

MODIFICATION

**State of Maine****Master Agreement****Effective Date:** 07/19/17**Expiration Date:** 06/30/19**Master Agreement Description:** Software Licenses, Maintenance and Professional Services**Buyer Information**

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

**Issuer Information**

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

**Requestor Information**

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

**Authorized Departments**

ALL

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

VS0000020696

**Vendor Name**

MobilSense Technologies Inc

**Alias/DBA****Vendor Address Information**

28632 Roadside Dr #120

Agoura Hills, CA 91301

US

**Vendor Contact Information**

David Stevens

8189039438 ext. 818

dave@mobilsense.com

## Commodity Information

**Vendor Line #:** 1

**Vendor Name:** MobilSense Technologies 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

<b>Quantity</b> 0.00000	<b>UOM</b>	<b>Unit Price</b> \$0.00
<b>Delivery Days</b>	<b>Free on Board</b>	
<b>Contract Amount</b> \$0.00	<b>Service Start Date</b> 07/19/17	<b>Service End Date</b> 06/30/19
<b>Catalog Name</b>	<b>Discount</b> 0.0000 %	
	<b>Discount Start Date</b>	<b>Discount End Date</b>

### Commodity Terms and Conditions

**Vendor Line #:** 1

**Commodity Line #:** 1

**T&C #:** 165

**T&C Name:** Payment Terms

**T&C Details:** Net 30

## LICENSE AGREEMENT

This LICENSE AGREEMENT (this "**Agreement**") is entered into by and between MobilSense Technologies, Inc., a California corporation ("**MobilSense**"), and the entity identified as "Licensee" on the signature page below ("**Licensee**"), as of this 10 day of July, 2017 (the "**Effective Date**"), with reference to the following facts:

- A. MobilSense owns all right, title, and interest in and to certain software that offers users a fully-automated wireless cost management solution (the "**Software**").
- B. The Software is provided to licensees on an application service provider (or "**ASP**") basis, and Licensee's authorized users will be able to access the Software remotely through an Internet browser on a computer connected to the Internet.
- C. Licensee desires to obtain a license to use the Software and to permit certain of its employees to use the Software to access and manipulate their wireless account information.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS

1.1. "**Administrators**" means those employees of Licensee who will have administrative responsibilities in connection with their use of the Software, as identified by Licensee in writing and provided to MobilSense in accordance with this Agreement.

1.2. "**Improvements**" means any improvements, modifications, enhancements or other alterations to the Software suggested or created by or on behalf of either party.

1.3. "**Licensee Data**" means all data necessary for MobilSense to enable Licensee's use of the Software, including (but not limited to) all wireless device call records and charges applicable to Users and any and all organizational information sufficient to identify Managers and Administrators.

1.4. "**Managers**" mean those employees of Licensee responsible for managing the accounts of certain groups of Users, as identified by Licensee in writing and provided to MobilSense in accordance with this Agreement.

1.5. "**Term**" has the meaning ascribed in Section 3.2.

1.6. "**Users**" mean those employees of Licensee who have been provided with wireless devices under Licensee's wireless account or employees that have been granted access to the Software by Licensee.

### 2. LICENSE GRANTS

2.1. **By MobilSense.** MobilSense hereby grants to Licensee a worldwide, nonexclusive, non-transferable license to access and use the Software (including any Improvements that MobilSense, in its sole discretion, chooses to incorporate into the Software) during the Term for the following purposes:

- (a) to permit Users to access and manipulate certain information related to their own wireless device bills, including (but not limited to) summaries of each monthly invoice and listings of charges by number dialed, and then categorize the reviewed device numbers as either "business" or "personal," and then indicate (by submission of categorized device number data) the amount owed to Licensee for those calls designated as "personal" (if Users are responsible for payment of their wireless device bills) or to be reimbursed by Licensee for those calls designated as "business";

- (b) to permit each Manager to access, review, approve personal and business charges from, and authorize certain additional actions in connection with those Users' accounts for which such Manager is responsible, and to generate certain reports available from the Software regarding wireless device accounts and usage; and

- (c) to permit Administrators to access and use the Software for system administration purposes, to manage the accounts of Users and Managers, to provide technical support to Users and Managers and to contact MobilSense in connection with any warranty claim under Section 8.1 below.

2.2. **By Licensee.** Licensee will provide (or instruct its wireless carrier to provide) MobilSense with the Licensee Data. The Licensee Data will be provided in an electronic format acceptable to MobilSense, and Licensee hereby grants and agrees to grant to MobilSense a worldwide, nonexclusive, fully-paid and royalty free license to use, reproduce, display, transmit, alter, manipulate and create derivative works of the Licensee Data during the Term in any manner necessary to provide the Software to Licensee. In addition, Licensee hereby grants and agrees to grant to MobilSense a perpetual, worldwide, nonexclusive, fully-paid and royalty free license to use the Licensee Data, as well as any information obtained by MobilSense from its analyses conducted using the Licensee Data, provided that MobilSense shall only make use of the Licensee Data in a manner that is non-personally-identifiable and does not identify Licensee or any User as the source of the Licensee Data, of any aspect thereof, or of any data derived therefrom, other than to provide Software to Licensee, without the prior written consent of Licensee.

### 3. TERM AND TERMINATION

3.1. **Initial Term.** The initial term of this Agreement will commence on the Effective Date and will continue in effect for a period of one (1) year (the "Initial Term"), unless earlier terminated as set forth herein.

3.2. **Renewal Terms.** This Agreement will automatically renew for successive one (1) year terms (each, a Renewal Term), unless either party notifies the other party of its intent not to renew at least sixty (60) days prior to the end of the then-current term. The Initial Term and any and all Renewal Terms are collectively referred to herein as the Term.

3.3. Termination for Breach. Either party may terminate this Agreement should the other party (a breaching party) commit any material breach in the performance of any of its obligations under this Agreement, which breach continues uncured for more than thirty (30) days after the breaching party receives written notice thereof from the other party specifying the nature of the breach.

3.4. Effect of Termination. Upon termination of this Agreement for any reason other than breach by Licensee, Licensee will be entitled to continue to access and use the Software for a period of sixty (60) days in order to accomplish any wind-down or completion of a billing cycle. No new data will be added during such wind-down period, but Licensee will continue to have the right to review and manipulate any data that was available as of the effective date of termination. In the event that MobilSense terminates the Agreement for breach by Licensee, Licensee's rights to use and access the Software will cease immediately upon such termination.

#### 4. LICENSE FEE AND PAYMENT TERMS

Fees. Licensee's use of the Software, receipt of the services described herein, and continuing rights under this Agreement are subject to the following payments:

(a) License Fee. There is a minimum flat processing fee for MobilSentry™ Enterprise Monitor of Four Hundred Ten Dollars and Zero Cents (\$410.00) for up to a total of Four Hundred and Seventy-Five Users (475) Users loaded monthly in each distinct website address (<https://mobilsense.com/mainedot>, [/mainecfs](#), [/memarine](#), etc). A charge of Ninety Cents (\$0.90) applies to every user over Four Hundred and Seventy-Five Users (475) loaded monthly in each distinct website address. If MobilSentry™ Order Manager provisioning module is requested, there is a minimum flat processing fee of One Hundred Eighty Dollars and Zero Cents (\$180.00) for up to a total of Four Hundred and Seventy-Five Users (475) loaded monthly in each distinct website address. A charge of Forty Cents (\$0.40) applies to every user over Four Hundred and Seventy-Five Users (475) loaded monthly in each distinct website address. MobilSense will calculate each month's license fees when it loads that month's wireless carrier data into the Software.

4.2. Payment Terms. MobilSense will invoice Licensee monthly for license fees due under the Agreement following the load of a monthly billing cycle, with all invoiced amounts due net thirty (30) days from the invoice date. Any payment not received by MobilSense within thirty (30) days after the invoice date will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower.

4.3. Payment Obligation. It will constitute a material default under the terms of this Agreement by Licensee if Licensee fails to pay to MobilSense any license fee or other amount payable to MobilSense under the terms of this Agreement.

#### 5. OWNERSHIP AND RESTRICTIONS

5.1. Ownership. MobilSense will own and retain all intellectual property rights in the Software, and will further own all rights in any and all Improvements, whether or not

MobilSense determines, in its sole discretion, to incorporate such Improvements in the Software.

5.2. Reservation of Rights. All rights not expressly granted to Licensee herein are reserved by MobilSense.

5.3. Restrictions. To the maximum extent permitted by law, Licensee will not: (a) modify, reverse engineer, decompile, disassemble or attempt to derive the source code of the Software; (b) rent, lease, loan, sell, sublicense, distribute, transmit or otherwise transfer its rights to use the Software to any third party; or (c) make any copy of or otherwise reproduce the Software or any portion thereof, except as expressly authorized by MobilSense or as may be incidentally made in connection with Licensee's access to and use of the Software.

#### 6. RESPONSIBILITIES OF THE PARTIES

##### 6.1. Responsibilities of Licensee.

(a) Project Manager. Licensee will appoint a project manager responsible for oversight of implementation and management of the Software, and for acting as the initial point of contact for MobilSense communications and questions under the Agreement, and Licensee will identify this person to MobilSense in writing within ten (10) days after the Effective Date.

(b) Data. Licensee will deliver, or have delivered, to MobilSense, the Licensee Data, as well as any other information reasonably requested by MobilSense. Licensee shall have sole responsibility for securing all necessary permissions and clearances with respect to the Licensee Data and for ensuring that Licensee's use of the Software to access, manage and manipulate the Licensee Data complies with any and all laws, rules, and regulations applicable thereto, including (but not limited to) those concerning any privacy rights of Users.

(c) Other Information. Licensee will provide to MobilSense any and all information reasonably requested by MobilSense regarding Licensee departments or divisions and management and reporting relationships, in order to permit MobilSense to set up the Software for use by Licensee. Such information shall constitute "Licensee Data" for purposes of this Agreement. It is Licensee's responsibility to maintain the accuracy and completeness of such information at all times during the Term.

(d) Safeguard of Information. Licensee will take all reasonable steps to safeguard all User, Manager, and Administrator login and password information, so as to ensure that no unauthorized person will have access to the Software, and that no persons authorized to have access will make any unauthorized use thereof. Licensee will promptly report and Licensee will require all Managers and Administrators to promptly report, to MobilSense any unauthorized use of the Software of which Licensee (or its Managers or Administrators) becomes aware and will take such further steps as may reasonably be requested by MobilSense to prevent unauthorized use thereof.

(e) Employee Data Maintenance. Licensee will be responsible for ongoing maintenance and accuracy of employee data, including departments, divisions, email

addresses, and management reporting relationships subsequent to initial setup.

## 6.2. Responsibilities of MobilSense.

(a) Tailoring. Upon receipt from Licensee of the Licensee Data, MobilSense will, at no additional charge, develop those interfaces and Manager- and Administrator-level views necessary to implement Licensee's reporting relationships and departmental structures. MobilSense will notify Licensee in writing if it requires additional information to complete this development, and Licensee agrees promptly to provide any information required by MobilSense.

(b) Co-branding. MobilSense will reserve a section of certain Software screens for co-branding purposes, and if Licensee provides MobilSense with a logo or other Licensee brand-related item in a format acceptable to MobilSense (which format information will be provided by MobilSense upon Licensee's reasonable prior request), MobilSense will incorporate such logo or other item into the aforementioned section of the Software screens.

(c) Notification. During the Term, MobilSense will load the Licensee Data into the Software promptly upon receipt from Licensee or its wireless carrier. Upon completion of each such data load, the Software will generate email correspondence to Users indicating that their wireless account information is ready for viewing.

(d) Rate Plan Recommendations. During the Term, the Software will generate rate plan recommendations and at Licensee's choice, MobilSense will communicate those changes to the respective carrier(s).

(e) Information Presentation. During the Term, MobilSense will maintain and keep available for User viewing up to twelve (12) months of complete wireless device bill information, as well as up to an additional twelve (12) months of summary information, which summary information will be maintained and accessible to Users, Managers and Administrators in a manner and format determined by MobilSense upon reasonable consultation with Licensee.

(f) Training. MobilSense shall provide to Licensee training in use, administration and technical support of the Software at such date as is mutually acceptable to both parties, as follows: MobilSense will provide up to ten (10) hours of web-based training at no charge to Licensee. Additional training may be purchased at \$100/hour.

(g) Technical Support. During the Term, MobilSense will provide technical support to Licensee's Administrators and Licensee's Administrators will be responsible for answering all internal Licensee inquiries regarding customer and technical support and will be responsible for providing support internally to Managers and Users. MobilSense will have no such support obligations to Licensee. In the event that Licensee identifies any defect in the Software, an Administrator will contact MobilSense to report the defect and MobilSense will handle such defect according to Section 8.1 hereof. Administrators will be able to contact MobilSense by device or email, and MobilSense will provide Administrators with MobilSense's standard

technical support services during MobilSense's regular business hours.

## 7. CONFIDENTIALITY

7.1. MobilSense Confidential Information. Subject to the requirements of the Maine Freedom of Access Act, Licensee will not disclose to any third party the Software or any portion thereof, the terms of this Agreement, any technical, product or business information of MobilSense, or any information that MobilSense identifies as confidential (collectively, "Confidential Information"), without the prior written consent of MobilSense. Licensee will take all reasonable measures to maintain the confidentiality of all Confidential Information in its possession or control, which in no event will be less than the measures that Licensee employs to maintain the confidentiality of its own information of similar importance

7.2. Injunctive Relief Authorized. Licensee acknowledges and agrees that (a) the Confidential Information is of a special, unique, unusual, extraordinary and intellectual character; (b) the unauthorized use or disclosure of any Confidential Information would constitute a material breach of this Agreement; (c) the interests of MobilSense in and to the Confidential Information would be irreparably injured by the unauthorized use or disclosure of such information; and (d) money damages would not be sufficient to compensate MobilSense for any such unauthorized use or disclosure. Accordingly, Licensee agrees that, in addition to any other remedies available to MobilSense at law, in equity or under this Agreement and notwithstanding the requirements of Section 10.8 below, MobilSense shall be entitled to seek specific performance, injunctive relief and other equitable relief to prevent any actual or threatened use or disclosure of the Confidential Information.

7.3. Licensee Confidential Information. MobilSense will make no use of Licensee Confidential Information including billing information, employee names, device numbers, management hierarchical information, email addresses, for any purpose other than supporting the Licensee's online bill presentment and reporting needs. Licensee information will be maintained in its own database instance, accessible only by licensee authorized users and MobilSense personnel involved in data center operations or customer support functions.

7.4. Survival. The foregoing obligations of confidentiality shall survive any termination of this Agreement for a period of five (5) years from the date of such termination, except that Licensee shall not be required to treat as confidential any information that Licensee can demonstrate:

- (a) Was in its possession or known to it prior to receipt from MobilSense;
- (b) Was publicly available at the time of receipt from MobilSense, or later became publicly available through no act or omission of Licensee; or
- (c) Was or later became lawfully available to Licensee from a source other than MobilSense, which

source was not under any obligation of confidentiality or nondisclosure.

## 8. REPRESENTATIONS AND WARRANTIES

8.1. By MobilSense. MobilSense warrants that the Software will substantially conform to those functional specifications or other written documentation provided by MobilSense when the Software is given normal, proper and intended usage in compliance with any user manuals or other written instructions provided by MobilSense. In the event that the Software should fail to so conform during the Term, MobilSense will investigate and use commercially reasonable efforts to remedy such nonconformance. THE FOREGOING REPRESENTS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED FOR THE SOFTWARE, AND MOBILSENSE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE, OR A COURSE OF DEALINGS BETWEEN THE PARTIES. MobilSense does not warrant that the functions contained in the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free.

8.2. By Licensee. Licensee represents, warrants, and covenants that (a) it has the right to enter into this Agreement and to fully perform its obligations hereunder; (b) by entering into this Agreement, it does not violate any agreement existing between it and any other person or entity; and (c) it will comply with all applicable laws, rules, and regulations in performance of its duties hereunder.

## 9. MUTUAL INDEMNIFICATION AND LIMITATION OF LIABILITY

9.1. Intellectual Property Indemnification. MobilSense will indemnify, defend and hold harmless Licensee against a claim by a third party that the Software infringes a copyright or trademark of such third party, provided that (a) Licensee notifies MobilSense in writing within ten (10) days after receipt of the claim; (b) MobilSense has sole control of and sole discretion with respect to the defense and all related settlement negotiations; and (c) Licensee provides MobilSense with the assistance, information and authority necessary to perform MobilSense's obligations under this paragraph. If it is determined that the Software, or any necessary part thereof, infringes the patent, copyright or trademark of a third party, MobilSense will, in its sole discretion, either (x) use its best efforts to obtain a license from the third party in order to permit the continued use of the Software by Licensee; (y) redesign the Software to operate in a way that does not infringe such third party rights; or (z) terminate this Agreement and promptly refund to Licensee the total fees paid by Licensee during the preceding three (3) months. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF MOBILSENSE FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS FOR THE SOFTWARE, AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY IN REGARD TO THE SOFTWARE, INCLUDING, WITHOUT

LIMITATION, THE WARRANTY AGAINST INFRINGEMENT SPECIFIED IN THE UNIFORM COMMERCIAL CODE.

9.2. Limitation of Indemnity. The obligations of MobilSense in Section 9.2 will not apply: (a) if the Software was modified by any person or entity other than MobilSense; (b) if the Software was combined with other products or services or marks where the alleged infringement relates to such combination; (c) if Licensee, or its Managers, Administrators or Users continue allegedly infringing activity after Licensee has been notified thereof or after Licensee was informed of and offered modifications that would have avoided the alleged infringement; (d) where Licensee's, or its Managers', Administrators' or Users' use of the Software was incident to an infringement not resulting primarily from the Software; or (e) where Licensee's, or its Managers', Administrators' or Users' use of the Software was not strictly in accordance with this Agreement.

9.3. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL MOBILSENSE BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING OUT OF LICENSEE'S USE OF OR INABILITY TO USE OR ACCESS THE SOFTWARE, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF DATA, LOST PROFITS, OR LOST BUSINESS OPPORTUNITIES, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

## 10. MISCELLANEOUS TERMS

10.1. Relationship of the Parties. The parties will at all times act independently, and their relationship will be that of independent contractors. No agency, partnership, joint venture or similar relationship shall be deemed to be created by this Agreement or by any other document or dealings between the parties. Neither party will have the right to create any obligation or duty, express or implied, on behalf of the other party.

10.2. Publicity. Neither party may issue any press releases or make any public announcement relating to this Agreement or the transaction contemplated herein without the prior written consent of the other party, except that MobilSense shall be entitled to include Licensee on its client list, including the MobilSense website, and use Licensee as a reference in connection therewith.

10.3. Notices. Except where provided otherwise, notices hereunder shall be in writing and shall be deemed to have been fully given and received when delivered by hand, sent by nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, postage prepaid, and properly addressed to the offices of the respective parties at the addresses set forth by the parties' signatures below.

10.4. Assignment. Licensee may not assign this Agreement or any of the rights granted by MobilSense herein, in whole or in part, without the prior written consent of MobilSense, and any attempt to do so shall be void. MobilSense will be entitled to assign this Agreement to a

subsidiary of MobilSense or to an entity that acquires all or substantially all of MobilSense's assets or business relating to the Software or to this Agreement.

10.5. Severability. If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be interpreted to the maximum extent to which it is valid and enforceable, all as determined by such court in such action, and the remaining provisions of this Agreement will, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

10.6. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Maine, without reference to rules regarding conflicts of law.

10.7. Survival. The provisions of Sections 2.2, 3.4, 5, 7, 9, and this Section 10, as well as any other terms of this Agreement that expressly extend or by their nature should extend beyond termination or expiration of this Agreement, will survive and continue in full force and effect after any termination or expiration of this Agreement.

10.8. Dispute Resolution. The parties agree to submit any dispute or controversy arising out of or relating to this Agreement to binding arbitration to be held at a location mutually agreed upon by the parties, under the then-current Commercial Rules of the American Arbitration Association (the "AAA Rules"). With respect to any arbitration proceeding held hereunder, either party has the right to opt for expedited arbitration under the AAA Rules. In addition to the powers conferred by the AAA Rules, the arbitrator shall have authority to order such other discovery as he or she deems appropriate for a full and fair hearing of the case.

Within ten (10) business days after the demand for arbitration is given, the parties shall select a single neutral arbitrator to preside over the arbitration proceeding. If the parties fail to select an arbitrator within such ten (10) day period, each party will have three (3) business days to nominate an independent representative, and the two representatives shall have ten (10) business days after their nomination to select a single neutral arbitrator. In the parties' representatives fail to agree upon an arbitrator within such ten (10) day period, such arbitrator shall be chosen by the American Arbitration Association in accordance with the AAA Rules. The arbitrator's decision shall be final and binding and the award so rendered may be filed in any court having jurisdiction. The losing party will bear all expenses in connection with arbitration conducted hereunder, except that, if applicable, each party will bear its own expenses in connection with the independent representative that it nominates.

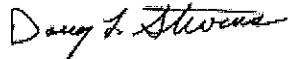
10.9. Entire Agreement. This Agreement, together with its attached exhibits and schedules, constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written communications with respect hereto, all of which are merged herein. Except as specifically provided for herein, this Agreement may not be altered, amended, or modified except by an instrument in writing signed by a duly authorized representative of each party.

10.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

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

MOBILSENSE

MobilSense Technologies, Inc.  
28632 Roadside Drive, Suite 120  
Agoura Hills, CA 91301-6075



Signature

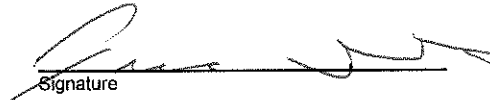
Doug L. Stevens  
Print Name

Vice President  
Title

LICENSEE

State Of Maine, OIT  
145 Statehouse Station  
Augusta, ME 04333

Company Address



Signature

James Smith  
Print Name

CIO  
Title

# State of Maine Waiver of Competitive Bidding Request Form

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

<b>Requesting Department's Contract Administrator:</b>	Jennifer Chisum CS-Kimbalie Lawrence	<b>Office/Division/Program of Contract Administrator:</b>	MaineDOT/Maintenance and Operations
<b>Est. Contract Amount:</b>	\$ 9842	<b>Contract or RQS Number:</b>	
<b>Proposed Start Date:</b>	<b>7/1/2017</b>	<b>Proposed End Date:</b>	6/31/2019
<b>Vendor/Provider Name, City, State</b>	MobilSense Technologies Inc 28632 Roadside Drive, Suite 120, Agoura Hills, CA 91301		
<b>Short Description of Good or Service:</b>	MobileSentry Enterprise Monitor Software-as-a-service for compiling wireless charges from all the Department's telecom providers, applying organizational data, and generating reports to facilitate payment and management of the Department's telecom bills.		
<b>Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Purchases' website for a period of seven consecutive calendar days.</b>		<b>To be completed by the Division of Purchases</b> Posting dates on Division of Purchases' website: From: <u>05/12/2017</u> To: <u>05/19/2017</u>	
<b>Notice of Intent to Waive Competitive Bidding Number:</b>		NOI# <u>0520170599</u>	
<b>1. Statutory Justification</b> State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification which applies to this specific request.			
	A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;		
	B. The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services;		
	<i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the Governor's "designee") sign and date on the right.</i>	By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement. <b>Signature:</b>	
		<b>Printed Name:</b>	<b>Date:</b>
	C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;		
	D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;		
	E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs;		
	<i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Purchases "GOVCOOP" form, found here: <a href="http://www.maine.gov/purchases/info/forms/govcoop.doc">http://www.maine.gov/purchases/info/forms/govcoop.doc</a>.</i>		
	F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids;		
<b>X</b>	G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.		

# State of Maine Waiver of Competitive Bidding Request Form

If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:

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

## 2. Description of Specific Need

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

With the proliferation of cell phones for personnel with the varying plans from varying carriers – since no one carrier has reliable coverage Statewide, and cell phone data accounts for various field technology such as stationary traffic counters and security cameras, the Department's manual business processes for managing and paying the bills is failing. One major carrier, US Cellular provides access to MobilSense MobilSentry which allows the Department to apply billing and organizational codes to the accounts which has allowed the Department to automate the bill payment process, turning a 2-day process into an hour-or-less process for each monthly bill. In addition, management reports allow the Department to identify and remove underutilized accounts and get other management reports. The Department wishes to also manage its other telecom bills in this system for further efficiencies. As this is outside the scope of their agreement with US Cellular, the Department must set up its own account for this.

## 3. Availability of other Public Resources

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

The department learned of MobilSense's software-as-a-service through reaching out to other State agencies for their solutions.

## 4. Cost

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

MobilSense has received national recognition in July 2016 for its pricing model as well as its functional fit to moderately sized enterprises <http://enterprise-mobility.cioreview.com/vendor/2016/mobilsense>; Gartner 2006. The savings in labor just in paying the bills, by adding the additional telecom carriers, will exceed the monthly fees. The vendor waived the usual account startup fees. The overall cost of this software-as-a-service is under \$5000/yr and is expected to save \$6500/yr just in bill payment processing.

# State of Maine Waiver of Competitive Bidding Request Form

## 5. Future Competition

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

The contract is for 2 years. This will give the Department time to further investigate the competitor services once the current labor shortage crisis in the unit is over.

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

## 6. Uniqueness

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

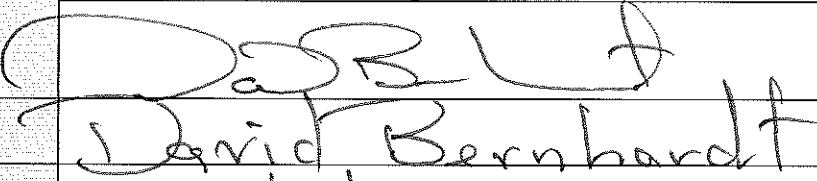
## 7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)

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

This solution is the fastest solution to put in place as it leverages existing efforts to other vendors and requires only a few hours to add the additional carriers. The old process still required by the non US-CELLULAR accounts, based on Access databases, spreadsheets, and email, costs the department a great deal of time with each bill – estimated at around 10 hours per month per bill; and additional time to maintain each new account modification or issue. There are immediate savings in time and money that can be gained by adding these other vendors – the monthly cost will be repaid several times over in labor savings alone. The Department is struggling mightily to keep up with basic required tasks at this time due to the OIT switchover of nearly all existing phones to new devices which must be reconfigured and distributed immediately upon delivery; new data-driven DOT initiatives with heavy investment in new cell data connected devices; a heavy volume of device billing changes to implement in July as a result of budget modifications; and recent changes in personnel leaving a knowledge/experience gap to fill. We cannot imagine where we will find the time to put together an RFP, and possibly do an implementation effort of unknown dimensions in the foreseeable future. It has taken a year to get the current MobilSense solution for US CELLULAR going although the vendor did most of the

# State of Maine Waiver of Competitive Bidding Request Form

work for us, based on our specifications, such as setting account codes by SQL rather than manual updates. The Department wishes to convert as soon as possible to free time for more productive work.

<b>Signature of requesting Department's Commissioner or Chief Executive (or designee within the Commissioner's Office):</b>	<i>By signing below, I signify that my Department requests, and I approve of, this Waiver of Competitive Bidding.</i>
<b>Printed Name:</b>	
<b>Date:</b>	5/9/17

# STATE OF MAINE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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