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| --- |
| A blue and white logo  Description automatically generated  **IT SERVICE CONTRACT** |

This Contract is between the Finance Authority of Maine (FAME) and Provider:

|  |  |  |
| --- | --- | --- |
| **PROVIDER** | | |
| PROVIDER NAME: | | |
| ADDRESS: | | |
| CITY: | STATE: | ZIP CODE: |
| PROVIDER’S VENDOR CUSTOMER #: | | |

Each signatory below represents that the person has the requisite authority to enter into this Contract.

|  |  |  |
| --- | --- | --- |
| **FAME Representative:** |  | **Provider Representative:** |
| BY: Signature **Name / Title Date** |  | BY: Signature, **Name / Title Date** |

*The contract is fully executed when all parties sign.*

**FAME AND PROVIDER POINT OF CONTACT**

CONTRACT ADMINISTRATOR: The following person is designated as the Contract Administrator on behalf of FAME for this Contract. All financial reports, invoices, correspondence and related submissions from the Provider as outlined in Rider A, Reports, shall be submitted to:

|  |  |  |  |
| --- | --- | --- | --- |
| NAME: | | | |
| EMAIL: | | TELEPHONE: | |
| ADDRESS: | | | |
| CITY: | STATE: | | ZIP CODE: |

PROVIDER CONTACT: The following person is designated as the Contact Person on behalf of the Provider for this Contract. All contractual correspondence from FAME shall be submitted to:

|  |  |  |  |
| --- | --- | --- | --- |
| NAME: | | | |
| EMAIL: | | TELEPHONE: | |
| ADDRESS: | | | |
| CITY: | STATE: | | ZIP CODE: |

Any changes to the individuals identified above may be changed at any time through written notice by either party.

**TABLE OF RIDERS**

*Instructions for FAME: (Please delete these instructions before final contract approval.) Complete the table below to indicate the riders and other attachments that are included with this IT Service Contract.*

* *Riders A, B-IT, and G are required.*
* *If any other riders or attachments listed in the table below will not be included, leave the box unchecked. IT Procurement will adjust the Table of Riders accordingly and delete the associated pages from the document.*
* *If additional attachments are included, insert additional rows in the table, check the box, and identify the title of each attachment.*

|  |  |
| --- | --- |
| The following riders are hereby incorporated into this Contract and made part of it by  reference. | |
|  |  |
| ☒ | Rider A – Specifications of Work to be Performed |
| ☒ | Rider B – Method of Payment and Other Provisions |
| ☐ | Rider C - Exceptions |
| ☐ | Rider D – Included at FAME’s Discretion |
| ☐ | Rider E – Included at FAME’s Discretion |
| ☐ | Rider F – Included at FAME’s Discretion |
| ☒ | Rider G – Identification of Country in Which Contracted Work will be Performed |
| ☐ | ATTACHMENT A - Confidentiality and Non-Disclosure Agreement |
|  |  |
| ☐ | Other – Included at FAME’s Discretion |

**RIDER A: SCOPE OF WORK**

# TABLE OF CONTENTS

1. Acronyms
2. Introduction/Overview
3. Deliverables
4. Technical Requirements
5. Performance Measures (Delete if not applicable)
6. Reports (Delete if not applicable)

# ACRONYMS/DEFINITIONS:

The following terms and acronyms shall have the meaning indicated below as referenced in this Contract:

|  |  |
| --- | --- |
| **COMMONLY KNOWN ACRONYMS**  **AND ABBREVIATIONS** | |
|  |  |
| Contract | Formal and legal binding agreement |
|  |  |
| Provider | Organization providing services under this Contract |
| FAME | Finance Authority of Maine |
|  |  |
|  |  |

# INTRODUCTION/OVERVIEW:

The purpose of this Contract is **Add 3-5 sentences regarding the overall purpose of the service, and state who the target population is…**

The Provider shall **Enter 2-3 sentences as to what the Provider shall do**

# DELIVERABLES:

The Provider shall perform all services and maintain all standards and requirements for services provided under this Contract in accordance with the below: **Add detailed deliverables the Provider will be performing**

# TECHNICAL REQUIREMENTS:

* 1. ACCESSIBILITY: All IT products must be accessible to persons with disabilities and must comply with State of Maine’s Accessibility Policy and Standards and the Americans with Disabilities Act. All IT applications should comply with Maine’s Digital Accessibility Policy

([https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-](https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/DigitalAccessibilityPolicy.pdf) [files/DigitalAccessibilityPolicy.pdf](https://www.maine.gov/oit/sites/maine.gov.oit/files/inline-files/DigitalAccessibilityPolicy.pdf)).

* 1. FAME POLICIES: All products and services delivered as part of this Contract must conform to FAME’s Policies, Standards, and Procedures applicable to procurement, physical and cyber security and other subject matters, as applicable, effective at the time this Contract is executed.

1. **PERFORMANCE MEASURES:** 
   1. STANDARD OF PERFORMANCE: The Provider shall perform all services under this Agreement in a professional and workmanlike manner, consistent with generally accepted industry standards and practices for similar services. The Service Provider shall exercise the degree of skill, care, diligence, and prudence that would reasonably be expected from a qualified and experienced provider of similar services under similar circumstances.
   2. DUTY OF CARE: The Provider shall at all times act in good faith and in the best interests of FAME. The Provider shall ensure that all personnel assigned to perform services under this Agreement are properly trained, qualified, and supervised, and that the services are performed with due care, attention, and accuracy.
   3. COMPLIANCE WITH BEST PRACTICES: The Provider shall adhere to industry best practices and applicable standards, including but not limited to those published by recognized professional bodies and regulatory authorities relevant to the services provided.
   4. QUALITY ASSURANCE: The Provider shall implement and maintain quality assurance procedures to ensure that all deliverables meet the specifications, requirements, and performance criteria set forth in this Agreement and any applicable Statements of Work.
   5. REMEDIATION OF DEFICIENCIES: If any services or deliverables fail to meet the standards set forth in this clause, the Provider shall, at no additional cost to FAME, promptly re-perform or correct such services or deliverables to bring them into compliance.
   6. ADDITIONAL MEASURES: This section is optional (Delete if not applicable). Enter measurable outcomes you are looking for in this Contract.
2. **REPORTS:** This section is optional (Delete if not applicable).
   1. Required Reports

The Provider shall track and record all data/information necessary to complete the reports listed in the table below:

|  |  |  |
| --- | --- | --- |
|  | Name of Report | Description or Appendix #: |
| 1. |  |  |
| 2. |  |  |

* 1. Reporting Schedule for Above Listed Required Reports

The Provider shall submit all of the reports listed in the table below to FAME in accordance with the deadlines established within the table:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Name of Report: | Period Captured by Report: *(“Each year/quarter/month/week”)* | Due Date and/or Frequency: (# days after each year/quarter/month/week”) |
| 1. |  |  |  |
| 2. |  |  |  |

The Provider understands that the reports are due within the timeframes established and that FAME will not make subsequent payment installments under this Contract until such reports are received, reviewed and accepted.

The Provider further agrees to submit such other data and reports as may be requested by the Contract Administrator. The Provider shall submit all data and reports to the Contract Administrator listed in section “FAME AND PROVIDER POINTS OF CONTACT” of this Contract.

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

1. **INVOICES AND PAYMENTS.** FAME will pay the Provider as follows: Payment terms are net 30 days from the date FAME receives an error-free invoice with all necessary and complete supporting documents.

All invoices must include the following:

* 1. Itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by FAME.
  2. 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 FAME’s contract administrator.

At its discretion, FAME may withhold a Retainage for project-based services in the following manner:

* + 1. The allowable payment amount from each project milestone payment will be multiplied by ten (10) percent, giving the amount that may be withheld from payment. Ninety (90) percent of the allowable project milestone payment amount would be paid to the Provider.
    2. The Retainage may be held by FAME until the end of the warranty period.

1. **BENEFITS AND DEDUCTIONS.** If the Provider is an individual, the Provider understands and agrees that they are an independent contractor for whom no Federal or State Income Tax will be deducted by FAME, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for their Income Tax records.
2. **INDEPENDENT CAPACITY.** In the performance of this Contract, the parties hereto agree that the Provider, and any agents and employees of the Provider, shall act in the capacity of an independent contractor and not as officers or employees or agents of FAME.
3. **FAME'S REPRESENTATIVE.** The Contract Administrator shall be FAME's representative during the period of this Contract. The Contract Administrator has authority to curtail services if necessary to ensure proper execution. They shall certify to FAME’s finance team when payments under the Contract are due and the amounts to be paid. They shall make decisions on all claims of the Provider, subject to the approval of the FAME’s CEO.
4. **CHANGES IN THE WORK.** FAME may order changes in the work, the Contract 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 FAME’s CEO. Said amendment must be effective prior to the execution of the changed work.
5. **SUB-CONTRACTORS.** The Provider may not enter into any subcontract for the work to be performed under this Contract without the express written consent of FAME. 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 Contract. The approval of FAME for the Provider to subcontract for work under this Contract 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 Contract. The Provider shall give FAME 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 Contract, or which may affect the performance of duties under this Contract.

1. **SUBLETTING, ASSIGNMENT OR TRANSFER.** The Provider shall not sublet, sell, transfer, assign, or otherwise dispose of this Contract, or any portion thereof, or of its right, title, or interest therein, without the written request and written approval from FAME. Such approval shall not in any case relieve the Provider of its responsibility for performance of work or liability under this Contract.
2. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Contract, the Provider certifies as follows:
   1. The Provider shall not discriminate against any employee or applicant for employment relating to this Contract because of race, color, religious creed, sex, national origin, familial status, ancestry, age, physical or mental disability, sexual orientation, or gender identity, unless related to a bona fide occupational qualification.

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.

* 1. The Provider shall, in all solicitations or advertising for employees placed by, or on behalf of, the Provider, relating to this Contract, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, familial status, ancestry, age, physical or mental disability, or sexual orientation, or gender identity.
  2. The Provider shall send to each labor union, or representative of the workers, with which it has a collective bargaining Contract, or other Contract or understanding, whereby it is furnished with labor for the performance of this Contract, 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.
  3. The Provider shall inform the Contract Administrator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against them by any individual, as well as any lawsuit regarding alleged discriminatory practice.
  4. 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.
  5. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract 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.

1. **CONFLICT OF INTEREST.** The Provider warrants that no FAME employee has or will receive any direct or indirect pecuniary interest in or receive or be eligible to receive, directly or indirectly, any benefit that may arise from this Contract, for any employee who participated in any way in the solicitation, award or administration of this Contract. Any contract made in violation of these sections is void.

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 Contract, no person having any such known interests shall be employed.

1. **EMPLOYMENT AND PERSONNEL.** The Provider shall not engage on a full-time, part-time or other basis during the period of this Contract, any employee who participated in any way in the solicitation, award or administration of this Contract.￼
2. **NON-COLLUSION.** The Provider warrants 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 Contract, 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 Contract.

The Provider also warrants that it has not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services, and this proposal is in all respects fair and without collusion or fraud. The above- mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

For breach or violation of this provision, FAME shall have the right to terminate this Contract without liability or, at its discretion, to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

# ACCOUNTING, RECORDS, AND AUDIT.

* 1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Contract, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Contract, and for a period of five (5) years following termination or expiration of the Contract. 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 Contract have been resolved.
  2. Unless FAME specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Contract for a period of five (5) years from the date of termination of this Contract.
  3. Records involving matters in litigation realted to or arising out of this Contract 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-Contract period. During the five- year post-Contract period, delivery of, and access to, all pertinent documents and records will be at no cost to FAME.
  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 FAME all payments made under this Contract 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 Contract 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 FAME. 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 Contract and make such materials available at its offices at all reasonable times during the period of this Contract and for such subsequent period as specified under Generally Accepted Accounting Principles (GAAP), Generally Accepted Auditing Standards (GASS) and Government Auditing Standards issued by the Comptroller General of the United States. The Provider shall allow inspection of pertinent documents by FAME or any authorized representative of FAME, 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 July 1, 2025.

1. **TERMINATION.** This Contract may be terminated by FAME, whenever for any reason the Contract Administrator shall determine that such termination is in the best interest of FAME. Any such termination shall be affected by the delivery to the Provider of a Notice of Termination specifying the date on which such termination becomes effective.

Provider may terminate this Contract for cause by providing a written notice of termination stating the reason for the termination, a minimum of sixty (60) calendar days ahead of the effective date of the termination. As part of the sixty (60) calendar days written notice of termination, the defaulting party shall have fifteen (15) calendar days to cure the default. If the default is of such a nature that it cannot be cured within fifteen (15) calendar days, the defaulting party shall have such additional time, as the parties may agree to, to cure the default, provided the defaulting party has taken steps to cure the default within the initial fifteen (15) calendar days.

Upon notice of termination by either party, and notwithstanding the 60-day notice provision above, Provider agrees to aid and assist in any transition to a new provider upon FAME’s request, up to one-year post-termination, so as to ensure continuation of the larger project. Such transition assistance may include but is not limited to timely return, or with FAME’s consent transfer, of data or partially completed works and good faith personal assistance by way of meetings and conversations between Provider, FAME, and new provider to ensure smooth transition and limit loss of knowledge and progress.

Upon termination, FAME shall pay the Provider for work performed by the Provider prior to the date of Notice of Termination.

1. **GOVERNMENTAL REQUIREMENTS.** The Provider warrants and represents that it will comply with all applicable governmental ordinances, laws, and regulations.
2. **GOVERNING LAW.** This Contract shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Contract shall be brought in the State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.
3. **FAME HELD HARMLESS.** The Provider shall indemnify and hold harmless FAME and its officers, agents, and employees from and against any and all third party 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 Contract; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of FAME, or for actions taken in reasonable reliance on written instructions of FAME.
4. **NOTICE OF CLAIMS.** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to this Contract, or which may affect the performance of duties under this Contract, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Contract, or which may affect the performance of duties under this Contract .
5. **THIS ITEM IS INTENTIONALLY LEFT BLANK**
6. **INSURANCE REQUIREMENTS.** The Provider shall procure and maintain insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection to, the fulfillment of this Contract, by the Provider, its agents, representatives, employees, or Subcontractors. The insurance shall be secured by the Provider, at the Provider’s expense, and maintained in force, at all times during the term of this Contract, and, for any claims-made (as opposed to occurrence-based) policy(ies), for a period of not less than two (2) years thereafter.
   1. Minimum Coverage
      1. Errors & Omissions, or Professional Liability Insurance, or Insurance by any other name, covering the following:
         1. All acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) in an amount not less than $1,000,000 per occurrence, and as an annual aggregate;
         2. Network security and privacy risks, including, but not limited to, unauthorized access, failure of security, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of confidential information, related regulatory defense, and penalties in an amount not less than $1,000,000 per occurrence, and as an annual aggregate;
         3. Data breach expenses, in an amount not less than (see NOTE below and insert the appropriate limit based upon the number of Personally Identifiable Information records) $ , and payable, whether incurred by FAME or the Provider; for and on behalf of FAME, including, but not limited to:
   2. Consumer notification, whether or not required by law;
   3. Forensic investigations;
   4. Public relations and crisis management fees; and
   5. Credit or identity monitoring, or similar remediation services.

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

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

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

|  |  |
| --- | --- |
| ***Number of PII Records*** | ***Insurance per Occurrence*** |
| *1 through 3,000* | *$400,000* |
| *3,001 through 100,000* | *$1,000,000* |

|  |  |
| --- | --- |
| ***Number of PII Records*** | ***Insurance per Occurrence*** |
| *100,001 through 1,000,000* | *$5,000,000* |
| *Greater than 1,000,000* | *$10,000,000* |

* + 1. Workers’ Compensation and employer’s liability, as required by law;
    2. Property (including contents coverage for all records maintained pursuant to this Contract): $1,000,000 per occurrence;
    3. Automotive Liability of not less than $400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
    4. Crime, in an amount not less than $ (The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider); and
    5. Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.
  1. Other Provisions - Unless explicitly waived by FAME, the insurance policies shall contain, or be endorsed to contain, the following provisions:
     1. The Provider’s insurance coverage shall be the primary and contributory. Any insurance or self-insurance maintained by FAME 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 FAME with certificates of insurance, and with those endorsements, if any, affecting coverage, required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by FAME before this Contract commences. FAME 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 FAME in the event of cancellation for any reason, including nonpayment.
     5. FAME will not grant the Provider, or any sub-contractor of the Provider, “Additional Insured” status and FAME will not grant any Provider a “Waiver of Subrogation”.

1. **THIS ITEM IS INTENTIONALLY LEFT BLANK**
2. **SEVERABILITY.** The invalidity or unenforceability of any particular provision, or part thereof, of this Contract shall not affect the remainder of said provision, or any other provisions, and this Contract shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
3. **ORDER OF PRECEDENCE.** In the event of a conflict between the documents comprising this Contract, the Order of Precedence shall be:

Rider C Exceptions

Rider B Payment Terms and Conditions

Rider A Scope of Work

Rider D Included at FAME's Discretion

Rider E Included at FAME's Discretion

Rider F Included at FAME's Discretion

Rider G Identification of Country in which contracted work will be performed ATTACHMENT A: Confidentiality and Non-Disclosure Agreement

Other Included at FAME's Discretion

Notice: No terms on provider’s invoices, ordering documents, website, browse-wrap, shrink- wrap, click-wrap, click-through or other non-negotiated terms and conditions provided with any of the contract activities will constitute a part or amendment of this contract or is binding on the FAME for any purpose. All such other terms and conditions have no force and effect and are deemed rejected by the FAME, even if access to or use of the contract activities requires affirmative acceptance of such terms and conditions.

1. **FORCE MAJEURE.** The performance of an obligation by either party shall be excused in the event that performance of that obligation is prevented by an act of God, act of war, riot, fire, explosion, flood, pandemic or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party.
2. **SET-OFF RIGHTS.** FAME shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, FAME’s option to withhold for the purposes of set-off any monies due to the Provider under this Contract, up to any amounts due and owing to FAME with regard to this Contract, any other Contract with FAME, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to FAME for any other reason. FAME shall exercise its set-off rights in accordance with normal FAME practices including, in cases of set-off pursuant to an audit, the finalization of such audit by FAME or its representatives.
3. **ENTIRE CONTRACT.** This document contains the entire Contract 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 the

Contract 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 the Contract, or to exercise an option or election under the Contract, 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, and no waiver by any party of any one or more of its rights or remedies under the Contract shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Contract or at law.

1. **AMENDMENT.** No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of FAME and Provider.
2. **DEBARMENT AND PERFORMANCE CERTIFICATION.** By signing this Contract, the Provider certifies to the best of Provider’s knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this Contract:
   1. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.
   2. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
      1. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.
      2. Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
      3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
      4. Have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.
3. **FAME PROPERTY.** The Provider shall be responsible for the proper custody, care and return of any FAME-owned property furnished or funded for the Provider's use in connection with the performance of this Contract, and the Provider will reimburse FAME for its loss or damage, normal wear and tear excepted.
4. **CYBERSECURITY AND PROHIBITED TECHNOLOGIES.** Through the execution of this contract, the Provider certifies that the aforementioned organization, its principals and any subcontractors named in this Contract**:**
   1. is not a foreign adversary business entity, [https://www.maine.gov/oit/prohibited-](https://www.maine.gov/oit/prohibited-technologies) [technologies](https://www.maine.gov/oit/prohibited-technologies), [Title 5 M.R.S. §2021 (3)](https://legislature.maine.gov/statutes/5/title5sec2021.html); and
   2. is not on the list of prohibited companies or does not obtain or purchase any information or communications technology or services included on the list of prohibited information and communications technology and services [https://www.maine.gov/oit/prohibited-](https://www.maine.gov/oit/prohibited-technologies) [technologies](https://www.maine.gov/oit/prohibited-technologies), [Title 5 M.R.S. §2030-B](https://legislature.maine.gov/statutes/5/title5sec2030-B.html).

Contracts entered into by FAME in violation of [Title 5 M.R.S. §2030-B](https://legislature.maine.gov/statutes/5/title5sec2030-B.html) are void as a matter of law. A person who executes this contract in violation of section A. of this paragraph and its applicable statutes and required lists, commits a civil violation for which a fine may be adjudged in an amount that is twice the amount of this contract or $250,000, whichever is greater, ([Title 5 M.R.S., §2030-A](https://legislature.maine.gov/statutes/5/title5sec2030-A.html)).

# CONFIDENTIALITY.

* 1. Subject to the Maine Freedom of Access Act (FOAA), [Title 1 M.R.S. §400](https://www.mainelegislature.org/legis/statutes/1/title1sec400.html) et seq., “confidential information” means non-public information designated as protected from disclosure under state or federal law. Confidential information given to the Provider by FAME, or acquired by the Provider on behalf of FAME, whether in verbal, written, electronic, or any other format, shall be subject to the requirements herein. The term “confidential information” does not include any information or documentation that is subject to disclosure under FOAA.
  2. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and FAME shall take all necessary steps to protect confidential information regarding all persons served by FAME, 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 FAME, or whose information is utilized in order to accomplish the purposes of this Contract.
  3. In the event of a breach of this confidentiality provision, the Provider shall notify the Contract Administrator immediately.
  4. The Provider shall comply with the [Maine Public Law, Title 10, Chapter 210-B (Notice of Risk](https://legislature.maine.gov/legis/statutes/10/title10ch210-Bsec0.html) [to Personal Data Act](https://legislature.maine.gov/legis/statutes/10/title10ch210-Bsec0.html)).

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

For instance, if this Contract is valued at $15,000,000, then the Provider's liability is up to

$25,000,000. But if this Contract is valued at $100,000, then the Provider's liability is no greater than $400,000.

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

# INTERPRETATION OF THE CONTRACT.

* 1. Reliance on Policy Determinations - FAME shall determine all program policy. The Provider may, from time to time, request FAME to make policy determinations, or to issue operating guidelines required for the proper performance of this Contract, and the Contract 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 FAME, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Contract, or in any Contract, determination, operating guideline, or other communication from FAME 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.

* 1. Titles Not Controlling - Titles of sections and paragraphs used in this Contract are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of the language.
  2. No Rule of Construction - This is a negotiated Contract and no rule of construction shall apply that construes ambiguous or unclear language in favor of or against any party.

1. **PERIOD OF WORK.** Work under this Contract shall begin no sooner than the date on which this Contract has been fully executed by the parties. Unless terminated earlier, this Contract shall expire on the date set out on the first page of this Contract, or at the completion and acceptance of all specified tasks, and delivery of all contracted products and services as defined in this Contract, including performance of any warranty and/or maintenance Contracts, whichever is the later date.
2. **NOTICES.**  For notice of termination, the parties consent to notice via email to the those contacts listed under FAME and Provider Point of Contact, and agree to return receipt and affirmative acknowledgment of receipt within one business day. For service of process, notices should comply with Maine Rules of Civil Procedure.
3. **ADVERTISING AND PUBLICATIONS.** The Provider shall not publish any statement, news release, or advertisement pertaining to this Contract without the prior written approval of the Contract Administrator.

# THIS ITEM IS INTENTIONALLY LEFT BLANK

# PROVIDER PERSONNEL.

* 1. The parties recognize that the primary value of the Provider to FAME derives directly from its Key Personnel assigned in the performance of this Contract. 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 Contract Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.
  2. FAME shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in FAME's judgment, are not appropriate for the performance of this Contract. In considering the Provider's employees' abilities and qualifications, FAME shall act reasonably and in good faith.
  3. During the course of this Contract, FAME reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by FAME for any reason. In considering the Provider's employees' acceptability, FAME shall act reasonably and in good faith.
  4. In signing this Contract, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Contract, including any Subcontractors, including persons or corporations who have critical influence on or control over this Contract, 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 Contract, FAME reserves the right to require a background check, at Provider’s expense, on any of the Provider’s personnel (employees and Subcontractors) that are in any way involved in the performance of this Contract.

# PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS.

* 1. The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Contract 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 FAME, FAME shall promptly notify the Provider and the Provider, at its expense, shall defend, indemnify, and hold harmless FAME 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 FAME. 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.

1. **PRODUCT WARRANTY.** The Provider expressly warrants its products and services for one full year from the conclusion of the project. 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 FAME. The Provider is also responsible for correcting and/or updating any documentation affected by any operational support performed under this warranty provision.
2. **COVER.** If, in the reasonable judgment of the Contract 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 FAME or by another contractor without unduly interfering with the continued performance by the Provider, then FAME may provide or procure the services necessary to cure the breach or default, in which event FAME shall withhold from future payments to the Provider the reasonable costs of such services.

# OWNERSHIP.

* 1. All data, notebooks, plans, working papers and other works produced, and equipment and products purchased in the performance of this Contract are the property of FAME, FAME 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 Contract, or equipment and products purchased pursuant to this Contract. The Provider shall furnish such information and data, upon the request of FAME, in accordance with applicable Federal and State laws.
  2. Upon termination of this Contract for any reason, or upon request of FAME, the Provider agrees to convey to FAME good titles to purchased items free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

1. **CUSTOM SOFTWARE.** For all custom software furnished by the Provider as part of this Contract, the following terms and conditions shall apply:
   1. FAME shall own all custom software. and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Contract.
   2. A fundamental obligation of the Provider is the delivery to FAME 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 FAME, and the Provider shall not use or describe such software and materials without the written permission of FAME. This obligation to transfer all ownership rights to FAME on the part of the Provider is not subject to any limitation in any respect.
2. **OFF-THE-SHELF (OTS) SOFTWARE.** FAME prefers to purchase and maintain its own licensing for all OTS software. In the event that OTS software is purchased by the Provider as part of this Contract, the following terms and conditions shall apply.
   1. This Contract grants to FAME a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. FAME 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 FAME’s site, at mutually agreed upon times. In the event that a separate license Contract accompanies the OTS software, then the terms of that separate license Contract supersede the above license granted for that OTS software.
   2. This Contract does not transfer to FAME the title to any intellectual property contained in any OTS software. FAME will not decompile or disassemble any OTS software provided under this Contract, or modify any OTS software that bears the copyright notice of a third party. FAME will make and maintain archival copies (for back-up purpose) of OTS software, and each copy 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.
3. **SOFTWARE AS SERVICE (SaaS).** FAME prefers to license and maintain FAME SaaS tenants directly through the SaaS provider. In the event that SaaS solutions are fully owned, hosted, and operated by the Provider, and FAME 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 FAME, with a recognized software Escrow Agent acceptable to FAME. The escrow contract must provide for FAME to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of FAME’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 FAME, upon receipt of a joint written instruction from FAME and the Provider, or upon receipt of written notice from FAME that:
      1. The Provider has failed to carry out its obligations set forth in this Contract; or
      2. A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or
      3. 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
      4. 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
      5. 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.

* 1. The Provider is responsible for all fees to be paid to the Escrow Agent.
  2. The Escrow Agent may resign by providing advance written notice to both FAME 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 acceptable to FAME.

# PRICE PROTECTION.

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

1. **IRREVOCABLE LETTER OF CREDIT.** In order to assure the Provider’s faithful adherence to the terms and conditions of this Contract, FAME may require the Provider shall submit an irrevocable letter of credit, acceptable to FAME, that is payable on demand. This letter of credit will be procured at the expense of the Provider, naming FAME as the beneficiary, in the entire Contract amount. In lieu of this requirement, FAME will accept a commitment letter from a recognized financial institution or investment fund stating that the Provider has sufficient capital to fund the obligations, and has legally committed such capital to fund the obligations, in accordance with this Contract. The letter of credit, or the equivalent commitment letter, shall specifically refer

to this Contract, and shall bind the parties to all the terms and conditions of this Contract. The Provider shall have fifteen (15) calendar days from the date of execution of this Contract to furnish the letter of credit or the equivalent commitment letter. Should the Provider fail to comply with this section, then FAME shall have the right to terminate this Contract without liability.

**RIDER C: EXCEPTIONS TO RIDER B-IT**

Enter the exceptions here, if applicable. If not applicable, delete this page **and** make sure Rider C is deleted in the Table of Riders section.

**EXAMPLES**

**Rider B-IT Item # - TITLE is amended to read as follows:**

1. **EXAMPLE:**
   1. Copy and paste the entire item that has an exception request from Rider B-IT into Rider
   2. When you have new language that is being added, you should underline it; however, ~~when~~ ~~you have language that needs to be removed you should use the strike through format~~. Both of these formatting options are located under “home” and “font” in Microsoft Word.
   3. When you have multiple paragraphs associated with the original item, you do need to copy all of the paragraphs, even if they don’t have any changes associated with them.
   4. If you’re removing an entire item from the contract, you should change the “amended to read as follows” to “is struck in full” as you see below.
   5. When you make an exception request, please also add a comment explaining *why* this request is necessary to you/the vendor.

**Rider B-IT Item # 99 – EXAMPLE is struck in full:**

1. **~~EXAMPLE:~~**
   1. ~~​ Copy and paste the entire item that has an exception request from Rider B-IT into Rider~~

~~C. When you have new language that is being added, you should underline it however when~~ ~~you have language that needs to be removed you should use the strike through format. Both of~~ ~~these formatting options are located under “home” and “font” in Microsoft Word.~~

* 1. ~~​ When you have multiple paragraphs associated with the original item, you do need to copy all~~ ~~of the paragraphs, even if they don’t have any changes associated with them.~~
  2. ~~​ If you’re removing an entire item from the contract, you should change the “amended to read~~ ~~as follows” to “is struck in full”.~~
  3. ~~​ When you make an exception request, please also add a comment explaining~~ *~~why~~* ~~this request~~ ~~is necessary to you/the vendor.~~

**RIDER D: [TITLE]**

## (Included at FAME’s Discretion)

Enter Rider D here, if applicable. If not applicable, delete this page **and** make sure Rider D is deleted in the Table of Riders section.

**RIDER E: [TITLE]**

## (Included at FAME’s Discretion)

Enter Rider E here, if applicable. If not applicable, delete this page **and** make sure Rider E is deleted in the Table of Riders section.

**RIDER F: [TITLE]**

## (Included at FAME’s Discretion)

Enter Rider F here, if applicable. If not applicable, delete this page **and** make sure Rider F is deleted in the Table of Riders section.

**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: Enter State

* **Other. Please identify country: Enter Country**

Notification of Changes to the Information:

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

**ATTACHMENT A: CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT** is hereby executed between the Finance Authority of Maine (“FAME”), and [insert Vendor’s legal name] having a principal place of business at [insert Vendor’s legal address] (“Vendor”), in relation to services and/or products to be provided by the vendor as of , 20 (“Effective Date”).

## Definitions

* 1. Authorized Person

“Authorized Person” is defined as a person authorized by FAME as having a need to receive, possess, store, access, view and/or use Confidential Information for an Authorized Use.

* 1. Authorized Use

“Authorized Use” is defined as the use of Confidential Information by the Vendor or Authorized Persons, solely for the purpose of performing the Contract. Disclosure, display, use, duplication, storage or transmittal of Confidential Information, in any form, for any purpose other than that set forth in the Contract, including extrapolation or retention of summary information, data or business processes, even if without specific identifiers, shall be deemed an “unauthorized use.”

* 1. Confidential Information

“Confidential Information” shall mean any information that FAME, regardless of form or medium of disclosure (e.g., verbal, observed, hard copy, or electronic) or source of information (e.g., FAME, FAME employees, electronic systems, or third-party contractors) provides to Vendor, or which Vendor obtains, discovers, derives or otherwise becomes aware of as a result of Vendor’s performance of the Contract. It includes any sensitive information that may be protected from disclosure pursuant to a federal or state statutory or regulatory scheme intended to protect that information, or pursuant to an order, resolution or determination of a court or administrative board or other administrative body. In addition, information concerning FAME’s information technology infrastructure, systems and software and procedures will be considered Confidential Information. It also includes a Vendor’s Service Organization Control audit report (SOC 2 Type 2) when submitted upon request to FAME and labeled as confidential.

Confidential Information shall not include information which the Vendor can clearly demonstrate to FAME’s reasonable satisfaction is:

* + 1. information that is previously rightfully known to the Vendor on a non-confidential basis without restriction on disclosure;
    2. information that is or becomes, from no act or failure to act on the part of the Vendor, generally known in the relevant industry or in the public domain;
    3. Information or documentation subject to disclosure under the Maine Freedom of Access

Act; or

(c) information that is independently developed by Vendor without the use of Confidential Information.

At all times FAME shall be the owner of any and all Confidential Information.

* 1. Services

“Services” is defined as the services to be performed by the Vendor in connection with the operation or management of the Contract.

* 1. Vendor

“Vendor” is defined to include the Vendor and the Vendor’s respective employees, agents and subcontractors assigned by Vendor and approved by FAME to perform obligations under the Contract (all of the foregoing collectively referred to as “Representatives”).

## Duty to Protect Confidential Information; Reporting Requirements

In consideration for the ability to perform the Services, the Vendor shall hold all Confidential Information in confidence and protect that Confidential Information with the same standard of care required to keep its own similar information confidential. The Vendor must abide by all commercially reasonable administrative, physical, and technical standards for maintaining this information confidential, which must be in accordance with standards established by the National Institute of Standards and Technology (“NIST”). In addition, the Vendor must safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. The Vendor may not, without prior consent from FAME, disclose any Confidential Information to any person for any reason at any time; provided, however it is understood that the Vendor may disclose Confidential Information to its Representatives and its business, financial and legal advisors who require the Confidential Information for the purpose of evaluating or performing the Services on the condition that, prior to such disclosure, the Representatives and advisers have been advised of the confidential and non-public nature of the Confidential Information and are subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Agreement. The Vendor shall be responsible for any breach of this Agreement by any of the Vendor’s Representatives or advisors.

The Vendor shall promptly report any activities by any individual or entity that the Vendor suspects may compromise the availability, integrity, security, or privacy of any Confidential Information. The Vendor shall notify FAME immediately upon becoming aware that Confidential Information is in the possession of, or has been disclosed to, an unauthorized person or entity.

## Discovery and Notification of Breach of Confidential Information

In the event of a breach of security or suspected security incident, intrusion, unauthorized use or disclosure involving Confidential Information, the Vendor shall notify FAME by telephone call (207-620-3522) and email to FAME’s CIO ([ITSecurityOps@famemaine.com](mailto:MaineITSecurityOperations@maine.gov)) within the following timeframes:

* 1. Upon the discovery of a breach of security or suspected security incident involving Confidential Information in electronic, or any other medium if the information was, or is reasonably believed

to have been, acquired by an unauthorized person; or

* 1. Within twenty-four (24) hours of the discovery of any suspected security incident, intrusion, unauthorized use or disclosure of Confidential Information in violation of this Agreement, or potential loss of Confidential Information affecting this Agreement.

The Vendor shall provide a written report to FAME of all information known at the time. The Vendor shall take:

1. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
2. Any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

## Written Report

In addition to the report required above, the Vendor shall provide a written report of the investigation to FAME within ten (10) working days of the discovery of the breach of security or suspected security incident, or unauthorized use or disclosure involving Confidential Information. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

## Notification to individuals.

The Vendor shall notify individuals of the breach or unauthorized use or disclosure of Confidential Information when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. Any notification provided must first be approved by FAME, who shall approve the time, manner and content of any such notifications prior to their release.

## Use Restriction

Vendor shall not receive, possess, store, access, view and/or use Confidential Information for any purpose other than an Authorized Use. Vendor shall not permit unauthorized persons or entities to gain access to Confidential Information and shall not divulge methods of accessing Confidential Information to unauthorized persons.

## Security Obligations

The Vendor agrees to comply with the following security obligations as well as any other such obligations specified in the contract, or conveyed to him/her during the course of the Agreement. The Vendor agrees to comply with the following security obligations:

* 1. Implement administrative, physical and technical safeguards in accordance with NIST standards that reasonably and appropriately protect the confidentiality, integrity and availability of any Confidential Information that is created, received, maintained, used, possessed, stored, accessed, viewed and/or transmitted on behalf of FAME or through FAME or any agency, instrumentality or political subdivision of the State of Maine Government;
  2. Unless otherwise authorized by FAME, Confidential Information may NOT be stored on personal (non-FAME) computing or other electronic or mobile storage devices or taken or removed in any form from FAME;
  3. Vendor shall comply with all applicable federal and state laws governing confidentiality and/or privacy of information;
  4. Vendor shall comply with all applicable FAME policies and procedures including but not limited to those that provide for accessing, protecting, and preserving FAME assets;
  5. Access to any and all Confidential Information will be limited to only those authorized persons who need the Information to perform the services required under the Contract;
  6. Obtain fingerprint-based criminal history record checks for all Vendor's employees, agents and subcontractors when requested by FAME pursuant to federal and state statutory and regulatory directives, at the expense of the Vendor;
  7. Vendor shall instruct all personnel having access to Confidential Information about the confidential nature of the Information, the safeguards required to protect the Information, and the sanctions specified in federal and state law for unauthorized disclosure of said Information; and
  8. Vendor shall use only those access rights granted by FAME.

## Certification by Vendor of Return of Confidential Information, Electronic Information and Tangible Property

Promptly following the written request of FAME, and immediately upon termination of the Services, the Vendor shall return all Confidential Information stored in any format to FAME, or destroy any Confidential Information that Vendor possesses in a format that cannot be returned. Further, Vendor agrees to submit to FAME on Vendor’s letterhead a “CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION, ELECTRONIC INFORMATION, AND

TANGIBLE PROPERTY” certifying that all copies of Confidential Information, electronic property and tangible property belonging to FAME have been returned, or if necessary, destroyed using the form provided in Appendix A.

## Termination

Vendor’s Authorized Use of Confidential Information shall terminate automatically upon: (a) breach of this Agreement as determined solely by FAME, (b) completion or termination of Vendor’s Services, or, (c) termination of Vendor’s Contract, whichever occurs first. Vendor’s indemnification, confidentiality, and related assurances and obligations hereunder shall survive termination of the Agreement.

## Compliance

If Vendor breaches or threatens to breach this Agreement, FAME shall have all equitable and legal rights (including the right to obtain injunctive relief and specific performance) to prevent such breach and/or to be fully compensated (including litigation costs and reasonable attorney’s fees) for losses or damages resulting from such breach. Vendor acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the Confidential Information. Vendor shall hold FAME harmless from, and indemnify FAME for any claims, losses, expenses and/or damages arising out of the unauthorized disclosure by the Vendor, its Representatives, or third party partners, of Confidential Information or other unauthorized use of the Confidential Information, including but not limited to, paying FAME any costs of enforcing this Agreement, securing appropriate corrective action, returning Information furnished hereunder, as well as any other costs reasonably incurred by FAME in enforcing the terms of this Agreement.

## Public Records Requests/Disclosure Compelled by Law or Judicial Proceeding

The Vendor acknowledges that FAME is a body corporate and politic and a public instrumentality of the State and as such it and this Agreement shall be subject at all times to the Maine Freedom of Access Act, 1 MRSA §400 et seq. (FOAA). In the event that FAME receives an appropriate request pursuant to FOAA, the subject matter of which is Confidential Information pursuant to this Agreement, then (a) FAME agrees to promptly notify the Vendor of such request and independently and in its sole discretion determine whether it believes the documents should be maintained as confidential; and (b) the Vendor agrees to provide FAME and its counsel such assistance and cooperation as is reasonably required and requested in order to respond to such a disclosure request.

Notwithstanding the requirements of this Agreement, the Parties may release the Confidential Information if directed to do so by operation of law, pursuant to a lawfully issued subpoena, or pursuant to a ruling by a court or arbitrator of competent jurisdiction, or if FAME determines, in its sole discretion, that such information is a public record under FOAA. FAME shall promptly notify the Vendor of such ruling or directive upon being made aware of same.

## Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. The place of this Agreement, its situs and forum, shall be Kennebec County, Maine, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation, and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of Maine, and stipulates that the State Courts in Kennebec County shall be the proper venue for all matters. If any provision of the Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

## Entire Agreement

This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives effective as of the Effective Date set forth above.

## [Name of Vendor]:

By: Printed: Title: Date:

## FAME:

By: Printed: Title: Date:

# APPENDIX A TO CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

**CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION, ELECTRONIC INFORMATION, AND TANGIBLE PROPERTY BY VENDOR PURSUANT TO VENDOR CONFIDENTIALITY & NONDISCLOSURE AGREEMENT DATED **

Pursuant to the Vendor Confidentiality and Non-Disclosure Agreement between FAME (“FAME”) and (“Vendor”) dated , Vendor acknowledges their responsibility to return or destroy all Confidential Information upon termination of the Vendor’s services to FAME. This document certifies that all copies of Confidential Information, electronic property and tangible property belonging to FAME have been returned, or if necessary, destroyed, as described below:

Description of *returned* Confidential Information, electronic information or tangible property:

Description of *destroyed* Confidential Information, electronic information or tangible property:

|  |
| --- |
| Vendor Signature |
| Vendor Name |
| Date |