

STATE OF MAINE
DEPARTMENT OF FINANCIAL AND ADMINISTRATIVE SERVICES
OFFICE OF INFORMATION TECHNOLOGY
Agreement to Purchase Services

THIS AGREEMENT, made this 13th day of November 2018, is by and between the State of Maine, Department of Financial and Administrative Services, hereinafter called "Department," and Premier International Enterprises, Inc., located at 221 North LaSalle, Chicago, IL 60601, hereinafter called "Provider", for the period of November 13, 2018 to January 15, 2020.

The AdvantageME Vendor/Customer number of the Provider is VS0000022515.

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 G - Identification of Country in Which Contracted Work will be Performed

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


Provider: Premier International Enterprises, Inc.

By: 
Craig Wood, CEO, Premier International Enterprises, Inc.
Date: 11/14/18

Department of Administrative and Financial Services
Office of Information Technology

By: 
Ande A. Smith, Acting Chief Information Officer
Date: 14 NOV 18

And

Bureau of Human Resources
By: 
Holly Pomelow, Acting Director Bureau of Human Resources
Date: 11/14/18

Total Agreement Amount Not to Exceed Time and Materials \$403,200.00 at a rate of \$210.00/hour plus Travel Not to Exceed \$36,000.00.

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

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

Provider shall deliver legacy data conversion and migration services for moving Department HCM data (HR, Payroll, Benefits, Employee Self-Service, Manager Self-Service, Time Tracking, Absence Management, Mobile, and Recruiting) to the Workday format.

Provider shall provide use of Applaud Data Migration software at no additional charge when used by Provider's staff. Department shall provide a Windows-based server (based on the PIF 1229 – Applaud Server Configuration.pdf provided on 10/3/18) residing within the Department's network to run the Applaud software and serve as the primary location for all of Provider's activities.

The Provider shall be required to perform the Task/Deliverables stated below:

List of data sources (tables/files) and data access plan	Provider supports Department in reviewing relevant data sources (specific tables and files), and in determining the optimal manner of accessing each data source. Department provides Provider with data access for each data source as required.
Extraction into the Applaud data repository	Provider extracts all data from each identified legacy table/file and replicates the legacy data environment in the Applaud data repository residing on Department's server. Applaud software is provided by Provider for use by Provider's employees.
Data profiling reports	As the legacy data is extracted, Provider will produce profile reports to provide the team with raw data statistics for every column/field. Provider will produce pattern analysis reports for relevant fields, as directed by Department. These reports identify all distinct data patterns, along with a count of rows/records that fit each pattern.
Review of profile reports	Department and Provider review the profile and pattern analysis reports to identify data issues that require additional research.
Custom data analysis reports	Provider works at the direction of Department to produce custom data analysis reports to support the team's data quality efforts, including identification and handling of conflicts between data sources. These reports identify all rows/records with specific issues as well as high-level summary of the findings.
Data quality strategy	Provider and Department review the analysis reports to develop a data strategy to address the data quality issues. During this process, comprehensive rules for handling overlap and conflicts between data sources are developed and documented by Provider, as are data enrichment requirements.

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<p>Data cleansing</p>	<p>Provider works at the direction of Department to address data quality issues.</p> <p>Provider will:</p> <ul style="list-style-type: none"> • standardize, correct, enrich, enhance, and consolidate data as needed; • provide dashboards to track the progress of cleansing throughout the project. <p>Provider supports three types of cleansing:</p> <ul style="list-style-type: none"> • Manual cleansing in the Department’s legacy system – Department’s legacy system end-users use analysis reports to manually cleanse the data in the legacy systems. • Automated cleansing as a part of the Data Migration – Department provides business rules and Provider automates the cleansing as a part of the Data Migration. Handling of multi-source overlap and conflicts will likely be handled through this approach. • The hybrid approach – Provider exports the relevant data to a secure site provided by Department and end-users manually cleanse it outside of the Department’s legacy system. The cleansed data is re-imported, validated, and used as an override at go-live.
<p>Conversion requirements</p>	<p>Provider uses the data conversion requirements (prepared by the Department and Workday) to transform the data into the structure and content required by Workday.</p>
<p>Data transformation programs</p>	<p>Provider uses the data conversion to transform the data into the structure and content required by Workday.</p>
<p>Project Management</p>	<p>Provider will document, organize and control specification changes and the frequent communication that are expected to occur on this Data Migration project. Such documentation will be maintained on a secure site provided by Department.</p> <p>Provider will keep the conversion requirements up-to-date as the project proceeds and the Department requests changes to ensure that Department will have comprehensive and accurate conversion requirements when the project is completed.</p>
<p>Data extracts</p>	<p>Provider will:</p> <ul style="list-style-type: none"> • export fully converted data into the defined Workday load format(s); • create Error Logs to identify situations where the Department’s legacy data did not match the conversion requirements; • ensure that everything runs efficiently in the desired time window.
<p>Data load</p>	<p>Workday will execute Workday load programs in accordance with the Workday Statement of Work to process the load files into the Workday tenant.</p>
<p>Conversion test cycles</p>	<p>Department and Workday will establish the testing schedule and Provider will run the Data Migration processes in support of this schedule.</p> <p>Following each test cycle, Department will verify the accuracy of the Data Migration and direct Provider in any changes required.</p>

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Payroll gross-to-net reconciliation	If Workday can provide the Workday payroll register and Department can provide the legacy payroll register for the same period, Provider will build a process to compare the old and new paychecks, and will identify differences at the summary and detail level for earnings, deductions, and taxes.
Data audit	Provider will: <ul style="list-style-type: none">• work with Department to develop a Data Migration audit plan that meets Department's external audit requirements;• build and run all additional data audit reports to support audit requirements.

Travel Costs - The Provider agrees the total cost for all travel costs shall not exceed \$36,000 without written approval from Department. Provider agrees to follow the State of Maine Travel Policy to be reimbursed for all travel costs: <http://www.maine.gov/osc/travel/>

RIDER B-IT

METHOD OF PAYMENT AND OTHER PROVISIONS

1. AGREEMENT AMOUNT

NOT TO EXCEED:

Time at a rate of \$210/hour (includes use of Applaud software)	\$403,200
Travel Expenses	\$ 36,000
TOTAL	\$439,200

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

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

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

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

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

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

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

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

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

Name: Tonia Ennis
Title: Director of Project Management Office
Address: 51 Commerce Drive, Augusta, ME 04330
Telephone: 207-624-8825
E-mail address: tonia.ennis@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: Debra Arrington
Title: Lead Project Manager
Address: 268 Whitten Road, Hallowell, ME 04347
Telephone: 207-287-8730
E-mail address: debra.arrington@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.

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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:

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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,

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

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

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

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

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

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

1. **Minimum Coverage**

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

A) All acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;

B) Network security and privacy risks, including, but not limited to, unauthorized access, failure of security, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of confidential information, related regulatory defense, and penalties in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;

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C) Data breach expenses, in an amount not less than (*see NOTE below and insert the appropriate limit based upon the number of Personally Identifiable Information records*) \$_____, and payable, whether incurred by the Department or the Provider; for and on behalf of the Department, including, but not limited to:

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

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

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

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

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

- 2. Workers' Compensation and employer's liability, as required by law;
- 3. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
- 4. Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
- 5. Crime, in an amount not less than \$_____ (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and
- 6. Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.

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

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

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

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

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

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

25. SET-OFF RIGHTS The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement, up to any amounts due and owing to the State with regard to this Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any

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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.

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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 Provider without unduly interfering with the continued performance by the Provider, then the Department may provide or procure the services necessary to cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

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

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

40. CONFIDENTIALITY

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

41. OWNERSHIP

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

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:

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1. The Provider, as depositor, shall enter into an escrow contract, upon terms acceptable to the Department, with a recognized software Escrow Agent. The escrow contract must provide for the Department to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of the Department's data, and all updates thereof (the "Deposit Materials"), in electronic format. Deposits will occur no less frequently than once a month.
2. The escrow contract shall provide for the retention, administration, and controlled access of the Deposit Materials, and the release of the Deposit Materials to the Department, upon receipt of a joint written instruction from the Department and the Provider, or upon receipt of written notice from the Department that:
 - a. The Provider has failed to carry out its obligations set forth in 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

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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

Notwithstanding anything to the contrary contained herein, the following shall apply to this Agreement:

1. The Total Agreement Amount and the Travel expenses are estimates and shall not exceed the "Not To Exceed" amount specified for each unless otherwise agreed by the Department in writing.
2. As to Section 2 D of Rider B-IT, the last sentence of paragraph 2, and the entirety of paragraph 3 and paragraph 4 shall be deleted.
3. As to Section 13 of Rider B-IT, the following language shall be added to the Section as 9:
Within 30 days of the date of termination of this Agreement for any reason, the Department shall pay Provider, all amounts due to Provider and fees incurred by Provider as of the date of termination. In addition, the last sentence of the introductory paragraph shall be deleted.
4. As to Section 13 of Rider B-IT, the language of the last paragraph shall be made mutual.
5. As to Section 17 of Rider B-IT, paragraph 1 shall be deleted in its entirety and replaced with the following:

17. LIMITATION OF LIABILITY The Provider's liability to the Department, for damages sustained by the Department, as the result of Provider's default, or acts, or omissions, in the performance of work under this Agreement, whether such damages arise out of breach, negligence, misrepresentation, or otherwise, shall be the greater of any actual direct damages, up to the limits of the insurance required herein, or the value of the Product or Service that is the subject of this Agreement.

6. As to Section 17 of Rider B-IT, paragraph 2 shall be deleted.
7. As to Section 20 of Rider B-IT, the paragraph shall be deleted in its entirety and replaced with the following:

A. Provider shall provide the following insurance:

Commercial General Liability in an amount not less than \$1,000,000 each occurrence, with a general aggregate of \$2,000,000.

Automobile Liability in an amount not less than \$1,000,000 Combined Single Limit

Umbrella Liability in an amount not less than \$10,000,000 each occurrence with an aggregate of \$10,000,000.

Workers Compensation and Employer's Liability per statute.

Technology Errors and Omissions in an amount not less than \$5,000,000 each claim with an aggregate of \$5,000,000. Such coverage to include: Consumer Notification; Forensic Investigation, Public Relations and Crisis Management Fees, and Credit or Identity Monitoring, or similar remediation services.

B. Other Provisions:

Unless explicitly waived by the Department, the insurance policies shall contain, or be endorsed to contain, the following provisions:

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

8.

Section 35 of Rider B IT shall be deleted in its entirety and replaced with the following:

35. PRODUCT WARRANTY The Provider expressly warrants its products and services for ninety days 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.

9. Section 37 of Rider B-IT shall be deleted in its entirety.

10. Sections 41, 42, 43 and 44 Rider B-IT shall be deleted in their entirety and replaced with the following:

41. OWNERSHIP OF MATERIALS RELATED TO SERVICES.

(a) Provider Materials. Department acknowledges and agrees that all right, title and interest, including worldwide ownership of Intellectual Property Rights (as defined below), in and to any Provider Confidential Information, and other Provider materials (including but not limited to Provider software, derived components ("Components") thereof (as more fully defined below), content, work flows, marketing materials and business processes, services and any other material owned by Provider or provided by Provider to Department, and/or used to provide the services hereunder, including any derivatives, modifications, upgrades or enhancements thereto) (the "Provider Materials") are and shall at all times remain the property of Provider. Department shall have no rights or interests in or to the Provider Materials, provided however that Provider shall provide Department a use license below. The Department shall not and shall not permit any third party to copy, translate, modify, enhance, adapt, decompile, disassemble or reverse engineer the Provider Materials

either during the Term or after the termination of this Agreement. The Provider Materials are supplied for the sole use of the Department in accordance with the terms set forth herein. The Department agrees that they will not sell, transfer or assign or provide or permit access to the Provider Materials to any other person or entity. Nothing contained herein shall be construed as providing Department with any exclusive use of or rights to the Provider Materials. Provider may terminate this license if the Department breaches the terms of this Section 4.

For purposes of this Agreement, Intellectual Property Rights shall mean intellectual property rights of a party, including without limitation (i) any patentable materials, and U.S. or foreign patents or any division, continuation or extension thereof; (ii) all rights, title and interest in and to all trade secrets and trade secret rights arising under the common law, state law, federal law and laws of foreign countries; (iii) all copyrights, and all other literary property and author rights whether or not copyrightable, and all rights, title and interest in and to all copyrights and copyrighted interests throughout the world; (iv) all trademarks, tradenames and service marks, whether registered or arising under the common law, state law, federal law and laws of foreign countries and all registration thereof and interests therein throughout the world; and (v) all associated goodwill.

(b) Department Materials. Provider acknowledges and agrees that all right, title and interest, including worldwide ownership of proprietary rights, in any Department Confidential Information, and other Department materials provided to Provider hereunder (the "Department Materials"), including but not limited to Department data, are and shall at all times remain the property of Department. Provider shall have no rights or interests in or to the Department Materials, other than the rights granted herein. During the term hereof, subject to and in accordance with the terms hereof, Department hereby grants to Provider a non-exclusive, non-sublicensable, non-transferable, license to use the Department Materials solely as necessary in connection with the provision of the Services. Any rights not granted herein are reserved to Department.

(c) Applaud® License and the Components.

(i) Title to the Applaud. The parties hereto acknowledge and agree that the software product to be utilized by Provider hereunder to perform the services is known as Applaud, and any derivative, replacement or upgrade thereof (collectively "Applaud") shall remain the sole and exclusive property of Provider.

(ii) Components Created Hereunder. In each SOW hereunder, Provider will be using Applaud as a programming tool to build programming components for Department (the "Components"). For purposes hereof, Components shall mean any additional software or code written by Provider using Applaud or executed from Applaud, whether specifically developed for Department or otherwise. The parties agree that Components created by Provider in the course of providing the Services (collectively, the "Works") shall be sole and exclusive property of Provider. Department shall test the Components before providing or using Components for the benefit of Department or Client. Department shall notify Provider of any defects or omissions in the Components found during Department's testing. Provider shall promptly correct any defect or omission in the Components that precludes the Components from operating in accordance with its specification at no charge to Department. Department's sole remedy for a defect or omission in the Components is the correction of the defect or omission. Department is responsible for testing to ensure all data entering any live system is valid. Department agrees that Provider shall not be responsible for problems caused by invalid data in any live system.

(iii) License for Use of Applaud. During the term hereof, Provider hereby provides Department non-exclusive, non-sublicensable, non-transferable license to use Applaud for the purpose of running the Components created hereunder by Provider for Department's internal business purposes.

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Department acknowledges that this license is for running Applaud Components only and does not provide Department with a license to use Applaud for any other purposes, including but not limited to developing Applaud Components for their benefit or the benefit of third parties.

11. The following language shall be added to the Agreement as Section 48:

48. NON-SOLICITATION OF EMPLOYEES.

To the extent permitted by law, during the term of this Agreement and for a period of two (2) years after its termination, neither party shall, directly or indirectly, solicit for hire or hire as an employee, consultant, or otherwise any of the other party's personnel who have performed Services under this Agreement or the Prime Contract without such other party's express written consent. Both parties hereby acknowledge and agree that any breach of the terms of this Section would cause irreparable harm to the other for which no adequate remedy at law would exist, therefore the parties agree that, in addition to any other remedies available to Department or Provider, as appropriate, Department or Provider may enforce this Section by injunction, whether temporary or permanent, in any court of competent jurisdiction, without bond. The terms of this Section shall survive the termination or expiration of this Agreement.

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

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



United States. Please identify state: ME



Other. Please identify country: _____

Notification of Changes to the Information

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