



JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
MAINE REVENUE SERVICES  
24 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0024

ADMINISTRATIVE & FINANCIAL SERVICES

RYAN LOW  
COMMISSIONER

MAINE REVENUE SERVICES

JEROME D. GERARD  
ACTING EXECUTIVE DIRECTOR

April 13, 2010

James J. Everett  
Fairfax Imaging, Inc.  
4200-A Lafayette Center Drive  
Chantilly, VA 20151-1214

Dear Jim,

Please find enclosed your copy of the fully signed and approved contract between Fairfax Imaging, Inc. and Maine Revenue Services.

We look forward to working with the Fairfax team on the TRIPS project.

Sincerely,

A handwritten signature in cursive script that reads "Judith K. Whitten".

Judith K. Whitten, Director  
Return Processing and Quality Assurance  
Maine Revenue Services  
(207) 624-9713

STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE and FINANCIAL SERVICES, Maine Revenue Services  
Agreement to Purchase Services

THIS AGREEMENT, made this 5th day of April, 2010 is by and between the State of Maine, Department of Administrative and Financial Services, Maine Revenue Services, hereinafter called "Department," and Fairfax Imaging, Inc., located at 4921 Memorial Highway, Suite 114, Tampa, Florida 33634, telephone number (877) 627-8325, hereinafter called "Provider", for the period of April 12, 2010 to June 30, 2011.

The AdvantageME Vendor/Customer number of the Provider is VS0000003391.

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:

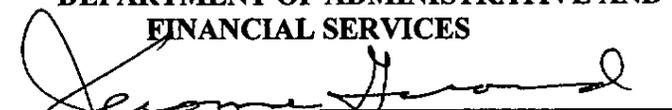
- Rider A - Specifications of Work to be Performed
- Rider B-IT - Payment and Other Provisions
- Rider C - Exceptions to Rider B-IT
- Rider D - Exhibit 1 - Sales and License Agreement
  - Exhibit 2 - Support Services Contract and
  - Exhibit 3 - Hardware and Equipment Maintenance
- Rider G - Identification of Country in Which Contracted Work will be Performed

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

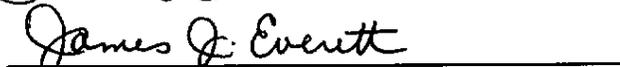
IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in four original copies.

DEPARTMENT OF ADMINISTRATIVE AND  
FINANCIAL SERVICES

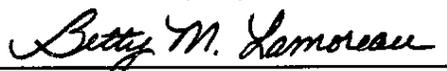
By:

  
\_\_\_\_\_  
Jerome Gerard, Acting State Tax Assessor  
and  
Fairfax Imaging, Inc.

By:

  
\_\_\_\_\_  
James J. Everett, Vice President

Total Agreement Amount: \$1,779,991

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

APR 09 2010

UNENCUMBERED  
  
APR 09 2010  
  
NO FUNDS RESERVED  
FOR THIS CONTRACT



**RIDER A**  
**SPECIFICATIONS OF WORK TO BE PERFORMED**

**I. ELEMENTS OF THE CONTRACT**

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

1. State of Maine Contract for Special Services, Page 1 and Rider A, Parts I and II;
2. State of Maine Contract for Special Services, Rider B-IT, Payment and Other Provisions, and Rider C – Exceptions to Rider B-IT;
3. State of Maine Contract for Special Services, Rider A, Specifications of Work to be Performed, exclusive of Parts I and II;
4. State of Maine Department of Administrative and Financial Services' Request for Proposals #200908512;
5. Vendor Proposal received in response to the RFP identified in 4 above;
6. State of Maine Contract for Special Services, Rider D, Exhibits 1, 2 and 3 – Sales and License Agreement, Support Services Contract and Terms and Conditions for Hardware and Equipment Maintenance

**II. CONTRACT INTERPRETATION - CONTROLLING TERMS**

It is mutually understood and agreed that in the event of any conflict among the provisions in the documents that constitute the State of Maine Contract for Special Services as listed in Article 1 above, the conflict shall be resolved by giving precedence to the contract elements in the order listed, with Element 1, State of Maine Contract for Special Services, Page 1 and Rider A, Parts I and II, having the highest precedence and Element 6 being subordinate to all other listed elements.

**III. OBJECTIVE OF THE CONTRACT**

The objective of this contract is to acquire and implement mail processing equipment and a scanning, imaging and data entry system products and services from Provider to replace the Maine Image Processing System (MIPS). This project will be referred to as the Tax and Revenue Image Processing System (TRIPS) project.

**A. PROVIDER SERVICES AND PRODUCTS**

Provider will deliver the following general services and products in order to fulfill its obligations as described in its proposal response and to complete the contract deliverables specified in Section F of this agreement:

1. Project planning and management.
2. Technical consulting and services.
3. System design and implementation approach.
4. Mail Extraction Hardware, Scanning Hardware, and related hardware
5. Application software licenses, configuration and development.
6. Upgrades to existing scanning hardware including installation and verification.
7. New system hardware including installation and verification.
8. Quality assurance and testing.
9. Software release implementation.
10. Software version and source control, and environment management.
11. Conversion of existing images from MODCA to FORTIS.
12. Documentation, training, and knowledge transfer.
13. Warranty support.
14. System security.

Provider will fulfill their service obligations by providing experienced, well-qualified, and adequate numbers of consultants and technicians. Provider will commit the following staff members to fill the "key" positions identified below:

- |                    |                  |
|--------------------|------------------|
| 1. Project Manager | Jaiya Green, PMP |
|--------------------|------------------|

- 2. Imaging Technical Engineer(s)
- 3. Quality Assurance / Testing Lead
- 4. Imaging Trainer

Vitaliy Baklikov and Fida Suleman  
 Baseem Samad  
 Robert Castello

**B. DEPARTMENT ROLE:**

The Department will assign key individuals to the following staff positions for the TRIPS Project. The Department expects Provider Staff to work directly with these assigned key individuals. Such staff will not be full time on the project, but will be available as directed by the MRS Project Manager to assist the Provider in fulfilling Provider’s obligations under this contract in accordance with the TRIPS Project Plan as developed and agreed to by both parties. The positions may be filled by different individuals during the life of the project.

<i>Position</i>	<i>Primary Responsibilities</i>
MRS Project Manager	Responsible for ensuring the project meets Department and state requirements. The MRS Project Manager will direct state staff assigned to the project and ensure project tasks and activities are progressing according to plan. The MRS PM will manage stakeholder relations including expectations management and project communications.
PMO Project Manager	The Department is contracting with a Project Management Organization (PMO) to provide contract management and project oversight services to the Department for TRIPS. The PMO project manager will be responsible for overall project management, establishing and operating the project office, developing and updating the project plan, evaluating resource needs and project team performance, and implementing project controls and reporting processes.
Development Coordinator	Senior level systems analyst with deep knowledge of MIPS to assist with the overall design of the new system, functional and technical requirements, and defining forms. Will coordinate the involvement of State development staff in assisting with system configuration and obtaining technical knowledge transfer.
Subject Matter Expert(s)	Expert system users that have a thorough understanding of the business processes, functional requirements, and user expectations. Will represent the user community on the project team and participate in all phases of system migration including assisting with requirements analysis and definition, establishing acceptance criteria, facilitating and assisting with user acceptance testing, planning and supporting implementation, training, and post production support. Primary responsibility is to provide direct input and expertise, and to identify and coordinate with other users whose input is required to ensure that new system functions and interfaces meet user requirements and expectations.
Testing Coordinator	Responsible for planning and executing the Department’s involvement in quality assurance and testing activities for the TRIPS Project, and will work with Provider’s QA/Testing Lead to manage the overall quality assurance and testing process. Additionally, the Testing Coordinator will oversee and coordinate the Department’s involvement in training activities to ensure MRS staff receive appropriate training in accordance with the Training Plan.
Operations and Support Coordinator	Responsible for coordinating with OIT to develop operations policies, procedures, documentation, and service agreements for the new system and to facilitate installation of required hardware and software to support the project. Coordinate with the Department OIT Staff to transition technical support activities from within the project team to the OIT organization.

### **TRIPS Project Management Team**

Department will form a TRIPS Project Management Team comprised of the PMO Project Manager, the MRS Project Manager and the vendor Project Manager. The Project Management Team will share responsibility for managing the TRIPS project. The vendor Project Manager's primary responsibilities include ensuring the Provider meets contractual and project requirements, managing Provider and subcontractor staff assigned to the project both onsite and offsite, responding to change requests, resolving invoice disputes, implementing corrective actions to improve Provider team performance, and ensuring Provider contract deliverables are on time, complete, and meet or exceed quality requirements. The Parties acknowledge that, notwithstanding the role of the PMO as provided herein, Provider's contractual obligations run to the Department and not to the PMO or its representatives.

The TRIPS Project Management Team will meet regularly to review project status, discuss issues and risks, identify corrective actions necessary to mitigate risks, resolve issues, and/or keep the project on plan, and review requested changes to scope, schedule, approach, and/or cost. The TRIPS Project Management Team is authorized to approve changes in accordance with Section C – Project Change Orders.

### **TRIPS Steering Committee**

Department will form a TRIPS Steering Committee comprised of senior managers within the Department and representatives from the Office of Information Technology (OIT). The TRIPS Project Management Team will regularly attend Steering Committee Meetings. Other project participants may be invited to attend meetings of the Steering Committee to provide input on specific issues. Members of the Steering Committee may change during the life of the project.

The TRIPS Steering Committee will:

- Review and approve Department staff assignments to the TRIPS Project Team.
- Receive updates on project activities, status, issues and critical success factors.
- Understand project risks and support implementation of mitigation strategies.
- Review and approve key contract deliverables.
- Review and approve material project change requests.

## **C. PROJECT CHANGE ORDERS**

Prior to implementation of changes to the project, including but not limited to, adjustments to project scope, schedule, budget, deliverables, staffing, milestones, planning documents, system and application architecture, and acceptance criteria, the parties shall negotiate and execute a change order using the following procedure, except when exigent circumstances require immediate action. Failure by Provider to request a change order prior to the implementation of any changes shall constitute a waiver by Provider of any compensation or schedule relief.

1. Department and the TRIPS PMO will implement a project status reporting process that will include gathering requested changes to the project as a normal project control function. Provider is responsible to participate in project status meetings and submit project status reports that clearly indicate Change Requests when needed.
2. Provider, in cooperation with the MRS Project Manager, the PMO, and/or the project team, will assist where appropriate in the development of a project change request. This request will include the reason for the change, expected impact to the project plan and schedule, and a cost estimate for implementing the change if it is outside existing project scope.
3. Cost estimates for change requests will be based on the prices for Change Order services as defined in Section E below. Any estimating assumptions such as the level of participation of Department staff in implementing the change, additional software and hardware costs required to implement the change, estimated hours by position for Provider's consultants, and/or travel expenses, will be clearly documented in the change request.
4. The project change request will be submitted to the TRIPS Project Management Team. The TRIPS Project Management Team will meet with the change requestor and appropriate team members and/or stakeholders to review the request and determine if the change should be approved, denied, or further researched.
5. Change requests that do not affect the overall project budget, and/or materially affect the schedule, and/or contract deliverables will be reviewed and approved by the Project Management Team.
6. Change requests that affect the project budget and/or result in a material impact to the overall project will be presented to the TRIPS Steering Committee for review and approval, and if approved, will result (subject to approval by the Department's Division of Purchases) in an amendment to this contract.

- 7. Approved change orders will be tracked. Invoices from Provider for services related to approved change orders will clearly indicate the change order number and description for tracking purposes.

**D. HARDWARE AND SOFTWARE PROVIDED BY STATE**

**STATE-PROVIDED HARDWARE**

In its original proposal, Provider specified a number of servers to be used to handle the software applications, database access, and image storage. The proposal indicated that the servers would be manufactured by Dell, and identified the specific configuration. The State has opted to purchase and install the servers separately from this contract. The State has elected to utilize servers manufactured by Hewlett Packard, and Provider has specified the appropriate configuration for those HP servers. In particular, the State will install and make available for utilization by the TRIPS system the following servers:

- 3 Application Servers – Microsoft Windows Server 2003 or 2008, consistent with technical specifications included in Provider Proposal
- 1 Terabyte of Work In Process image storage accessible by the 3 application servers.
- 2 Database Servers – Microsoft Windows Server 2003, MS SQL Server 2005, consistent with technical specifications included in Provider Proposal
- 880 Gigabyte of application database storage accessible by the 2 database servers.

The State will work with the Provider to finalize the overall technical architecture for the TRIPS project, including server and storage specifications prior to order and installation.

In addition, the Department will provide one existing IBML SoftTrac IT III, 2-pocket scanner with runout BC/IJP/F&R Camera, PowerEdge 2800, MICR Reader, Bottom Side, System 13009, purchased July 2006, which Provider will upgrade and incorporate in the new system. The Department will also provide one Omaton 206.

**STATE-PROVIDED SOFTWARE**

The Department will acquire software license and maintenance agreements for the following products from the software provider. The Provider will be authorized by the vendors to access and utilize such software to the extent necessary to fulfill its contractual obligations. The Provider will deliver, either directly or through its subcontractors, services and expertise to support the installation, testing, configuration, integration, operation, and use of all software products listed in the table below.

Software Product Name	Software Provider	Description
Windows Server 2003/2008	Microsoft	Application and database server operating system platform
SQL Server 2005	Microsoft	Relational database management system required for application data storage and processing.

Additions, changes, or deletions to the software product list described above will be reviewed and approved in accordance with the procedure described in Section C – Project Change Orders.

**E. PRICE**

The agreement amount for this contract is \$ 1,779,991. This total amount is comprised of several major system components, each with an associated value. The table below includes the components and their associated value.

Project Component	Provider's Fixed Price - Services	Provider's Fixed Price – Software	Provider's Fixed Price - Hardware	Provider's Total Fixed Price
Mail Hardware			87,290	87,290
Mail Hardware Maintenance - First Year			10,944	10,944

Scanning Hardware			620,190	620,190
Scanning Hardware Maintenance - First Year			69,807	69,807
Application Software – System		308,260		308,260
Application Software – Archive		0		0
Application Development	426,000			426,000
Image Conversion	65,000			65,000
Training & Documentation	0			0
Project Management	185,000			185,000
Shipping & Freight	7,500			7,500
<b>Total Fixed Price</b>	<b>683,500</b>	<b>308,260</b>	<b>788,231</b>	<b>1,779,991</b>

The Department intends to implement all the project components listed above as described in the Provider’s Proposal and the table above. However, as the project progresses, the Department may determine that implementation of one or more of the hardware and/or software components listed above may no longer be in the Department’s best interests. The Department reserves the right to cancel the implementation of any of the components listed above and the contract value will be reduced by the cost associated with that component, assuming that work has not yet started on that component. Any such cancellation or other change to the TRIPS project or system scope will require an approved Project Change Order in accordance with Section C - Project Change Orders.

Additional services to be provided under approved change orders as per Section C above will be billed at the rate of \$120 per hour. This rate does not include travel expenses, which would include weekly airfare (to/from the Provider’s home location), daily per diems, other transportation (rental car, taxi to/from the airport and/or airport parking) and general housing allowances. These rates will remain fixed for the duration of this contract. Travel and meal expenses will be estimated based on Domestic Per Diem Rates published by the U.S. General Services Administration (GSA) on their website [www.gsa.gov](http://www.gsa.gov).

**F. DELIVERABLES**

The TRIPS Project will be segmented into three phases. Within each phase, there will a number of tasks and deliverables. Within ten days of contract signing, the Provider will work with the MRS and PMO Project Managers to finalize a baseline project schedule that will include the targeted completion dates for each of the tasks and deliverables. This baseline schedule will be submitted to the TRIPS Steering Committee for approval.

Each phase includes a set of testing deliverables. The Department is primarily responsible for developing test scripts, reporting on system test results, acceptance testing, and the reporting on acceptance test results. Provider will participate and support these activities as necessary to achieve Department acceptance of each phase.

A phase will be considered completed when all tasks have been completed, each deliverable has been confirmed in user acceptance testing performed by the Department, and the system is implemented successfully in production operation for the items included in the scope of that phase (see Section J below). Upon completion of each phase, and performance of acceptance requirements in subsection J, below, to the satisfaction of the Department, the Department will provide written notice of acceptance of that phase to the Provider. Both parties agree that upon initiation of a project phase, the parties will review and revise, if appropriate, the project schedule. Any significant changes will be handled through the project change control process as necessary.

The following are the key deliverables for the project:

**Phase I:**

**Planning Documents**

- Baseline Project Schedule
- Implementation Plan
- Project Management Plan
- Project Quality Plan
- Risk Management Plan
- Image Conversion Plan
- Testing Plans – Installation, System, and Acceptance
- Training Plan
- Security Plan
- Business Process Analysis
- Requirements Definition
- System Design Document
- System Architecture/Infrastructure Diagrams
- Technical Design Specifications
- Data Process Work Flow
- Communications Plan
- Change Control Management Plan
- Problem/Issue Management and Escalation (Test and Production)
- Transition Plan
- Maintenance Plan
- Recovery Plan

**Hardware (Delivered, Installed, and Tested)**

- Mail Extraction Hardware
  - Omaton 206 (1)
  - ASED 48 Desk (11)
  - Info Poll (1)
- Scanning Hardware
  - IBML ImageTrac 3ex, Two Pockets with Runout, (2) includes:
    - Application Controller
    - IT3e, E13B MICR Module, Top Side
    - IT3e, Post-Image, Single Head IJP
    - IT3e, Envelope Detection w/Docnetics
    - SoftTrac IT3, Advanced Version
    - IT3, DocNetics, ChecksAll, Dual Camera
    - IT3, Dynamic TIFF
    - ImageTrac 3, Hardware Installation
    - ImageTrac Operator Training
  - Data and Image Retention Utility (1)
- Upgrade Existing Scanning Hardware
  - Conversion of One Current ImageTrac Scanner 603-00005 to 603-00004 includes:
    - Field Install IT3 E13B MICR Reader, Top side (1)
    - Field Install IT3, Envelope Detection w/Barcode Recognition (1)
    - Field Install IT3 Dynamic Tiff (1)
    - Field Install IT3, Post-Image Single IJP (1)
    - IT3, DocNetics, Checks All Dual Camera (1)
    - Small Document Option for IT3 v1 (1)

**Application Software**

- MavBridge Server and Dashboard
- Quick Input (unlimited license)
- Quick Enhance (unlimited license)
- Quick Capture (unlimited license)
- Quick Key (unlimited license)

- Quick Balance (unlimited license)
- Quick DBFill (unlimited license)
- Quick Review (unlimited license)
- Quick Research (unlimited license)
- Quick Workflow (unlimited license)
- Quick Output (unlimited license)
- Quick Reports (unlimited license)
- Quick Monitor (unlimited license)
- Quick Supervisor (unlimited license)
- Quick Purge (unlimited license)
- Quick Check 21 File Generator (unlimited license)
- Quick Check 21 Communicator (unlimited license)
- Quick Check 21 Deposit Monitor (unlimited license)
- Quick Check 21 Deposit Monitor Client (unlimited license)
- Test and Development System (unlimited license)

Software Environments

- Development
- Test
- Production

Software Configuration and Development

- MavBridge Statistical Software and Dashboard Configuration
- InfoPoll and InfoPointe Configuration
- Standard Report Configuration
  - Audit – bank reconciliation, validation, and audit trails.
  - Operational – personnel performance statistics.
  - Performance – speed of processes, accuracy statistics, time in system for work in progress.
  - Workflow – Work in progress real-time and statistical reporting.
- Custom Report Development
- Configuration of Key from Image, Key from Paper, and Key Correct of OCR/ICR capabilities
- Capability to reorder the images within a document for archive storage

Interface Development

- MERITS
- FORTIS
- Property Tax Management System
- Commercial Forestry Excise Tax System
- Department of Labor
- The State's primary bank provider for Check 21

Configuration and Development of Phase 1 Forms

- 1040Extension
- 1040EST- Current year
- Bill Payment
- FIDEST- Current year
- FUNDX payment
- Property Payment
- With EST - Current year
- PVSUPTDOC
- SalesPV

Phase 1 Testing

- System Test Scripts
- Report on System Test Results

- Acceptance Test Scripts
- Report on Acceptance Test Results

**Training and Knowledge Transfer**

- Instructional courses for users, including training materials, for all Quick Software Modules
- Instructional courses for users, including training materials, for MavBridge software
- Instructional courses for users, including training materials, for Crystal Reports
- Instructional courses for users, including training materials, for ASED 48 Desks and InfoPoll

**Phase 2**

Required updates to Planning Documents listed under Phase I

**Configuration and Development of Phase 2 Forms**

- SalesL - Current and Prior year
- SalesS Current and Prior year
- SPT
- T&R Current year
- WITH Current year
- 1040S Current and Prior year
- 1040L Current and Prior year
- SPT CON
- Sales CON
- 1040X

**Phase 2 Testing**

- System Test Scripts
- Report on System Test Results
- Acceptance Test Scripts
- Report on Acceptance Test Results

**Phase 3**

Required updates to Planning Documents listed under Phase I

**Configuration and Development of Phase 3 Forms**

- RETTD
- CQR Current and Prior year and Detail Wage Report Current Year
- CORP Current and Prior year
- GAS
- MILK
- CORP X
- BETR
- REW

**Image Conversion**

- Existing images from MODCA to FORTIS

**Phase 3 Testing – Including testing of image conversion**

- System Test Scripts
- Report on System Test Results
- Acceptance Test Scripts
- Report on Acceptance Test Results

**Final Documentation**

- User Manuals
- Programmer Guides
- Operational Guides
- System Administrator Manuals
- Detail User Library/Exit Routines Function Description
- Project Manager's and Technical Notes
- Weekly Status Reports
- Final Project Report

## G. SOFTWARE LICENSE

Provider shall deliver to the Department and hereby grants the Department irrevocable, nonexclusive, unrestricted, perpetual, site-wide licenses to use all *Quick* Modules and MavBridge Server and Dashboard Software and documentation, plus any software which shall be added to the software during the term of this Contract, on or in connection with any Provider supported processor utilized by the Department to fulfill the State's data processing needs. Such licenses shall not limit the number of users, seats, computers, or transactions used in conjunction with the Quick Modules software.

These licenses shall allow the software to be utilized to read any number of fields and characters. There will be no "charge per character read." The licenses shall also allow the use of remote keying locations for internet based keying.

This license grant is extended to employees, agents, subcontractors, contractors, outsourcing vendors, consultants and others who have a need to use the Software for the benefit of the Department. Provider further grants to the Department the right to use Department or other State employees, or to hire third party contractors, to work with the licensed software to develop user exits and custom add-ons for use by the department.

There shall be no limit on the number of machines, number of users, number of locations or size of process on which the Department can operate the software. The Department shall have the right to receive additional copies of the software and documentation free of charge as required by the Department for use on additional or alternate computers for the Department's operations.

Provider agrees that any software may be transferred or copied in whole or in part for disaster recovery planning and testing, and if an equipment malfunction occurs in hardware or other software causing the licensed software to be inoperable or not practicable to use. The software (or a copy of it) may be used without prior notice at another installation during such malfunction.

Provider agrees that any software may be transferred from one Department installation to another Department installation in the event of any operational restructuring by the Department. In the event that such a change may impact the maintenance and support location, the Department agrees to notify Provider in writing in advance of transfer taking place, and to discuss with Provider the details of the new installation.

Department agrees that Provider shall retain all ownership to any software (source code, computer programs, object code, and/or machine code) documentation (schematics, diagrams, technical documents, training materials, users guides, online help facilities), and other work products that are originally designed and developed by Provider independently of the project and without assistance from Department, and then delivered as an operational component and integrated into TRIPS as part of the overall solution.

The License extends to software upgrades, provided such software upgrades are acquired as part of the Annual Maintenance and Support Services described in Rider E of this contract. Software upgrades include all patches, updates, new releases, and other enhancements related to the Software.

## H. SOURCE CODE ESCROW

Provider agrees to deposit the software (including any enabling or supporting software tools), documentation, and/or other related material(s) with a third-party software escrow agent for the term of this contract, including any extensions. Software is the source code accompanied by a running object code version submitted on a virus-free magnetic or optical media, compiled and ready to be read by a computer. Documentation is all materials sufficient for a trained computer programmer of general proficiency to maintain and support the software without further assistance from Provider.

As part of the terms of the escrow agreement, Provider shall also have a continuing obligation to deposit any maintenance modifications, updates, upgrades, new releases, or documentation related to the deposited materials for the term of this contract, including any extensions. The escrowed items will have three elements as follows:

- (a) their operable form
- (b) in source code form of all binary coded artifacts and
- (c) in the compiled/assembled object form together with complete build instructions as a batch file for the respective artifacts.

The State shall have the right to have the Contractor demonstrate and verify the Escrow versions to the State upon request of the State at any reasonable time.

Provider agrees to enter into an agreement with the escrow agent which will instruct the escrow agent to cause delivery of the software, documentation, and all other related materials in its possession to the Department if any one of the following events occurs:

- Provider agrees in writing to the delivery;
- Provider ceases to do business and no successor shall have agreed to assume Provider's obligations to the Department;
- Provider has failed to support the software or has otherwise defaulted under this contract as declared by a court of law;
- Provider files for liquidation under the U.S. Bankruptcy Code, or files for reorganization under the U.S. Bankruptcy Code and does not remain debtor in possession; or,
- as otherwise provided in Rider B-IT, paragraph 44.

Provider shall grant the appropriate licensee rights to the escrow agent to allow the agent to exercise its rights under this contract. Provider agrees that if the escrow agent delivers the software to the Department, the Department shall have the same license and rights to use the software, documentation, and other related materials as the Department had under the original contract, including the right to utilize the source code and create updates and derivative works consistent with the purposes of this contract.

All costs and fees associated with the escrow agreement and this clause shall be the responsibility of Provider.

**I. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE (STATE OWNERSHIP)**

Any and all Site Materials and Site-Specific Components prepared by Provider in the performance of its obligations under this contract shall be the property of the State and all Site Materials shall be delivered to the State by Provider upon completion, termination, or cancellation of this contract. Provider shall not use, willingly allow, or cause to have Site Materials used for any purpose other than the performance of Provider's obligations under this contract without the prior written consent of the State. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, license, sell, display, transfer, prepare derivative works, or otherwise use the Site Materials.

**J. DEPARTMENT ACCEPTANCE**

**TRIPS PROJECT ACCEPTANCE:**

Department defines Final Acceptance of the completed TRIPS project as Department's written acknowledgement that:

A. The completed TRIPS system has been in successful production for 90 days with an absence of problems or defects (as defined and determined by Department) of the following types:

- No occurrence of failure or defect that has a mission critical impact;
- No occurrence of failure or defect that is critical for business continuity;
- No occurrence of failure or defect that creates an instance where the entire application or part thereof cannot be used, and;
- No occurrence of failure or defect for which there is no acceptable workaround.

B. Levels of system availability, application response time, and the other performance criteria listed below have been met.

1. The system is expected to be available 7 a.m. until 10:00 p.m. Monday through Friday, with the ability to extend weekday availability or enable weekend availability when necessary. Maintenance support coverage will be provided Monday through Friday from 8 a.m. to 5 p.m. with a 4 hour response for the months of January through March and May through December. For the month of April, software and scanner maintenance coverage is extended and the hours of coverage are 8 a.m. to 10 p.m. with a 4 hour response.

2. The TRIPS response time for key entry activities must be sufficient for there to be no detectable hesitation between transactions. The TRIPS online response time for other normal user transactions must be under one second. This response time will be measured from the time a user executes a command to the time the screen is freed up for the user to move to the next action. Response time will be tested and verified using transactions specified by Department.
3. The system will have achieved the following average recognition rates for a thirty (30) day period:
  - Character 93%
  - Field 80%
  - Optical Mark 99%
  - Barcode 99%
  - Hand-Print 80%
  - Machine-Print 97%

Acceptance of the TRIPS system by Department, based on the above listed criteria, will trigger payment of all retention amounts as described in Rider B-IT, Invoices and Payments.

**ACCEPTANCE OF HARDWARE DELIVERABLES:**

The following process will be utilized by the Department to conduct a review and determine the acceptance of Hardware Deliverables (those indicated as such in Section F) received from Provider.

1. Unless otherwise agreed to, hardware installed or upgraded by Provider must meet the following criteria for acceptance as deliverables:
  - a. Mail Hardware:
    - i. The Mail extraction hardware, including the Omaton 206, ASER 48 Desks, and InfoPoll must be in new condition, free of defects, and operate in accordance with the specifications outlined within the Provider's proposal.
  - b. Scanner Hardware
    - i. For acceptance of the IBML Scanners, the State will develop a test deck containing a representative mix of incoming transactions to be processed by the scanners and the applicable Quick Modules software. Both the State and the Provider will agree to the volume and mix of work in the test deck. The deck would then be processed and the results compared to the performance and recognition rates specified in the Provider's proposal and meet or exceed the performance of the existing legacy application (MIPS). The acceptance of the scanners will be based on the scanners effectively interfacing with the application software, and performing all the normal functions expected during live operations, including performing processing decisions, performing recognition, and transporting paper.

**ACCEPTANCE OF SOFTWARE DELIVERABLES:**

The following process will be utilized by the Department to conduct a review and determine the acceptance of Software Deliverables (those indicated as such in Section F) received from Provider. Department acceptance of the software deliverables for each phase will trigger the payments for each phase as defined in RIDER B-IT, Section 2, Invoices and Payments.

1. Unless otherwise agreed to, Provider software deliverables must include the following prior to initiating User Acceptance Testing:
  - a. Operational software including forms configuration and development
  - b. Installation and technical systems documentation
  - c. Updated user documentation
  - d. Summary results of Provider unit and system testing, and a request to initiate User Acceptance Testing.
2. Provider provides the deliverable package to the MRS Project Manager as described above.
3. The MRS Project Manager will solicit feedback from appropriate members of the project team and provide the Provider Project Manager with any corrections or issues within 5 working days. If Provider does not receive feedback within 5 working days the deliverable will be deemed ready for User Acceptance Testing.
4. Provider will provide an updated deliverable package to address issues and corrections.
5. Upon approval by the TRIPS Project Management Team, the software package will be installed in the User Acceptance Test environment.
6. Department and Provider agree to work diligently to complete user acceptance testing at the earliest possible date following receipt of software and documentation. Department agrees to provide technical and user staff in accordance with the project

plan and schedule, to support the testing process and to provide accurate and timely documentation of defects. User Acceptance testing will include testing of compliance with software functionality requirements and the performance criteria described in Final Acceptance, subsection B above. Provider agrees to provide timely response to reported defects so that testing can continue to completion. Contract Software Deliverables will not be considered for migration into the production environment until User Acceptance Testing is complete and the results are documented.

7. Software deliverables are subject to the deployment certification process by the Office of Information Technology in compliance with the Deployment Certification Policy for Major Application Projects.
8. Software Deliverables identified in Section F will be reviewed and approved by the TRIPS Steering Committee prior to migration to the production environment. Provider, in cooperation with the TRIPS Project Management Team will prepare a recommendation for presentation to the TRIPS Steering Committee. The Committee will review the document and either approve the migration to production or seek additional information.
9. Upon approval, the software package will be migrated to the production environment and use of the new component will begin. The TRIPS project team will track and monitor all issues and defects reported by the user community. Any issues subsequent to the completion and acceptance of the deliverable will be treated as warranty issues.
10. Within 5 business days of a successful migration to production, the TRIPS Steering Committee will meet to review the initial production use and approve acceptance of and invoicing for the deliverable.
11. The Provider will submit an invoice for the associated phase and payment will be approved by the TRIPS Steering Committee.

**ACCEPTANCE OF DOCUMENT DELIVERABLES**

The following process will be utilized by Department to conduct a review and determine the acceptance of DOCUMENT Deliverables from Provider:

1. Provider will provide preliminary drafts of interim deliverables for Department review prior to finalization.
2. Once completed, Provider will provide the deliverable to the MRS Project Manager as described in Section F above.
3. The MRS Project Manager will solicit feedback from appropriate members of the project team and the Project Management Team, and provide the vendor Project Manager with any corrections or issues within 5 working days. If Provider does not receive feedback within 5 working days the deliverable will be forwarded to the TRIPS Steering Committee for review and approval.
4. Provider will provide an updated deliverable to address issues and corrections.
5. DOCUMENT Deliverables identified in Section F will be reviewed and approved by the TRIPS Steering Committee prior to acceptance and payment. Within 5 days of receipt of the corrected deliverable, the TRIPS Steering Committee will meet to review the deliverable and either provide acceptance or request additional corrections. This process will continue until acceptance is achieved.

**K. PROVIDER RESPONSIBILITY FOR ALL PRODUCTS AND SERVICES**

The Provider will assume responsibility for all products and services included in the contract price whether or not the Provider is the original source provider of said products or services. The State will consider the selected Provider to be the sole point of contact with regard to all contractual matters, including billing, invoicing, delivery of products and/or services, and completion of tasks. Bills and invoices for products and services shall be issued by and be payable to the Provider. The Provider will be responsible for the entire Contract performance whether or not product vendors and/or Subcontractors are used; except to the extent that the Department enters into any support or maintenance agreements directly with any such vendor or Subcontractor.

**L. CONFIDENTIALITY AND PERFORMANCE**

In the performance of this contract, the Provider agrees to comply with and assume responsibility for compliance by his employees and subcontractor employees with the following requirements:

1. All work will be done under the supervision of the Provider or the Provider's employees.
2. The Provider shall require all officers and employees assigned to the TRIPS Project to read and sign confidentiality statements provided by Department. These statements are to be delivered to Department.

3. Any taxpayer account or banking information made available to the Provider in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as necessary in the performance of this contract. Disclosure of taxpayer information to anyone other than an officer or employee of the Provider will be prohibited.
4. All taxpayer account and banking information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material. Provider will acknowledge, in writing, the receipt of any taxpayer account and/or banking information.
5. The Provider certifies that any federal and/or state data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Provider at the time the work is completed. If immediate purging of all data storage components is not possible, the Provider certifies that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
6. Any spoilage or any intermediate hard copy printout that may result during the processing of federal and/or state data will be given to Department. When this is not possible, the Provider will be responsible for the secure destruction of the spoilage or any intermediate hard copy printouts, and will provide Department with a statement containing the date of destruction, description of material destroyed, and the method used.
7. Performance of the contract may require that the Provider access federal and/or state tax return information. The Provider is required to fully comply with Department non-disclosure and confidentiality requirements related to federal taxpayer information, and to understand and communicate to all Provider staff assigned to this contract the Criminal / Civil Sanctions described below.
8. The Provider will maintain a list of employees authorized access to federal or state tax data. Such list will be provided to Department.
9. Department will have the right to void the contract if the Provider fails to provide the safeguards required herein.
10. The Provider agrees that the safeguard provisions of this agreement apply to both Federal and State tax returns and tax information.

**M. CRIMINAL / CIVIL SANCTIONS FOR IMPROPER DISCLOSURE OF TAXPAYER INFORMATION**

1. Any person who willfully violates 36 MRSA, Section 191, shall be guilty of a Class E crime in the State of Maine.
2. Any further disclosure of federal tax returns or federal tax information inadvertently or purposely obtained as a result of or in contravention of this contract is governed by the Provider's obligation to act in accordance with the following:
  - a. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
  - b. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the

sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

- c. Additionally, it is incumbent upon the Provider to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Providers by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Provider, who by virtue of his/ her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established hereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

## **N. AMERICANS WITH DISABILITIES ACT**

All software developed under this contract shall be compliant with the ADA software keyboard access, display, and reports and program output standards. Provider will be required to sign a copy of the Computer Application Program Accessibility Standards and fully comply with the standards included therein.

## **O. INSPECTION**

Department has the right at its expense to send its officers and employees into the offices and plants of the Provider at reasonable times for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the Provider is found to be noncompliant with contract safeguards.

## **P. PROVIDER PERSONNEL**

The Department reserves the right to interview key personnel that the Provider would place on this contract. The Department shall retain the right to reject and/or request replacement of any of the Provider's and/or Subcontractor's employees whose qualifications or performance in the Department's judgment do not meet the standards established by the Department as appropriate for the performance of the services. Only those meeting the approval of the Department shall be engaged in the work associated with this contract. In considering the Provider's employee qualifications, the Department will act reasonably and in good faith. The Department will reserve the right to require security clearance and/or background checks for Provider's employees placed on this contract.

The Provider will require all officers and employees engaged in the contract to read and sign confidentiality statements provided by the Department. The signed statements must be delivered to the Department. The Provider will require all of its officers and employees engaged in the contract to complete confidentiality training, to be provided by the Department, before performing any work on the project and at least annually thereafter.

## **Q. OFFICE SPACE, EQUIPMENT, and ACCESS**

The Department will establish project office space and will provide a location and all office furniture, office equipment and telephone systems to support the TRIPS project.

The Provider estimates that between two and five staff members will be on site at the Department office during the execution of this contract. The Department agrees to set aside three cubicle spaces and provide up to three workstations for Provider staff members (and contractors) working on the TRIPS Project. Should Provider require additional cubicle spaces, the Department agrees to provide their best effort in making space available. This may include temporary use of conference or meeting rooms, and/or sharing cubicle spaces.

The Department agrees to provide necessary meeting rooms and training facilities and equipment necessary to support the project.

The Provider offsite team requires, and the Department will provide, remote access via VPN and credentials (user accounts, passwords, security devices) to access the Department LAN. The Provider will require remote access to the Department network and systems Monday thru Saturday from 7:00 AM to 12:00 midnight EST. The team will need access to a Department file server (for project document storage) and all project related servers; build stations, web servers and database servers. A shortened Sunday access is projected to be 7:00 AM to 10:00 PM EST. Provider anticipates the majority of the remote work to occur between the hours of 10:00 AM and 10:00 PM EST, Monday through Friday.

The Provider onsite team will require, and the Department will provide, facility access as well as access to the Department LAN Monday through Friday from 7:00 AM to 5:00 PM EST. Facility access will be provided until 6:00 PM Monday through Friday and on Saturday from 7:00 AM to 5:00 PM, if required, with prior notice. The Provider anticipates the majority of the onsite work to occur between the hours of 8:00 AM and 5:00 PM EST, Monday through Friday.

The Department and Provider will work cooperatively to develop back-up schedules that minimize adverse impact on the Department's operations while facilitating required access to the Provider development teams.

## R. CONTRACT TERM, EXTENSION, RENEWAL OPTIONS

The term of the contract will be from April 12, 2010 to June 30, 2011. The contract may be renewed for a maximum of two one-year periods, at the option of the Department. The contract may be further extended or renewed for additional periods by agreement between the parties (subject to the approval of the Division of Purchases). Additionally, consulting services relating to TRIPS project concerns of MRS may be sought within the provisions of the contract.

## S. PAYMENT AND RETENTION

Provider will provide Department with invoices covering the Products delivered and Services performed, following the Payment Schedule in "Rider B-IT, Invoices and Payments". The invoices will outline a description of the deliverable being billed. All fees are to be paid to Provider in United States Dollars, by electronic funds transfer to an account designated by Provider or by check sent to Provider at:

Provider Name	Fairfax Imaging, Inc.
Address	P.O. Box 864517
City, State	Orlando, FL 32886-4517

Provider's invoices are due and payable in full within thirty (30) days from the date of the receipt of the invoice.

All deliverable and milestone payments outlined in the Payment Schedule will be subject to retention of ten percent (10%) of the invoice amount. Invoices received from Provider will reflect the original invoice amount, the 10% retention, and the net amount due. Any approved change orders that result in additional billings by Provider will be invoiced separately and also subject to 10% retention. The retained amounts will be invoiced by Provider upon Department final acceptance of all Deliverables as defined within Section J – Department Acceptance, TRIPS PROJECT ACCEPTANCE within this contract. Should this contract be terminated for cause as a result of Provider's breach of contract this retention shall revert to the Department. Should this contract be terminated by the Department for reason other than for cause, Provider will be entitled to any unpaid retention amounts for Deliverables (as listed in Rider A, Section F; and Rider B-IT, Section 2) that have been completed and accepted by the Department in accordance with Rider A, Section J – "DEPARTMENT ACCEPTANCE." Further, in determining any equitable adjustment under Rider B-IT, Paragraph 13 "TERMINATION", consideration shall be given to work in progress under the Agreement and corresponding unpaid retention amounts for such work.

If Department withholds any invoiced amount which it disputes in good faith, Department must pay all undisputed amounts on the invoice within the agreed payment period and promptly notify Provider of the specific amount in dispute and the reasons why it disputes the amounts. Provider and Department will work together in good faith to resolve any timely disputed amount in a prompt and mutually acceptable manner. If a disputed amount is not resolved within thirty (30) days after the original payment due date receipt, the parties agree to each appoint a senior management representative, not directly involved in the work performed under the contract, to negotiate a settlement of the dispute. If the appointed representatives are unable to resolve the dispute within thirty (30) days, either party may commence formal proceedings in accordance with Rider B-IT, Section 15. Department will pay any disputed amounts within thirty (30) days after the dispute has been resolved.

No compensation or payments of any nature will be made in advance of services actually performed or products actually delivered and accepted.

**T. SYSTEM MAINTENANCE**

The Provider will be the sole point of contact for maintenance and support of all software, hardware and third party software supplied as part of the execution of this contract in accordance with the terms of the maintenance and support services agreements provided as exhibits in Rider D. Annual maintenance costs for the first year (Year 1) are included within the terms of this contract. Maintenance services may be extended, at the option of the Department, for four additional one-year periods ("Years 2 through 5") and any such annual maintenance costs for Years 2 through 5 will be billed separately. Maintenance costs will not exceed:

Annual Maintenance					
	Year 1	Year 2	Year 3	Year 4	Year 5
Mail Hardware	\$10,944	\$11,491	\$12,066	\$12,669	\$13,303
Scanning Hardware	\$69,807	\$73,298	\$76,962	\$80,811	\$84,851
System Software	No Charge	\$52,164	\$54,772	\$57,511	\$60,386
Annual Total	\$80,751	\$136,953	\$143,800	\$150,991	\$158,540

**RIDER B-IT****METHOD OF PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT** \$1,779,991

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

Upon completion and acceptance of Phase 1 deliverables; targeted for completion within 5 months from contract start, the amount of \$ 1,194,240, less retention.

Upon completion and acceptance of Phase 2 deliverables; targeted for completion within 7 months from contract start, the amount of \$ 320,000, less retention.

Upon completion and acceptance of Phase 3 deliverables, targeted for completion within 12 months from contract start, the amount of \$ 265,751, less retention.

Upon TRIPS Project Acceptance in accordance with RIDER A, Section III, Subsection J - Department Acceptance, all retention amounts.

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 Agreement 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: Judith Whitten  
 Title: Director, Return Processing and Quality Assurance Division  
 Address: Maine Revenue Services  
 24 State House Station  
 Augusta, Maine 04333  
 Telephone: (207) 624-9713  
 E-mail address: judith.k.whitten@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: Judith Whitten  
 Title: Director, Return Processing and Quality Assurance Division  
 Address: Maine Revenue Services  
 24 State House Station  
 Augusta, Maine 04333  
 Telephone: (207) 624-9713  
 E-mail address: judith.k.whitten@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 is not and shall 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 Maine Public Law 10 MRSA §1347 (Notice of Risk to Personal Data Act).

**41. OWNERSHIP**

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

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

1. The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software

shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.

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

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

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

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

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

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

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

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

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

- b. A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or
- c. The Provider has filed a voluntary petition in bankruptcy, or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or becomes subject to an involuntary petition in bankruptcy, which petition or proceeding is not dismissed or unstayed within sixty (60) days from the date of filing; or
- d. The Provider is in material breach of its maintenance and support obligations and has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or
- e. A condition has occurred that materially and adversely impacts the Provider's ability to support the software and the Provider has failed to cure such condition within thirty (30) days from the date of receipt by the Provider of written notice of such condition.

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

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

45. **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

This language replaces the original language of paragraph 35 in Rider B:

**35. PRODUCT WARRANTY** The Provider expressly warrants its products and services for 90 days from their final written acceptance by the Department. The Provider further warrants the products and services accepted by the Department for Phase 1 and Phase 2 through the completion of Phase 3 and the following 90 day warranty period. 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.

RIDER D - Exhibits

Exhibit 1 – Sales and License Agreement

Exhibit 2 – Support Services Contract

Exhibit 3 – Terms and Conditions for Hardware and Equipment Maintenance

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

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

- United States. Please identify state: Maine and Florida**
- Other. Please identify country:**

**Notification of Changes to the Information**

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



## RIDER D, Exhibit 1

### Sales Contract

This Agreement is entered into as of DATE ("Effective Date"), by and between Fairfax Imaging, Inc. ("Fairfax"), a Virginia corporation, having an address at 4200A Lafayette Center Drive Court, Chantilly, Virginia 20151, and CUSTOMER ("CUSTOMER"), a corporation having an address at ADDRESS, CITY, STATE, ZIP CODE.

#### 1. Grant of License to Use (the "License")

1.1 Subject to the terms and conditions of this Agreement, Fairfax grants CUSTOMER on behalf of its parent and subsidiary entities, a non-exclusive, non-sub licensable, non-transferable right to use Fairfax's forms processing software, *Quick Modules*, in object code form. *Quick Modules* is for CUSTOMER's internal use and evaluation only. All rights not expressly and unambiguously granted are reserved by Fairfax.

#### 2. Restrictions

2.1 All CUSTOMER's enterprise licensed software, including any additional *Quick Modules* subsequently purchased, and any part thereof may be used in a client server environment. The *Quick Modules* software may be copied solely for backup purposes, in whole or in part (with the proper inclusion of the Fairfax copyright notice and any Fairfax propriety notices on the *Quick Modules* software) and only for use with CUSTOMER's enterprise client server environment for which it is licensed. CUSTOMER agrees to supply Fairfax with a list of installations upon request.

2.2 CUSTOMER shall not (and shall not allow any third party to) (i) de-compile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas of *Quick Modules* by any means whatsoever, (ii) remove any product identification, copyright or other notices, (iii) [omit] (iv) except as specified in the applicable user documentation provided by Fairfax modify, incorporate into or with other software or create a derivative work of any part of *Quick Modules* software, (v) load or use any portion of *Quick Modules* software (whether or not modified or incorporated into or with other software) on or with any machine or system other than those specifically agreed upon in writing between Fairfax and CUSTOMER.

2.3 In the event that Fairfax solely produces any subsequent software in the performance of a service for CUSTOMER, Fairfax shall be free to use for any purpose any concept, ideas, techniques, or general software developed by Fairfax during the performance of the services. It is understood that Fairfax shall be free to pursue, directly or with third parties, business or applications of similar nature. All other software, including packaged applications software, and/or software modifications furnished to CUSTOMER is licensed in accordance with the terms and conditions described herein.

2.4 No title or ownership of *Quick Modules* is transferred to CUSTOMER.

#### 3. Termination

[omit]

**4. Limited Warranty and Disclaimer**

[omit]

4.3 Outside the U.S., neither these remedies nor any product support services offered by Fairfax are available without proof of purchase from an authorized non-U.S. source.

**5. Limitations of Liability**

[omit]

**6. Export Restrictions**

6.1 *Quick Modules*, including all related technical data, are subject to United States export control laws, including the United States Export Administration Act and associated regulations and may be subject to export and import regulations in other countries. CUSTOMER agrees to comply with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import *Quick Modules*.

**7. Governing Law**

[omit]

**8. Miscellaneous**

8.1 CUSTOMER shall not delegate or assign any or all of its duties, obligations, or rights hereunder.

8.2 Severability: If any provision herein shall be held to be invalid or unenforceable for any reason, such provision shall, to the extent of such invalidity or unenforceability, be severed, the remainder of the Agreement shall continue in full force and effect.

8.3 [omit]

8.4 [omit]

8.5 Copyright Infringement: Fairfax agrees to indemnify, defend and hold harmless CUSTOMER for any damages and costs including attorneys' fees in case of any third-party action brought against CUSTOMER for copyright infringement resulting from CUSTOMER's use of the *Quick Modules* software.



**RIDER D, Exhibit 2**

**Support Services Contract**

This Agreement is entered into as of DATE ("Effective Date"), by and between Fairfax Imaging, Inc. ("Fairfax"), a Virginia corporation, having an address at 4200A Lafayette Center Drive, Chantilly, VA 20151, and CUSTOMER ("CUSTOMER"), a corporation, having an address at ADDRESS, CITY, STATE, ZIP CODE.

**1. Coverage.**

Subject to the terms hereof, Fairfax will provide Support Services to CUSTOMER for the Licensed Software Products (Software) described in Rider A of the Agreement.

**2. Support Services.**

Support Services consists of (a) Error Correction and Telephone Support provided to the Technical Support Contact concerning the installation and use of the then current release of Software and the Previous Sequential Release and (b) product updates that Fairfax makes generally available. Product updates consist of one copy of published revisions to the printed documentation and one copy of revisions to the machine readable Software which are not designed by Fairfax as products for which it charges a separate fee. Support Services must be obtained separately for each copy of each Software.

All product updates or upgrades provided to CUSTOMER shall be governed by the terms of this agreement. Fairfax shall advise CUSTOMER of product updates and upgrades.

**3. Term and Termination.**

Support Services shall be provided for one year from the termination date of the 90-day warranty provided under the Sales Contract. Support services shall be extended for four additional one-year extensions at the option of the CUSTOMER, as provided in Rider A.

Fairfax may suspend or cancel Support Services if CUSTOMER fails to make payment pursuant to the Section titled "Fees and Payment," or breaches the Support Services provisions and such breach is not remedied within thirty (30) days (10 days in the case of nonpayment) after CUSTOMER receives notice of the breach.

**4. Fees and Payment.**

Charges for Support Services shall not exceed the maintenance cost maximums set forth in Rider A part III.T. For each unit of product for which Support Services will be provided, CUSTOMER shall pay Fairfax the applicable Support Services fee, not to exceed an annual increase of five percent (5%). Support Services fees will be billed on an annual basis, payable in advance. CUSTOMER payment is due within thirty (30) days of receipt of the Fairfax invoice. In the event CUSTOMER fails to pay Fairfax on the due date, then to reinstate or renew Support Services (if allowed by Fairfax), CUSTOMER must first pay Fairfax the annual Support Services fee and the reinstatement charge listed in the then-current Fairfax price list.

If payment is not made within one hundred eighty (180) days of the due date, Support Services will be renewed or reinstated only if CUSTOMER re-licenses the Software and pays all

applicable support and licensing fees, although Fairfax is not obligated to allow CUSTOMER to do so.

#### **5. Error Priority Levels.**

Fairfax shall exercise commercially reasonable efforts to correct any Error reported by CUSTOMER in the current unmodified release of Software in accordance with the priority level reasonably assigned to such error by Fairfax.

- Priority A Errors - Fairfax shall promptly commence the following procedures:
  - Assign Fairfax engineers to correct the Error;
  - Notify Fairfax management that such Errors have been reported and steps being taken to correct such Effort(s);
  - provide CUSTOMER with periodic reports on the status of the corrections; and
  - initiate work to provide CUSTOMER with a Fix or Workaround.
- Priority B Errors - Fairfax shall exercise commercially reasonable efforts to correct the problem or provide a Fix or Workaround.
- Priority C Errors - Fairfax may include the Fix for the error in the next maintenance or major release of the Software.

If Fairfax believes that a problem reported by CUSTOMER may not be due to an Error in the Software, Fairfax will so notify CUSTOMER. At that time, CUSTOMER may (i) instruct Fairfax to proceed with problem determination at its possible expense as set forth below or (ii) instruct Fairfax that CUSTOMER does not wish the problem pursued at its possible expense. If CUSTOMER requests that Fairfax proceed with problem determination at its possible expense and Fairfax determines that the error was not due to an Error in the Software, CUSTOMER shall pay Fairfax, at Fairfax's then-current and standard consulting rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. CUSTOMER shall not be liable for (i) problem determination or repair to the extent problems are due to Errors in the Software or (ii) work performed under this paragraph in excess of its instructions or (iii) work performed after CUSTOMER has notified Fairfax that it no longer wishes work on the problem determination to be continued at its possible expense (such notice shall be deemed given when actually received by Fairfax). If CUSTOMER instructs Fairfax that it does not wish the problem pursued at its possible expense or if such determination requires effort in excess of CUSTOMER instructions, Fairfax may, at its sole discretion, elect not to investigate the error with no liability therefore.

#### **6. Exclusions.**

Fairfax shall have no obligation to support:

- Software altered, damaged or modified by CUSTOMER;
- Software that is not the then current release or immediately Previous Sequential Release;
- Software problems caused by CUSTOMER negligence, abuse or misapplication, use of Software other than as specified in the Fairfax's user manual;

- Software installed on any computer Hardware that is not supported by Fairfax. Fairfax shall have no liability for any changes in CUSTOMER hardware, which may be necessary to use Software due to a Workaround or maintenance release.

**7. Limitation of Liability.**

[omit]

**8. Force Majeure**

[omit].

**9. Governing Law.**

[omit]

**10. Definitions.**

Unless defined otherwise herein, terms used in these Support Services Terms and Conditions shall have the same meaning as set forth in the Sales Contract.

- "Upgrades" means a major revision to the object code of the SOFTWARE marketed under a different version number (i.e. v2.2 to v3.0).
- "Updates" means a minor revision to the object code of the SOFTWARE issued as a different sub number version (i.e. v2.1 to v2.2).
- "Error" means an error in SOFTWARE which significantly degrades the SOFTWARE as compared to Fairfax's published performance specifications.
- "Fix" means the repair or replacement of object or executable code versions of SOFTWARE to remedy an Error.
- "Previous Sequential Release" means the release of SOFTWARE which has been replaced by a subsequent release of the same SOFTWARE (upgrade or update). Notwithstanding anything else, a Previous Sequential Release will be supported by Fairfax only for a period of six (6) months after release of the subsequent release.
- "Priority A Error" means an Error, which renders the SOFTWARE inoperable or causes the SOFTWARE to fail catastrophically.
- "Priority B Error" means an Error, which degrades the performance of the SOFTWARE and/or restricts the use of the SOFTWARE.
- "Priority C Error" means an Error, which causes only a minor impact on the use of the SOFTWARE.
- "Telephone Support" means technical support telephone assistance provided by Fairfax to the Technical Support Contact during normal business hours, (8AM-6PM Eastern Standard, Monday-Friday, excluding Fairfax holidays), concerning the installation and use of the then current release of SOFTWARE and the Previous Sequential Release.
- "Workaround" means a change in the procedures followed or data supplied by CUSTOMER to avoid an Error without substantially impairing CUSTOMER use of the SOFTWARE.

[omit]



## RIDER D, Exhibit 3

### Terms and Conditions for Hardware and Equipment Maintenance

Unless otherwise agreed by Fairfax Imaging, Inc. ("Fairfax") in a writing signed by an authorized officer of Fairfax, these Terms and Conditions for Hardware and Equipment Maintenance Services shall apply to all hardware and equipment maintenance services supplied by Fairfax to any Customer.

**1. Availability of Hardware Maintenance Services.** In connection with the Hardware and Equipment to be provided by Fairfax to Customer pursuant to this Agreement, Customer may purchase from Fairfax Hardware and Equipment Maintenance Services, subject to the terms and conditions set forth in this document. Unless otherwise agreed in writing, Customer shall pay Fairfax' then-current Maintenance Charge for Hardware and Equipment, which Maintenance Charge shall be payable monthly in advance. In the event that Customer elects not to take Hardware and Equipment Maintenance Service for any period, or allows Hardware and Equipment Maintenance Services to lapse for any period, Customer may initiate or reinstate Hardware and Equipment Maintenance Service subject to inspection and remedial adjustments, repairs and parts replacement necessary to restore the covered Hardware and Equipment to good working order, which inspection and refurbishment services will be billable to Customer at the Fairfax Imaging's then-current rates. Fairfax shall invoice Customer for the Maintenance Charges, in accordance with this Agreement.

**2. Normal Working Condition; Exclusions.** Subject to the terms and conditions set forth in this document, Hardware and Equipment Maintenance Services shall consist of preventive and remedial adjustments, repairs and parts replacement necessary to keep the covered Hardware and Equipment in, or restore it to, good working order. Maintenance Services to be provided with respect to Hardware and Equipment shall be limited to maintaining the Hardware and Equipment in normal working condition for the purposes for which it was intended by the manufacturer and expressly excludes: (a) electrical work external to the Hardware and Equipment; (b) changes or alterations made by the Customer in specifications, such as the attachment of foreign devices; (c) changes or alterations made by Fairfax at Customer's direction, (d) relocation or reinstallation of the Hardware and Equipment; (e) furnishing supplies (e.g., consumables), accessories, attachments or other devices, including but not limited to removable media and other items subject to damage or deterioration due to removal by the Customer, handling and installation; (f) replacement of parts or repair of damages resulting from accident, neglect or misuse, failure of electrical power, air conditioning or humidity control, fire or other casualty; (g) defects or damage caused by any person other than Fairfax' authorized service representative; and (h) parts replacement caused by Hardware and Equipment operation in an environment which does not conform to Fairfax' or the manufacturers specifications. Hardware and Equipment Maintenance Services do not include customization of any Hardware or Equipment. Any customization of Hardware or Equipment requested by Customer and agreed to be performed by Fairfax shall be the subject of a Statement of Work to be executed by the Parties. Only new standard parts or parts of equal quality shall be used in providing Hardware and Equipment Maintenance Services.

**3. No Maintenance for Modified Hardware and Equipment.** Customer shall not cause modifications to be made or accessories, attachments, features or devices to be added to the



Hardware and Equipment without Fairfax' prior written approval. Customer's personnel shall not perform maintenance or attempt repairs to Hardware and Equipment while such Hardware and Equipment is subject to Maintenance Services. If Customer, with Fairfax' approval, causes modifications to be made, or accessories, attachments, features, or devices not covered by this Agreement to be added to Hardware and Equipment being maintained by Fairfax, then Maintenance Services will be supplied thereon at an additional charge upon mutual agreement between Customer and Fairfax and the Maintenance Services charges specified in this Agreement shall be adjusted accordingly by Fairfax

**4. Support Desk Hours.** The Fairfax Support Desk is staffed from 8:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding Fairfax' holidays ("Standard Support Desk Hours"). Problems can be reported after hours to the support center with response and repair based upon the Customer's contracted period of maintenance coverage.

**5. Emergency Off-Hour Support Access.** In the event of an emergency due to a hardware or equipment failure resulting in lost production during off hours or non-contracted coverage hours, the Customer may contact the Fairfax Imaging's support center. Any support which may be provided for support of this nature is on a best effort basis, and is billable at the current standard hourly rates in effect.

**6. Non-Billable Services included in Maintenance.** The following maintenance and support services will be provided by Fairfax, free of charge, with respect to Hardware and Equipment for which Maintenance Services currently are in effect:

- Scheduled preventative maintenance or remedial maintenance, due to causes attributable to normal wear and tear, during the Standard On-Site Service Hours on dates and times mutually agreed upon by the parties.
- All adjustments, repairs and parts replacement provided by Fairfax during the Standard On-Site Service Hours that are necessary to keep the Hardware and Equipment in, or to restore it to, good working order, when notified by Customer that the Hardware and Equipment is inoperative.

**Billable Additional Maintenance Services.** [omit]

**9. Term; Maintenance Charges; Terms of Payment.** The initial term for Equipment Maintenance Services shall be one (1) year commencing on the later of (i) the expiration of any applicable Equipment Warranty Period and (ii) the date of any service order or request, purchase order, sales order, statement of work, project change request or other agreement pursuant to which Fairfax agrees to provide the applicable Equipment Maintenance Services. Thereafter, Equipment Maintenance Services with respect to the covered Hardware and Equipment shall be extended for four additional one-year extensions at the option of the CUSTOMER, as provided in Rider A. Unless otherwise agreed in writing, the charges for Equipment Maintenance Services (the "Annual Maintenance Charge") for each year shall be Fairfax' rate then in effect for such year, which Annual Maintenance Charge shall be payable monthly, within thirty (30) days of the date of invoice, and shall be non-refundable. Unless otherwise agreed in writing, prior to the commencement of any annual renewal or anniversary date, the Annual Maintenance Charge may be increased on an annual basis by giving the Customer at least ninety (90) days advanced written notice of said increase, provided that such increase may not exceed five percent (5%) per annum.