

MODIFICATION

State of Maine**Master Agreement****Effective Date:** 02/01/15**Expiration Date:** 06/30/18**Master Agreement Description:** Off-site Electronic Media and Transport Services**Buyer Information**

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

Issuer Information

JUSTIN FRANZOSE 207-624-7337 ext. justin.franzose@maine.gov

Requestor Information

Jeff Cotnoir 207-624-9449 ext. Jeff.Cotnoir@maine.gov

Authorized Departments

18B BUREAU OF INFORMATION SERVICES

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

VC0000213071

Vendor Name

IRON MOUNTAIN INC.

Alias/DBA**Vendor Address Information**

1101 ENTERPRISE DRIVE

ROYERSFORD, PA 19468

US

Vendor Contact Information

PRASHANT HIREMATH

816-448-6621 ext.

AREFTREMIT@IRONMOUNTAIN.COM

Commodity Information

Vendor Line #: 1

Vendor Name: IRON MOUNTAIN INC.

Commodity Line #: 1

Commodity Code: 92023

Commodity Description: Off-site Electronic Media and Transport Services

Commodity Specifications: Please see documents attached.

Quantity	UOM	Unit Price
0.00000		\$0.00
Delivery Days	Free on Board	
Contract Amount	Service Start Date	Service End Date
\$0.00	02/01/15	06/30/18
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
Agreement to Purchase Services

THIS AGREEMENT, made this 1st day of January, 2015, is by and between the State of Maine, Department of Administrative & Financial Services/OIT, hereinafter called "Department," and Iron Mountain Information Management, LLC, located at 26 A Parkway Dr. Scarborough, ME 04070, telephone number 207-885-0683, hereinafter called "Provider" or "Iron Mountain", for the period of 2/1/2015 to 6/30/2018, with the option for two (2) one year renewals.

The AdvantageME Vendor/Customer number of the Provider is VC1000037721.

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

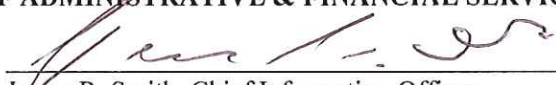
Rider A - Specifications of Work to be Performed
Rider B-IT - Payment and Other Provisions
Rider C - Exceptions to Rider B-IT
Rider D - RFP # 201405744, Off-Site Electronic Media Storage and Transport Services
Rider E - STATE OF MAINE REQUEST FOR PROPOSALS AMENDMENT
Rider F - Exhibit 7 Safeguarding Contract Language
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 2 original copies.

DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES/OIT

By:


James R. Smith, Chief Information Officer

and

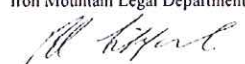
IRON MOUNTAIN INFORMATION MANAGEMENT, LLC

By:


Gregg Postage, Vice President, Territory General Manager

Total Agreement Amount: \$ Unencumbered, Based on Usage.

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

Approved as to Form and Legal Content:
Iron Mountain Legal Department

Name: Robert Liljedahl
Customer: State of Maine
Date: January 21, 2015

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

The Department of Administrative and Financial Services, Office of Information Technology ("Department"), requires regular Off-Site Electronic Media storage and Transport Services as part of its disaster recovery/business continuity process.

This document creates a Master Contract under which Off-Site Electronic Media Storage and Transport Services will be delivered (Hereinafter, the Master Contract is referred to as the "Agreement" or "Contract").

Term:

The initial term of the Contract with Iron Mountain is for the period beginning 02/01/2105 and ending on 6/30/2018, with the option for a maximum of two (2) one year renewals.

Offsite Media Storage Transportation Services:

Iron Mountain will provide a standard, safe transportation and handling capabilities to the State of Maine, Augusta, 45 Commerce or a location designated by the Department. Regular pickup/delivery will occur each business day Monday through Friday, excluding State holidays.

On work days, the Department must be able to request tapes up to 09:50am and receive them on the standard delivery the same day by noon. After 9:50am, tapes are received next working day on the standard delivery.

Iron Mountain will have in place adequate environmental controls for temperature and humidity to protect the electronic media during transport.

Containers with tapes and documents are received and sent at 45 Commerce by authorized staff; Iron Mountain must provide the authentication process.

"Special deliveries" must be available 24/7 and must be delivered to the Augusta 45 Commerce location within 4 hours of the request. These special deliveries are at one fixed price (Rider F) regardless day, time, or number needed.

Transport containers provided, on request, by Iron Mountain which are water retardant or water proof.

A closed in loading dock will be used to protect transported materials from adverse weather.

Iron Mountain will provide lockable, movable security containers (upon request) dedicated exclusively for the collection of the electronic media that is to be stored off-site, at no additional cost to the Department. Containers must have slot(s) for the electronic media and shall remain locked at all times to ensure security during pickup, exchange, and transport. All containers shall be the property of the Iron Mountain and must be maintained by Iron Mountain.

Iron Mountain will except containers provided by the Department for off-site storage at the standard storage fee for similar size containers.

Iron Mountain will provide secure containers (upon request) with combination locks that can be set by the Department dedicated exclusively for the collection of the electronic media at no additional cost to the Department. Containers must have slot(s) for the electronic media and shall remain locked at all times to ensure security during pickup, exchange and transport. All containers shall be the property of Iron Mountain and must be maintained by the Iron Mountain. Lock combination will be established and retained by the Department.

Iron Mountain shall unlock containers, if appropriate, only at their facility when materials are ready to be stored behind two locked barriers.

Offsite Storage Facility and Storage (located at 26a Parkway Drive, Scarborough, Maine):

Storage facility will maintain adequate environmental controls for temperature and humidity to protect all the State's media during storage.

The State of Maine electronic media will be stored behind two locked barriers at all times and there will be active logging of all individuals going into these areas.

Iron Mountain will monitor and routinely test all detection, suppression, and alarm systems of the storage facility [Iron Mountain's records centers meet all requirements of the local Authorities Having Jurisdiction (AHJ) and National Fire Protection Association (NFPA) standards 13, 25 and 72 at the time the facility was built. Iron Mountain complies with all other relevant NFPA standards, as interpreted by the local AHJ at the time the facility was built, including 10 and 101, as required.]

The storage facility will meet standards for smoke detection, sprinkler system, etc. and Iron Mountain will provide a copy of the most recent fire inspection report if requested.

Storage facility must have a monitored security system in place. This system must cover at least all of the outside walls of the storage building. Adequate police and fire protection must also be in place to cover the facility.

Iron Mountain will provide the State a copy of its current disaster preparedness plan and all updated plans.

Iron Mountain will provide documentation of pest control and facility cleaning when requested by the State.

The State of Maine may audit the offsite storage facility on a regular basis and will provide Iron Mountain with a 48 hour notification of such audit.

All containers and/or tapes will be placed on shelving, never on the floor.

Segregate electronic media from other warehouse operations.

Individual tapes will be stored in slots and indexed by the State of Maine bar code. No additional information may be placed on the tape.

Inventory Tracking:

Iron Mountain will use SecureSync® as its secure, encrypted customer portal for Iron Mountain's library management system, which is structured to receive FTP files from the State of Maine. These files will be used to compare and validate inventory integrity and Chain of Custody scan comparisons.

The State of Maine's Data Management solution will be managed through SecureBase, Iron Mountain's internal process management system. State of Maine authorized users will have online access to the system through SecureSync, which provides customer access to information such as their inventory, tape history, discrepancy resolutions, corrective actions, inbound/outbound, etc.

Staffing:

All Iron Mountain staff involved in this contract will sign agreements to keep customer information confidential.

All Iron Mountain staff involved in this contract will take the federal training for handling FTI (federal tax information) data and those who directly handle FTI media will be certified. Iron Mountain drivers will wear standard Iron Mountain uniforms and display picture identification badges when providing services under this contract.

Security:

Iron Mountain is required to conform to Internal Revenue Service, Maine Revenue Service, Office of Information Technology and any other agency information disclosure and security requirements as well as Maine law.

RIDER B-IT

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ Unencumbered, Based on Usage.

Schedule A:

PROGRAM PRICING SCHEDULE

Data Protection and Recovery Services

This Pricing Schedule is incorporated into and made part of the Customer Agreement (the "Agreement") between Iron Mountain Information Management, LLC, ("Iron Mountain") and State of Maine, ("the Customer").

Please see our Customer Information Center at <http://cic.ironmountain.com/dataprotection/> for a Glossary with definitions of the terms used in this Pricing Schedule and more detail regarding our services, standard processes, and billing practices. In addition, restrictions apply to volume and/or stated timeframes for some service transaction types and these may be found in the Glossary under each service type.

State of Maine

District Name/Number: Scarborough, ME 44027

Customer No. 44027.0PT39V

Effective Date: February 1, 2015

Backup Tape Vaulting

► TRANSPORTATION SERVICES

Scheduled Service — Scheduled Pickup/Delivery services are provided during Regular Business Hours (local time) during Business Days, excluding Holidays.

DESCRIPTION	PRICE	PER	CODE
☐ Scheduled Service	\$35.70	Trip	TRANSTR100

Special Service — Pickup/Delivery service initiated to occur within a specific timeframe of request for service from Customer's Authorized Representative. Charges for Special Service are in addition to the Scheduled Service trip charge.

DESCRIPTION	PRICE	PER	CODE
☐ Critical Special (3 hours)	\$156.40	Trip	SPECLEM000

Transportation Services are billed monthly in arrears.

► VAULTING

The service of storing media items at an Iron Mountain facility. See specific container size descriptions in the Cost Estimate.

DESCRIPTION	PRICE	PER	CODE
■ Slotted Media	\$0.175	Slot	VAULTA1000
■ Small Containers	\$3.33	Container	VAULTAR000
■ Medium Containers	\$5.608	Container	CONTRXM000
■ Large Containers	\$8.063	Container	CONTRXT000
■ 4 Draw File Cabinet	\$150.02	Cabinet	CONTRSC000

Storage services are billed monthly in arrears.

► MEDIA MANAGEMENT SERVICES

Services are provided during Regular Business Hours (local time) during Business Days, excluding Holidays.

DESCRIPTION	PRICE	PER	CODE
■ Closed Container Handling	\$2.70	Item	HANDL03000
■ Transport Container Handling	\$2.70	Item	HANDL04000
■ Media Handling	\$0.45	Item	HANDL01000

► OTHER PRODUCTS AND SERVICES

DESCRIPTION	PRICE	PER	CODE
■ Management Services during Business Hours	\$48.00	Hour	LABOR02000
■ Management Services outside Business Hours	\$65.00	Hour	LABOR07000
■ SecureSync Compatible Scanner - Tethered	\$295.00	Each	SCANNER1
■ SecureSync Compatible Scanner - Wireless	\$1,495.00	Each	SCANNER2
■ Data Entry Fee	\$75.00	Month	CODE
■ Container Locks	\$12.00	Lock	MAINTLOCKS
■ Security Clips	\$2.75	Clip	MAINTCLIPS
■ Temporary Transport Container Fee	\$1.00	Each per Day	TRANSRENTL
■ Custom Bar Code Labels		Quote	MAINTLABEL
■ Data Products		Quote	DPQUOTE
■ Disaster Recovery Testing		Quote	DRSVCS
■ Library Moves		Quote	LIBMOVES
■ Plastic Media Destruction		Quote	OTHERDD000

Use of third party carriers for Disaster Recovery Testing and Library Moves require the completion of the Third Party Transportation Authorization Form.

► **OTHER MONTHLY FEES**

DESCRIPTION	PRICE	PER	CODE
■ Administrative Fee	\$25.12	Acct Number	MAINTADMIN

Additional Services beyond those listed in this Pricing Schedule are available. For service descriptions, please go to Additional Services at <http://cic.ironmountain.com/dataprotection/additional/>.

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

Upon verification of Invoice, payment will be issued.

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

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

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

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

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

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

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

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

Name: Jeffrey Wm. Cotnoir
Title: Management Analyst I
Address: 51 Commerce Drive, 4th Floor
Telephone: 207-624-9449
E-mail address: jeff.cotnoir@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: Ed Lincoln
Title: Systems Group Manager
Address: 51 Commerce Drive, 4th Floor
Telephone: 207-624-3172
E-mail address: edward.lincoln@maine.gov

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **ACCOUNTING, RECORDS, AND AUDIT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Damages for violation or infringement of any copyright or trademark;
2. Damages for bodily injury (including death) to persons, and damages for physical injury to tangible personal property or real property; and
3. The amount of any other actual direct damages up to the greater of \$500,000 or three times the value of the Product or Service that is the subject of the claim, up to a maximum of \$25,000,000. For example, if the Product or Service that is the subject of the claim was valued at \$15,000,000, then the Provider would be liable for no more than \$25,000,000. For purposes of this subsection, the term "Product" would typically include the following, but not be limited to, Materials, Source Code, Machine Code, and Licenses.

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

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

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

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

1. **Minimum Coverage**

1. Commercial general liability (including products, completed operations, and broad-form contractual): \$1,000,000 per occurrence;
2. Workers' Compensation and employer's liability: as required by law;
3. Professional liability: \$1,000,000; and

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

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

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

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

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

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

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

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

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

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

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

26. **INTERPRETATION OF THE AGREEMENT**

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

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

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

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

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

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

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

31. **LOBBYING**

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

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

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

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

32. PROVIDER PERSONNEL

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

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

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

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

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

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

34. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS

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

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

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

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

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

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

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

40. **CONFIDENTIALITY**

1. All materials and information given to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information.

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

41. OWNERSHIP

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The Provider is in material breach of its maintenance and support obligations and has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or

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

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

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

45. THIS ITEM IS INTENTIONALLY LEFT BLANK

46. THIS ITEM IS INTENTIONALLY LEFT BLANK

47. ENTIRE AGREEMENT This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to this Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise an option or election under this Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, but the same shall continue in full force and effect. Use of one remedy shall not waive the Department's right to use other remedies. Failure of the Department to use a 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 16, State Held Harmless.** Section 16 is amended by adding a new sentence at the end to read:

Notwithstanding the foregoing, Provider's liability for Deposits is limited to the Declared Value as set forth in Section 17 as amended.

2. **Section 17, Limitation of Liability.** Section 17 is amended by adding the following: "For the purposes of this Agreement, Department declares the following values for items stored under this Agreement ("Deposits"): (a) for hard-copy records, \$1.00 per carton, linear foot of open-shelf files or other storage pricing unit, and (b) for media, the cost of replacing the physical item (each a "Declared Value")."

Section 17 is further amended by deleting subsection 3 and replacing it with the following:

"The amount of any other actual damages is limited as follows: (i) with respect to Deposits and related data, Provider's liability is limited to the Declared Value; and (ii) with respect to non-storage services and electronic storage services and data related to each, Provider's liability is limited to six (6) months of fees paid by Department for the particular service that gave rise to the claim. If Deposits are placed in the custody of a third-party carrier for transportation, the carrier shall be solely responsible for any claim related to the Deposits while in the custody of the carrier."

3. **Section 32, Provider Personnel.** Section 32 is amended by deleting subsection 1.

Section 32 is further amended by adding at the end of subsection 5 the following:

"The parties agree that background checks will be conducted by Provider in accordance with its background investigation policy, which policy Provider shall provide to the Department upon request."

4. **Section 33, State Property.** Section 33 is amended by adding at the end the following:

"Provider's reimbursement obligation with respect to Deposits shall be limited to the Declared Value set forth in Section 17."

5. **Section 37, Cover.** Section 37 is deleted in its entirety.

6. **Rider B-IT** is amended by adding new sections 48, 49, 50, 51, 52 and 53 to read as follows:

48. Operational Procedures. Department shall comply with Provider's reasonable operational requirements, as modified from time to time, regarding cartons, carton integrity, delivery/pickup volumes, preparation for pickup, security, access and similar matters.

49. Ownership Warranty. Department warrants that it is the owner or legal custodian of the stored materials and has full authority to store the materials and direct their disposition in accordance with the terms of this Agreement.

50. Government Orders. Provider is authorized to comply with any subpoena or similar order related to the Deposits, provided that Provider notifies Department promptly upon receipt thereof, unless such notice is prohibited by law.

51. Purchase Orders. In the event that Department issues a purchase order to Provider covering the services provided under this Agreement, any terms and conditions set forth in the purchase order which are in addition to or establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Provider.”

52. Performance of Service by Provider Affiliates. Notwithstanding anything to the contrary in this Agreement, Provider may delegate, assign or subcontract any or all of its obligations under this Agreement to an affiliate of Provider. An affiliate means any entity controlling, controlled by, under common control with, or having a common parent with Provider. Provider acknowledges that it shall remain directly liable to the Department for the performance of such delegated obligations.

53. Audit Rights. Notwithstanding anything to the contrary in this Agreement, unless otherwise required by law, the audit rights of the Department contained within this Agreement are subject to the following conditions: (i) all audits will be at the Department’s expense; (ii) the Department may not view materials or information pertaining to other Provider customers and Provider shall not be required to disclose information related to its proprietary security procedures or environment; (iii) all individuals conducting the audit must sign Provider’s standard confidentiality agreement and comply with Provider’s safety and security policies at all times while on Provider’s premises.

AGREEMENT TO PURCHASE SERVICES
BP54 EO-IT.doc

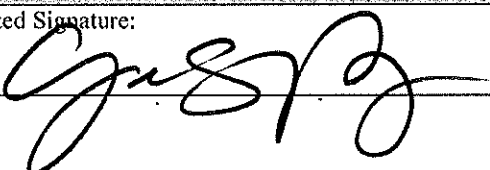
Debarment, Performance, and Non-Collusion Certification

By signing this document I certify to the best of my knowledge and belief that the aforementioned organization, its principals, and any subcontractors named in this proposal:

- d. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
- e. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
 - v. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.*
 - vi. Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;*
 - vii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and*
 - viii. Have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.*
- f. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

Failure to provide this certification may result in the disqualification of the Bidder's proposal, at the discretion of the Department.

To the best of my knowledge all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.

Name: Greg Postage	Title: VP + GM
Authorized Signature: 	Date: 2/6/15