime that is the basis for a successful Subscription Credit claim cannot be the basis for a future claim. To receive a Subscription Credit, Customer must submit a written request to Pegasystems that includes the dates and times of each Incident of Unavailability along with server request logs that document the errors and outage, within 30 days of the end of the Subscription Month in which the Unavailability occurred. If the Monthly Uptime Percentage of such request is confirmed by Pegasystems to be less than 99.95% for the Subscription Month, then Pegasystems will issue the Subscription Credit to Customer within one billing cycle following the month in which the request occurred.
 - c. Customer acknowledges that development environments are used for testing and may be unstable due to the nature of their use. The SLAs do not apply to these development and test environments.
 - d. The Subscription Commitment does not apply to any unavailability, suspension or termination of the Subscription that (i) result from Subscription Suspensions, (ii) result from any actions or inactions of Customer or any third party, (iii) result from Customer's Application, data, equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Pegasystems' direct control) or (iv) arise from Pegasystems' valid suspension and termination of Customer's right to use the Subscription.
9. Suspension of Subscription.

- a. Customer acknowledges that (i) Customer's access to and use of the Subscription may be suspended for the duration of any unanticipated or unscheduled downtime for any reason, including as a result of power outages, system failures or other interruptions outside of Pegasystems' reasonable control, and (ii) Pegasystems may suspend access to any portion or all of the Subscription due to a Subscription Suspension.
- b. Pegasystems will have no liability for any damage, liabilities, or other losses that Customer may incur as a result of any suspension of access to the Subscription pursuant to Section 9a. Pegasystems will use reasonable efforts to provide Customer email notice of any Subscription Suspension and updates regarding resumption of the Subscription following any such suspension.

10. Security.

- a. Pegasystems agrees that it will adhere to the security protocols described on Exhibit 3 to this Schedule.
- b. Other than the Pegasystems Subscription Support described in Exhibit 2 and the PegaCloud security protocols described on Exhibit 3, Customer acknowledges that it is responsible for security, protection and backup of its content, data and Applications. Customer should protect its authentication keys and security credentials. Actions taken using Customer's credentials will be deemed to be actions taken by Customer and will be the responsibility of Customer.

11. Changes in the Terms of Use.

- a. The Subscription is subject to limitations determined by Pegasystems' third party providers, including AWS. In the event AWS or any other third party provider amends its terms of service applicable to Customer's use of the Subscription, Pegasystems may amend any and all corresponding and applicable terms in this Schedule.
- b. Pegasystems may also amend these terms of service to comply with changes in applicable law and as deemed necessary by Pegasystems to ensure the security and performance of the Subscription.
- c. Amendments will be effective 10 days after being provided to the Customer, either by email or by posting on the Pegasystems website, provided that if Customer objects to any modification to this Schedule, Customer will have the right, as its sole and exclusive remedy, to terminate this Schedule by providing Pegasystems with written notice within such 10 day period and to stop using the Subscription at the end of such 10 day period.

12. Delivery and Acceptance. Pegasystems will create and email to Customer a Software User ID and Password which will allow Customer to access and use the Subscription. The Subscription will be accepted upon delivery ("Acceptance"). This acceptance is not dependent on any remaining services, conditions or contingencies, and there are no other written or verbal agreements with respect to acceptance. For the duration of the Subscription, the Customer shall not be entitled to take possession of the Software licensed herein.

13. Other Terms.

- a. EXCEPT FOR THOSE WARRANTIES EXPRESSLY CONTAINED IN THE AGREEMENT, PEGASYSTEMS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
- b. This Schedule and the Agreement constitute the entire understanding of the parties with respect to the Subscription to be provided under this Schedule.

PEGASYSTEMS INC.

Shawn Hoyt
Signature
Shawn Hoyt
Name
Vice President
Title
December 10, 2014
Date

STATE OF MAINE

[Signature]
Signature
James Smith
Name
CIO
Title
12-10-14
Date

EXHIBIT 1 DEFINITIONS

The following definitions will apply:

- "Application"** means a collection of rules and processes that provides specific business functionality and is released to production as a unit and that has been developed and deployed using the Subscription. Each Application is documented in the Software by an Application Rule.
- "AWS"** means Amazon Web Services.
- A **"Case"** is use of the Software for the capture, routing, status tracking or closure of a single unit of work related to a particular transaction in Production.
- "Cloud"** means a set of virtual computer servers and related services.
- "Development/Test Instance"** means an Instance to be used in conjunction with development or testing of Applications or user training.
- "Eligible Credit Period"** is a single calendar month, and refers to the monthly billing cycle in which the most recent Unavailable event included in the SLA claim occurred.
- "Export of Database"** means a backup file of an Oracle database that is running in the production environment and that is encrypted to agreed upon standards.
- "Hibernate"** means to stop or place an Instance in a stopped state while preserving the data and validity of the Instance. A Hibernated Instance may be restarted by using the PegaCloud Manager or attempting to go to the Instance URL.
- "Instance"** means a virtual server, provisioned and managed by Pegasystems, with up to 4.5Ghz and 7.5GB of RAM.
- "Monthly Uptime Percentage"** is calculated by dividing each hour into five minute periods, and then determining during which, if any, of those five minute periods, the Subscription was Unavailable, subtracting that number from the total number of such minute periods in the Subscription Month during which the Subscription was scheduled to be available (the "Scheduled Availability Number") and dividing that number by the Scheduled Availability Number. If Customer has been using the Subscription for less than a full calendar month, the Subscription Month is still the preceding calendar month but any days in such month that are prior to the commencement of use of the Subscription will be deemed to have had 100% availability. Monthly Uptime Percentage measurements exclude downtime resulting from a Subscription Suspension.
- "Pre-Production Environment"** means 1 load balancer Instance, 2 application server Instances and 1 database Instance.
- "Production"** means use with Customer's live and/or real-time data or in connection with Customer's ongoing business operations (other than in development or testing).
- "Standard Architecture"** means a production environment running an apache load balancer or using Amazon Elastic Load Balancer services, with at least two application servers running Tomcat, and 2 database servers running Oracle or PostgreSQL database. The VPN may be included as part of the Standard Architecture if the Customer so requires and the parties so mutually agreed.
- "Storage"** is calculated based on the aggregate of work objects, history entries, attachments and any customer data or files stored by the Customer on its production system.
- "Subscription"** means the provision of the Pegasystems software and hosting to the Customer on the terms described in this Schedule.
- "Subscription Month"** means each applicable calendar month in which the Subscription is contracted to be provided.
- "Subscription Suspension"** means the unavailability of the Subscription (a) during weekends or on weekdays between 11:00pm and 5:00am Customer's local time zone with at least 3 days' notice (provided via email or on Pegasystems' web site) for scheduled downtime to permit Pegasystems to conduct maintenance or make modifications to the Subscription, (b) in the event any third party service providers that provide infrastructure for the Subscription cease providing services, in which case Pegasystems will provide Customer with thirty days written notice and will use reasonable efforts to restore access to the Subscription as soon as commercially feasible, (c) at any time in the event of a denial of service attack or other event that Pegasystems reasonably determines may create a risk to the applicable Subscription, or (d) at any time in the event that Pegasystems reasonably determines that suspension is necessary for legal or regulatory reasons.

"SLA" means a Monthly Uptime Percentage of at least 99.95% during each Subscription Month.

"Software" means the software specified in this Schedule.

"Unavailable" or **"Unavailability"** means that all of the Subscription is unresponsive during a five minute period and Customer is unable to launch replacement instances in order to access the Subscription.

A **"User"** is a person that uses the Software in the applicable month.

**EXHIBIT 2
SUBSCRIPTION SUPPORT**

Pegasystems will provide Customer Subscription Support comprising Problem Resolution, upgrades and updates to the Pegasystems Software and access to the Pega Developer Network (together, "Support"). Pegasystems will provide Support in accordance with the procedures described in the Pegasystems Customer Support Handbook, as updated from time to time. Pegasystems may not update the Customer Support Handbook in a manner that would materially and adversely affect the rights of Customer to Support under this Subscription Support Exhibit.

Pegasystems will support Customer's use of the Pegasystems Software irrespective of its version as long as the parties renew this Subscription Schedule for additional terms, but reserves the right to negotiate an additional Support fee if Customer is using a release of the Pegasystems Software that is older than three versions from the then-most current version.

Problem Resolution

Pegasystems will repair errors or problems with the Software so that the Pegasystems Software operates in substantial accordance with its Documentation. Problem Resolution includes:

- Telephone Support: Pegasystems will accept calls from Customers' designated contacts and work with the Customer to provide relief and/or a permanent solution.
- Customers designated contacts: Customer may change these contacts upon written notice to Pegasystems. Additional contacts may be added for an additional fee.

Managed Services:		
Help Desk Support Services:	<ul style="list-style-type: none"> • The Help Desk will provide a single point of contact for support of the Subscription. • The PegaCloud Service desk may be contacted by: <ul style="list-style-type: none"> ○ Emailing support@pegacloud.com; ○ Calling 877-311-3244; or ○ A webform at https://servicedesk.pegacloud.com 	24/7 support
Availability monitoring	<ul style="list-style-type: none"> • Monitoring and restarting of the Instances as needed 	24/7 support
Server Management and Operating System Administration Service	<ul style="list-style-type: none"> • At the Customer's request, assist in: <ul style="list-style-type: none"> ○ Configuration of the application server ○ Encrypting the file system ○ Managing firewall settings ○ Deploy custom java objects as needed. ○ Applying patches as requested. 	24/7 support
Database Administration services	<ul style="list-style-type: none"> • At a minimum, database backups will be: <ul style="list-style-type: none"> ○ Daily incremental backups ○ Weekly full backups ○ Data is retained for a rolling 15-day period. 	As scheduled

	<ul style="list-style-type: none"> • At Customers' request: <ul style="list-style-type: none"> ○ Assist in executing DDL's to create custom tables and indices ○ Provide database performance statistics 	
Application migration services	<ul style="list-style-type: none"> • At Customer's request, assist in migrating Customer's application from one environment to another. 	As scheduled
Up to specified number of "Defined Names" authorized to contact Pegasystems for Subscription Services	Up to 5 contact names	
Number of Calls	Unlimited	
Telephone support within coverage hours	Included	
Secure access to Knowledge Base FTP site	Included	

Pegasystems is not responsible for errors caused by (a) non-Pegasystems' software or hardware, (b) unauthorized modifications to the Pegasystems Software, or (c) failure to follow the operating procedures described in the Pegasystems Software documentation, or those errors that Customer cannot reproduce under test conditions.

SUPPORT SERVICE LEVEL AGREEMENTS

The section defines the severity levels of issues/problems impacting the business.

Severity	Definition
S1- High Priority	When the System is unavailable for all users or a department.
S2-Medium Priority	When there are problems with the System, but the system can still work or requires information to fix the issue. Or the application is unavailable for a user.
S3-Low Priority	When a Customer has a problem and also has a workaround.
S4-Lowest Priority	When a Customer has a problem that does not materially affect the use of the System.

MINIMAL SERVICE LEVEL PREMIUM SUPPORT

Severity	Response Time	Target Resolution Time	Service Level Agreement
S1	15 min	2 hours	99.95%
S2	2 hours	8 hours	99.95%
S3	4 hours	24 hours	99.95%
S4	16 hours	40 hours	99.95%

Software Updates

Software Updates support the evolution of the Pegasystems Software. They periodically consist of:

- Service Packs: sets of modifications for published generally available Software releases primarily designed to address functional defects only.
- Documentation Updates: reflect changes to Software, documentation and help files.

Upgrades

Upgrades provide new functionality and enhancements to the Pegasystems Software within the functional domain of the licensed components.

Pega Developer Network

The Pega Developer Network ("PDN") is the primary technical resource for Customer's Software developers and system administrators. The PDN contains a broad range of technical articles including troubleshooting and "How-To" information, a comprehensive and searchable knowledgebase to help developers speed their application development, and a library of shared component examples, and copies of formal product documentation and PRPC Help systems. The PDN also enables members to access Pegasystems' on-line support resources in order to submit defect reports and enhancement suggestions, and to review all issues associated with the user's PDN account.

**EXHIBIT 3
SECURITY**

- a. **Access Control:** Implement access control measures restricting access to applications, data, and software to only those entities that have a documented, current business need. These measures shall meet the requirements of the security policies required by the Customer (HIPAA, SOX, and/or others as required). Access to the controlled systems shall be locked down by subnet, port, protocol, server, role, and user to allow only the access required for the business function.
- b. **Audit Controls:** Implement audit control mechanisms to record, monitor, and examine system activity, including data access activities. Maintain full logs of monitored activities for at least three years trailing.
- c. **Authorization Control:** Implement a mechanism for controlling the authorization of individuals, organizations, and roles to access applications, data, and software. Integrate with Customer's existing identity management solution where one exists to enable single sign-on and centralized identity management. Assure supervision of personnel performing technical systems maintenance activities by authorized, knowledgeable persons. Ensure that system users, including technical maintenance personnel are trained in system security.
- d. **Data Authentication:** Create audit trail providing corroboration that data has not been altered or destroyed in an unauthorized manner at the infrastructure layer. The Customer is responsible for this at the application layer.
- e. **Entity Authentication:** Implement entity authentication technologies, including automatic logout and unique user identification through a password or equivalent system. Passwords or other user tokens shall be required to follow robust, documented policy requirements including:
 - a. Periodic reset/renewal every six months or less (Password ageing)
 - b. Complexity and length requirements in the case of passwords
 - i. No dictionary words
 - ii. No dates
 - iii. Mixed character types (at least three of lowercase, uppercase, numerals, and punctuation)
 - c. Lockouts after five unsuccessful authentication attempts
- f. **Encryption at Rest:** Sensitive data shall be encrypted whenever stored in the database or in persisted memory using 256-bit AES encryption
- g. **Encryption in Flight:** Communications over a network containing sensitive data shall be encrypted through SSL or a VPN tunnel
- h. **Business Continuity:** Implement and document business continuity and disaster recovery procedures, including but not limited to incremental data backups taken daily and stored for a rolling 15-day period, and full data backups taken weekly and stored for trailing rolling 15-day period.
- i. **Audits and Policy Compliance:** Documentation and implementation of security policy shall be prepared and supplied to the Customer on demand for ALL of the following policy components:
 - a. A data backup plan
 - b. A disaster recovery plan
 - c. A business continuity plan
 - d. Testing and revision procedures
 - e. Access authorization policies and procedures
 - f. Security testing
 - g. Virus checking
 - h. Security incident response procedures
 - i. Personnel clearance procedures
- j. **Assigned Security Responsibility:** Assign and document the assignment of security responsibility to a specific individual or role within the service provider organization. This

responsibility would include the management and supervision of the use of security measures and the conduct of personnel.

- k. **Physical Security:** Implement and document physical access controls (limited access) governing the service provider's location(s) that are used to access Customer's applications, data, and software.

STATE OF MAINE
DEPARTMENT OF Administrative and Financial Services
Agreement to Purchase Services

THIS AGREEMENT, made this 18th day of JUNE, 2013, is by and between the State of Maine, Department of Administrative and Financial Services, hereinafter called "Department," and Pegasystems, Inc., located at One Rogers Street, Cambridge, MA 02142, telephone number 617-374-9600, hereinafter called "Provider", for the period of May 30, 2013 to May 29, 2018.

The AdvantageME Vendor/Customer number of the Provider is 150000016754

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/Master Software License, Maintenance & Professional Services Agreement
- Rider B-IT - Payment and Other Provisions
- Rider C - Exceptions to Rider B-IT
- Rider D/E/F - At Department's Discretion
- 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 four (4) original copies.

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

By: [Signature]

and

PEGASYSTEMS INC.

By: Shawn Hoyt
Shawn Hoyt, Vice President

UNENCLUMBERED
JUN 24 2013
NO FUNDS RESERVED
FOR THIS CONTRACT

Total Agreement Amount: As authorized on related delivery orders

Approved: Michael Alan Wanzel
Chair, State Purchases Review Committee

JUN 24 2013



BP54 (Rev 9/07) – (Rev Rider B-IT 7/15/09)

AdvantageME ACCOUNT CODING

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

VC NUMBER	DOC TOTAL	FND	DEPT	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: _____



RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

This Master Software License, Maintenance and Professional Services Agreement (the "Agreement") is between Pegasystems Inc., located at One Rogers Street Cambridge, MA, 02142, USA ("Pegasystems"), and the State of Maine ("Customer").

This Agreement describes the terms and conditions that will apply to licenses for Pegasystems' products that Customer purchases from time to time, and maintenance services and professional services and training from Pegasystems relating to those licensed products. This Agreement consists of specific terms and conditions relating to Licenses, Maintenance and Professional Services and Training, general terms and conditions relating to the relationship between the parties, the defined terms specified on Exhibit A, and the terms and conditions in any Schedule.

Pegasystems' products include its PegaRULES Process Commander® (PRPC) platform for business process management, and solution frameworks and technology components that provide purpose-specific or industry-specific functionality that enable customers to efficiently deploy PRPC for specific solutions. These products are comprised of RuleSets that Customer may configure to develop Applications for processing and automation of its business, as described in a License Schedule to this Agreement. Customer may integrate these Applications to its other systems through Service and Connector facilities. Customer may also obtain maintenance services under a Maintenance Schedule to this Agreement and professional services and training under a Work Order to this Agreement.

Licenses

1. License Grant.

- (a) Pegasystems grants to Customer or its applicable Affiliate a license to use the Software, in object code and/or rules form, as specified in each applicable License Schedule. This license is non-exclusive and non-transferable, except as provided in Paragraphs 15(b) and (c), and Pegasystems retains all rights not expressly granted to Customer in this Agreement.**
- (b) Customer may use the Software on any Technology Platform that is then generally supported by Pegasystems, and may switch from one generally supported Technology Platform to another (e.g., from a Windows environment to a Linux environment) at no additional charge.**
- (c) Unless specifically authorized by law, Customer may not reverse engineer, decompile, disassemble or otherwise attempt to determine source code or protocols from the Software. Customer agrees not to lease or sublicense the Software to any third party or otherwise use it except as permitted under this Agreement or the applicable Schedule. All copies of the Software will contain Pegasystems' copyright notice.**
- (d) In each License Schedule, Customer will commit to purchase licenses for production use of each Application at the time that development of the Application begins. Customer will not use shared User IDs, or aggregating technologies such as concentrators, multiplexers, gateways or edge servers,**



to avoid or reduce the counting of individuals that use the Software.

- (e) Pegasystems retains all right, title and interest to the Software and any derivatives, modifications and enhancements.

2. Escrow of Source Code.

At Customer's written election, Pegasystems will escrow the source code to the Software with Iron Mountain Intellectual Property Management, Inc., or Pegasystems' then-current escrow agent, on the condition that Customer pay for all fees and expenses associated with its escrow account, including the costs for any verification of the deposit materials.

Maintenance

3. Maintenance. In a License Schedule, Customer may purchase maintenance services as described in the applicable Maintenance Schedule. The following terms and conditions will apply to maintenance services:

- (a) The maintenance term under each License Schedule will automatically renew for successive annual terms, at the then-current fees under such License Schedule, subject to annual inflation adjustments in accordance with Section 6, unless either party provides prior written notice of its intent not to renew maintenance at least 60 days prior to the expiration of the then-current term. If Customer elects not to renew maintenance, the election must be for all of the Software licensed under the applicable License Schedule, and for any additional usage of that Software licensed under other License Schedules. The maintenance fees for each term will be due and payable thirty days in advance.
- (b) If the Customer licenses the Software for additional use, the corresponding maintenance fee will be assessed at the applicable percentage of the license fee, as adjusted for annual inflation increases in accordance with Section 6. Any such additional maintenance fee will be prorated to reflect the period of time remaining in the then-current term and will be payable from the date the additional usage is licensed.
- (c) In the event that Customer elects not to renew maintenance, and then later elects to renew maintenance, any reinstatement of maintenance services will be subject to the mutual agreement of the parties and Customer's payment to Pegasystems of 120% of all fees that would have been payable from the time that Customer discontinued maintenance to the time of its reinstatement.

Professional Services and Training

4. Performance of Professional Services; Deliverables.

- (a) Pegasystems may provide services under a mutually-agreed Work Order, including consulting, installation support, and access to training courses.
- (b) All deliverables that Pegasystems creates during the course of services for Customer under this Agreement will be a "work made for hire" and will become, effective upon payment by Customer in full, the exclusive property of Customer. Customer will also retain all right, title and interest in any RuleSets that Customer develops for itself using the Software. Customer grants Pegasystems a non-exclusive, transferable, fully-paid license to use any portion of deliverables that perform generic functions which do not embody Customer's Confidential Information. So long as Pegasystems has not used any Customer Confidential Information, Customer agrees not to challenge or make claims against any Pegasystems products or services.
- (c) Pegasystems may use its Pre-Existing Materials in the course of providing services to the Customer. Pre-existing Materials (and all derivatives, modifications and enhancements to such Pre-Existing

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Materials) will at all times remain the property of Pegasystems, and Customer will receive a non-exclusive, fully-paid license to use the Pre-Existing Materials in connection with the deliverables to which they relate.

General Terms and Conditions

5. Term.

- (a) This Agreement is binding upon signing and will continue through the term of its Schedules.
- (b) In the event that Pegasystems commits a material breach of this Agreement or any Schedule, and such breach is uncured for 30 days following receipt of Customer's written notice to Pegasystems specifying the breach, Customer may terminate in writing this Agreement and any Schedule to which the breach relates. In the event that Customer commits a material breach of this Agreement or any Schedule, including non-payment, and such breach is uncured for 30 days following Pegasystems' written notice to the Customer specifying the breach, Pegasystems reserves the right to either suspend or terminate Customer's use of the Software or Pegasystems' provision of maintenance or other services.
- (c) Either party may, by written notice to the other party, terminate this Agreement or any Schedule in the event a party terminates or suspends its business, becomes insolvent, admits in writing to its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, becomes subject to direct control of a trustee, receiver or similar authority, or becomes subject to any other bankruptcy or insolvency proceedings not dismissed within 60 days.
- (d) If the Agreement is terminated or expires, each party will return to the other, or certify in writing the destruction of, any Confidential Information (as defined below) or property of the other. Termination will be subject to payment for all Software or services that Customer had received and accepted prior to the effective date of termination. If a License Schedule is terminated or expires, all licenses granted under that Schedule will terminate.
- (e) Sections 1(b), 1(c), 7, 8, 11 through 13, and 17 will survive the termination of this Agreement.

6. Fees. Fees and expenses are specified in the applicable Schedule and are payable in US Dollars (\$), unless otherwise specified. All payments are due within 30 days of the date of Pegasystems' invoice, and will be subject to a late charge of the lesser of 1.5% per month or the greatest amount permitted by law if unpaid for 30 days or more from the invoice date. To the extent that Customer requires the issuance of a purchase order before it can make payment, Customer's delay in issuing the purchase order prior to the due date will not affect Customer's obligation to pay the applicable late charge.

Once due, all fees are non-cancelable and non-refundable, except to the extent expressly provided in this Agreement or such Schedule or under applicable law. Upon termination of the Agreement or any Schedule, the payment obligation for all fees for the full applicable term will be paid to Pegasystems at the time of termination of this Agreement or the Schedule. License fees, maintenance fees and PegaCloud subscription fees for future years will be subject to the increase in the U.S. Consumer Price Index (All Urban Consumers) annually.

7. This section is intentionally left blank.

8. Representations and Warranties.

- (a) Each party represents and warrants that entering into and carrying out the terms and conditions of this Agreement will not violate any obligation binding upon it; that each party will comply with all



applicable laws in connection with its performance under this Agreement; and that the executing persons have the authority to bind their respective parties.

- (b) Pegasystems warrants that for a period of 90 days from the initial delivery of the Software:
 - (i) The Software will operate substantially in accordance with its Documentation; and
 - (ii) No disruptive or corrupting software will be introduced into the Software by Pegasystems or its employees. Customer will conduct virus-checking procedures before allowing installation or using the Software, and for each new version, upgrade or service pack.

Pegasystems will, at its election, promptly repair the Software to resolve any failure of these warranties, which can be replicated or verified, or replace the Software with a corrected version. These remedies will be Customer's exclusive remedy for any failures of these warranties. In order for Customer to invoke these remedies, Customer must provide written notice to Pegasystems within the warranty period, expressly outlining the nature of the alleged failure or breach.
- (c) The foregoing warranties will be void to the extent that any failure of such warranties is caused by (i) anyone other than a Pegasystems employee modifying the Software (unless Pegasystems authorizes the change in writing), or (ii) non-Pegasystems' software or hardware.
- (d) Pegasystems warrants that all services provided under this Agreement will be performed in a professional manner, consistent with industry standards.
- (e) EXCEPT AS EXPRESSLY STATED IN THIS SECTION, PEGASYSTEMS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

9. Confidentiality.

- (a) "**Confidential Information**" means all non-public information provided by or on behalf of a party to the other party related to the disclosing party's business, including but not limited to Pegasystems' Software and Documentation. For the avoidance of doubt, Customer's Confidential Information also includes any information that is protected by applicable law, statute or regulation, including the Health Insurance Portability and Accountability Act and the Gramm-Leach Bliley Act.
- (b) Each party agrees that any Confidential Information it receives from the other is the exclusive proprietary property of the disclosing party and may include trade secrets and other highly confidential information.
- (c) Each party agrees to receive and hold any Confidential Information in confidence and agrees:
 - (i) not to disclose or publish any Confidential Information to third parties;
 - (ii) not to use any Confidential Information except for those purposes specifically authorized by the disclosing party;
 - (iii) not to use any Confidential Information to unfairly compete with the disclosing party;
 - (iv) to restrict access to Confidential Information to those of its officers, directors, agents and employees who have a need to know, have been advised of the confidential nature of the Confidential Information, and who are under obligations of confidentiality to the receiving party; and
 - (v) to follow the other party's reasonable on-site security procedures.
- (d) The above confidentiality provisions will not apply to information that:
 - (i) is in the public domain at the time of its disclosure;
 - (ii) is disclosed with the prior written consent of the disclosing party;
 - (iii) becomes known to the receiving party from a source other than the disclosing party, provided such source is legally entitled to have and disclose the information;
 - (iv) is independently developed by a receiving party without use of the Confidential Information of the disclosing party, as demonstrated by written records of such receiving party; or



(v) is required to be disclosed by a court or regulatory authority or because of laws, rules or regulations.

(e) Pegasystems will own and be free to use any ideas or suggestions that directly relate to Pegasystems' products or business and do not contain Customer Confidential Information. For example, Pegasystems will be free to incorporate any suggested repairs, fixes, changes or modifications to the Software into its products.

10. Indemnification.

(a) Pegasystems will indemnify Customer from, and defend Customer against, any third party claim that the Software infringes upon a United States, Australian, Canadian or European Union trademark, copyright, trade secret or patent ("IPR"), except to the extent that the alleged infringement results from modifications to the Software by Customer or a third party or RuleSets created by Customer or a third party. In the event that the Software is found to be infringing or if Pegasystems deems it advisable as a result of a claim or threatened claim, Pegasystems will, in its reasonable discretion:

- (i) procure for Customer the right to continue using the Software;
- (ii) replace or modify the Software so that it becomes non-infringing; or
- (iii) in the event that Pegasystems cannot reasonably do the foregoing in its discretion, terminate the particular Schedule to which the IPR infringement claim relates and refund the Software license fees associated with such Schedule, depreciated on a straight-line five year basis.

These remedies will be Customer's sole remedy for any IPR infringement claims.

(b) In asserting any claim for indemnification, the relevant party must provide prompt written notice describing the claim, and cooperate in all reasonable ways with the indemnifying party. The indemnifying party will be entitled to control any proceedings or litigation for which it is indemnifying the other party, except that the indemnifying party will not, without the other party's prior written consent (not to be unreasonably withheld), enter into any settlement that would require the other party to take any action, or refrain from taking any action, other than permitting the indemnifying party to pay money damages on its behalf.

11. Limitation of Liability. Each party will have unlimited recourse against the other party for the following types of actual, direct damages arising under, or related to, this Agreement:

- (a) damages resulting from personal injury, death or tangible property damage caused by the other party or its personnel;
- (b) damages, and related legal costs and reasonable attorneys' fees, for which the other party has agreed to provide indemnification under this Agreement; or
- (c) damages resulting from a breach of a party's confidentiality obligations under this Agreement.

All other damages arising under, or related to, this Agreement (regardless of the type of damages, and whether for breach of contract, breach of warranty, tort or otherwise) will be limited to the amount of fees received by Pegasystems from Customer in connection with the Schedule(s) under which such damages arose, or to which such damages relate (except any claim by Pegasystems for payments owed by Customer will be limited to the amount owed).

12. Outsourcing. Customer will be permitted to allow a third party service provider to operate the Software as part of a technology outsourcing arrangement or to assist Customer in the development of an application, provided that: (a) such use is solely for the benefit of Customer and subject to the terms and conditions of this Agreement; and (b) Customer informs Pegasystems in writing and provides reasonable assurances that the requirements of this Section have been satisfied.

13. Notices. Any notices under this Agreement will be in writing and sent by certified mail, return receipt

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requested, or by a nationally or internationally recognized overnight delivery service.

14. Insurance. During the term of this Agreement and for so long as any Schedule has not been terminated or expired, Pegasystems will maintain insurance coverage with limits no less than those set forth below.

▪ <u>Property/Casualty/Fire Insurance - To cover Lease Requirements & Inventory Replacement Basis</u>	
▪ <u>Commercial General Liability</u>	\$1 Million
▪ <u>Workers Compensation</u>	Statutory
▪ <u>Employers Liability</u>	\$1 Million
▪ <u>Automobile Liability</u>	\$1 Million
▪ <u>Professional Liability (Errors & Omissions)</u>	\$1 Million
▪ <u>Umbrella/Excess Liability</u>	\$5 Million
▪ <u>Fidelity Bond</u>	\$1 Million

The insurance companies used must be rated at least A- by A.M. Best's Rating Service or equivalent. Upon written request by the Customer, Pegasystems will provide a Certificate of Insurance evidencing the required insurance or Customer may obtain such certificate directly from: <http://www.marsh.com/MarshPortal/PortalMain?PID=AppMoiFAQ-Terms&CLIENT=900114580>

15. Additional Terms and Conditions.

(a) Cooperation. The parties agree that they will cooperate at all times in good faith. In the event of any dispute, which cannot be readily resolved within 30 days, the parties will each escalate the matter to senior management who will meet in person or by telephone within 15 days of receipt of notice of the dispute, to attempt to resolve the open issues.

(b) Assignment or Delegation. Neither party may assign or delegate any rights or obligations under this Agreement or any Schedule without the other party's prior written consent, except that either party may assign the entirety of its rights and obligations under this Agreement (i) to its parent company or an Affiliate, or (ii) in connection with a merger or sale of a business unit or majority stock ownership, subject to Section 15(c) and provided that the successor party assumes the rights and obligations in writing and has adequate resources to meet its obligations and Customer notifies Pegasystems in writing prior to the assignment. Customer will not assign the Agreement or any Schedule to a Pegasystems competitor, which will be defined as any entity that licenses software that has a primary function of business rules and/or business process management. Any assignment is subject to the terms and conditions of this Agreement.

(c) Customer Combinations. In the event that Customer should merge with, acquire, or be acquired by another entity (collectively, a "Combination"), the resulting combined entity may only use the Software within the scope of the Customer's operations at the time of the Combination. In addition, the parties will negotiate in good faith a proportionate adjustment to the fees due under the applicable Schedule as a result of the Combination.

(d) Non-Solicitation. Neither party will hire or contract with, either as an employee or an independent contractor (either directly or through a third party), any Covered Personnel of the other party. The term "Covered Personnel" of a party will mean that party's employees or any contractors retained by that party who are professional services personnel or who were involved in the performance of this Agreement within the preceding six-month period, or any person who would have been considered Covered Personnel but for having terminated employment or contractual relationship within the past six months. Breach of this Paragraph will constitute a material breach of this Agreement.

(e) Export Compliance. The export and re-export of the Software and any Pegasystems technology is subject to export controls under the laws and regulations of the United States, and may also be subject to export and import controls under the laws and regulations of other countries. Customer agrees, at all times, to comply fully with these controls, laws and regulations. Furthermore, Customer represents and



warrants that it is not subject to the restrictions of the export control laws and regulations of the United States.

- (f) U.S. Government Contracts. *This subsection applies when any Software is acquired directly or indirectly by or on behalf of the United States Government:* The Software is a commercial product, licensed on the open market; developed entirely at private expense; and without the use of any U.S. Government funds. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19. Use, duplication and disclosure by DOD agencies is subject solely to the terms of this Agreement as stated in DFARS 227.7202.
- (g) Cooperation; Usage Validation. Pegasystems and Customer agree that each will execute and deliver documents, including confirmations to Pegasystems auditors, and take such other actions as may reasonably be requested to effect the transactions contemplated by this Agreement. Pegasystems reserves the right, upon reasonable prior notice, to validate Customer's usage of the Software and its compliance under this Agreement.
- (h) Force Majeure. Neither party will be responsible for performance delays caused by circumstances outside its reasonable control.
- (i) No Waiver. Neither a failure of a party to exercise any power or right under this Agreement, nor a custom or practice of the parties with regard to the terms or performance under this Agreement, will constitute a waiver of the rights of such party to demand full compliance with the terms of the Agreement.
- (j) Counterparts. This Agreement may be signed in counterparts, including facsimile or PDF counterparts or electronic signatures, each of which will be legally binding.
- (k) Entire Understanding. This Agreement and its Schedules constitute the entire understanding of the parties with respect to the Software and supersedes all previous agreements, statements and understandings from or between the parties regarding the subject matter of this Agreement. This Agreement also supersedes any conflicting language contained in any applicable past or future purchase order regarding the subject matter of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Schedule, the terms of the applicable Schedule will control. This Agreement will not be modified except in a writing signed by an authorized representative of each party.
- (l) Enforceability. If any portion of this Agreement is declared by a court of competent jurisdiction to be overbroad or unenforceable, the remainder of this Agreement will be valid and enforceable to the fullest extent permitted.
- (m) Governing Law. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, excluding its conflicts of laws provisions.

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Exhibit A

For the purposes of the Agreement and any Schedule, the following definitions will apply, unless otherwise expressly stated:

"Affiliates" are those entities that control, are controlled by, or are under common control with the Customer. Affiliates may be entitled, subject to the terms of this Agreement and the applicable Schedule, to license Software, use Software licensed by Customer, or purchase maintenance or professional services. For the purpose of any Schedule to which an Affiliate is a party, the Affiliate will be considered the Customer for purposes of the Agreement and such Schedule.

"Application" means a collection of rules and processes that provides specific business functionality and is released to production as a unit. Each Application is documented in the Software by an Application Rule.

"Connector" means an integration facility that permits the Software to call applications for data or processing.

"Documentation" consists of user manuals for the Software, which are provided to Customer in electronic form at the time of delivery of the Software.

An **"Invocation"** is a call for execution of the Software as a business rules engine to perform an automated decision or calculation. For the avoidance of doubt, multiple processes or queries performed by the Software in completing the call for execution do not result in additional Invocations.

"License Schedule", "Maintenance Schedule" or "Work Order" means a signed agreement to license products, purchase maintenance or purchase professional services from Pegasystems. License Schedules, Maintenance Schedules and Work Orders are referred to collectively as **"Schedules"**. Each Schedule, once signed, will be non-cancelable and non-refundable, except to the extent expressly provided in this Agreement or such Schedule or under applicable law.

"Pre-Existing Materials" means processes, methods, software (including but not limited to the Software), related documentation, designs and know-how, which Pegasystems conceived independently of the services for Customer and without the use of any Customer Confidential Information.

A **"RuleSet"** is a named collection of configuration records. For Pegasystems' provided RuleSets, the RuleSet names begin with "Pega" or the "&," "@ or)" symbol.

"Service" means an integration facility that permits applications to call the Software for data or processing.

"Software" will mean the licensed software listed in the applicable License Schedule, including any service packs, upgrades or other releases provided to Customer pursuant to a paid maintenance agreement. The Software includes Pegasystems' provided RuleSets and source code generated by the Software, if any.

"Technology Platform" will mean hardware, operating system, database, web browser, application server or other software with which the Software is intended for use.

A **"User"** is a person who uses the Software in a particular month.

A **"Sporadic User"** is a person that uses the Software during less than 10 hourly periods in a calendar month.

An **"Occasional User"** is a person that uses the Software during between 10 and 50 hourly periods in a calendar month.

Any other person that uses the Software in a calendar month, or that has the privilege to modify rules or processes, is a **"Regular User"**.

Regular Users, Occasional Users and Sporadic Users will be the unit of measurement for work done by customer staff. The number of Regular Users, Occasional Users and Sporadic Users will be measured each calendar month based on their actual usage of the Software in that month. The Software tracks only actual use, so a person who has a User ID but does not use the Software in a month will not be counted as a User for that month. Also, for the avoidance of doubt, merely being "logged in" is not counted as actual use during inactive hours.

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METHOD OF PAYMENT AND OTHER PROVISIONS

1. AGREEMENT AMOUNT \$ As authorized on related delivery orders

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 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: Douglas Averill
 Title: Director, Business Process Management
 Address: 111 Sewall Street, Augusta, ME 04330
 Telephone: 207-485-9780
 E-mail address: douglas.b.averill@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: Douglas Averill
 Title: Director, Business Process Management
 Address: 111 Sewall Street, Augusta, ME 04330
 Telephone: 207-485-9780
 E-mail address: douglas.b.averill@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 agrees 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 knowingly 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.

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10. STATE EMPLOYEES NOT TO BENEFIT No individual known to be 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 known to be 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.

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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;

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5. With the approval of the Agreement Administrator, settle all outstanding liabilities, claims, and payment obligations 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

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"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.

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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.

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

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

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

28. **NOTICES** All notices under this Agreement shall be deemed duly given: 1) upon delivery, if delivered by hand against receipt, 2) five (5) business days following posting, if sent by registered or certified mail, return receipt requested, or 3) by email. 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.

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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, in compliance with applicable laws, 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.

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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. The remedies contained in this section will be the sole remedy for applicable claims.

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 reasonably 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

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DATE _____

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 reasonable 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.

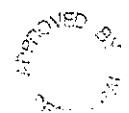
The Provider shall comply with the Maine Public Law, Title 10, Chapter 210-B (Notice of Risk to Personal Data Act).

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 the right 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 and stay lifted within sixty (60) days from the date of filing; or

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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 storage fees to be paid to the Escrow Agent. The State is responsible for all beneficiary fees paid to the Escrow Agent.

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

45. PRICE PROTECTION

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

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

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

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

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



RIDER C
EXCEPTIONS TO RIDER B-IT

1. Section 13, TERMINATION, is amended by deleting the first paragraph and replacing it with the following:

_____ 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 30 day Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

2. Section 17, LIMINATION OF LIABILITY, subsection 3, is deleted and replaced with the following:

The amount of any other actual direct damages up to the greater of \$500,000 or the value of the Product or Service that is the subject of the claim, up to a maximum of \$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.

3. Section 21, NON-APPROPRIATION, is amended by adding at the end of the section the following:

_____ In the event that the State is excused from its obligation to make payments under this Agreement, Provider shall have the option to terminate the Agreement. Upon termination of this Agreement, the following will occur: (i) the Department will return to Provider the software, materials and information provided under this Agreement; and (ii) all rights granted to the Department under this Agreement, including but not limited to the license to Provider's software, will immediately cease.

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

5. Section 35, PRODUCT LIABILITY, first sentence, is deleted and replaced with the following:

The Provider expressly warrants that its products and services will conform to applicable documentation for three months from their final written acceptance by the Department.

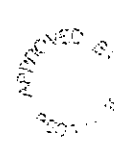
6. Section 40, CONFIDENTIALITY, subsection 1, is deleted and replaced with the following:

1. All non-public materials and information provided by or on behalf of a party to the other party related to the disclosing party's business, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information.

7. Section 40, CONFIDENTIALITY, subsection 3, is deleted and replaced with the following:

3. In the event of a breach of this confidentiality provision, the breaching party shall notify the other party promptly. The notice of breach to the Department shall be sent to the Agreement Administrator.

8. Section 41, OWNERSHIP, subsection 1, is amended by adding a new sentence at the end to read:



For the avoidance of doubt, the ownership and other rights relating to the software is not subject to this Section, but rather is governed by Sections 42 and 43.

9. Section 42, CUSTOM SOFTWARE, subsections 1 and 2 are deleted and replaced with the following:
 1. All deliverables that Provider creates during the course of services for Department under this Agreement will be a "work made for hire" and will become, effective upon payment by the Department in full, the exclusive property of Department. The Department will also retain all right, title and interest in any Rule Sets that Department develops for itself using the Provider's software. The Department grants Provider a non-exclusive, transferable, fully-paid license to use any portion of deliverables that perform generic functions which do not embody the Department's confidential information. So long as Provider has not used any of Department's confidential information, The Department agrees not to challenge or make claims against any Provider's products or services.
 2. Provider may use its pre-existing materials in the course of providing services to the Department. Pre-existing materials (and all derivatives, modifications and enhancements to such pre-existing materials) will at all times remain the property of Provider, and the Department will receive a non-exclusive, fully-paid license to use the pre-existing materials in connection with the deliverables to which they relate.
10. Section 43, OFF-THE-SHELF (OTS) SOFTWARE. subsection 1, is amended by deleting the first sentence and replacing it with the following:

Provider grants to the Department a license to use the software, in object code and/or rules form, as specified in each applicable License Schedule. This license is non-exclusive and non-transferable, except as provided in Paragraphs 15(b) and (c) of the Master Software License, Maintenance and Professional Services Agreement, and Provider retains all rights not expressly granted to the Department in this Agreement.
11. Section 43, OFF-THE-SHELF (OTS) SOFTWARE, subsection 2, is amended by adding a new sentence at the end to read:

Provider retains all right, title and interest to the Software and any derivatives, modifications and enhancements.
12. Section 45, PRICE PROTECTION, subsection 1, is deleted and replaced with the following:

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 on its GSA Schedules. If, during the term of this Agreement, the Provider modifies its GSA Schedule to provide more favorable terms, the Provider shall provide the same terms to the Department.
13. Section 46, IRREVOCABLE LETTER OF CREDIT, is deleted in its entirety.

APPROVED BY

APPROVED BY
DATE

RIDER D

Not Required: For use at Department's Discretion

APPROVED BY
[Signature]

RIDER F

Not Required: For use at Department's Discretion



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: MA

Other. Please identify country: _____

Notification of Changes to the Information

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

[Faint circular stamp]

STATE OF MAINE
DEPARTMENT OF Administrative and Financial Services
Agreement to Purchase Services

THIS AGREEMENT, made this 18th day of June, 2013, is by and between the State of Maine, Department of Administrative and Financial Services, hereinafter called "Department," and Pegasystems, Inc., located at One Rogers Street, Cambridge, MA 02142, telephone number 617-374-9600, hereinafter called "Provider", for the period of May 30, 2013 to May 29, 2018.

The AdvantageME Vendor/Customer number of the Provider is VS0000016754

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/Master Software License, Maintenance & Professional Services Agreement
- Rider B-IT - Payment and Other Provisions
- Rider C - Exceptions to Rider B-IT
- Rider D/E/F - At Department's Discretion
- 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 four (4) original copies.

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

By: [Signature]

and

PEGASYSTEMS INC.

By: Shawn Hopt
Shawn Hopt, Vice President

UNENCLUMBERED
JUN 24 2013
NO FUNDS RESERVED
FOR THIS CONTRACT

Total Agreement Amount: As authorized on related delivery orders

Approved: Michael Alan Wenzel
Chair, State Purchases Review Committee

JUN 24 2013



