

ADMINISTRATIVE PRACTICE LETTER**SUBJECT: UNIVERSITY OF MAINE SYSTEM PURCHASING PROCEDURES****I. PROCEDURES**

It is the practice of the University to obtain all goods and services at the lowest cost to the University consistent with those standards of quality, performance, service, and availability which will best meet the needs of the University.

It is the intent of this APL to promote the practice of the competitive purchasing process in order to keep costs at a minimum and to give interested and qualified vendors an equal opportunity to supply goods and services to the University.

This Administrative Practice Letter (APL) applies to the procurement of all services, supplies, material and equipment (including equipment obtained by capital or operating lease) with the exception of:

- services supplied by people or organizations named in grant proposals,
- honoraria – one time gratuities, awards or gift payments to a non-employee without the usual employment or consultant requisites or obligations, e.g., guest speakers,
- employees – all payments to employees for services rendered **must** be paid through the payroll system regardless of the service being performed,
- concessions contracts – the use of the process described in this APL is not a requirement for concessions contracts though it may be used at the discretion of each University CFO,
- new construction, modification or repair of a University owned building, utility or land improvement, (see APL II-H *Procedures for Obtaining Design and Contracting Services for Capital Construction Projects*)
- architecture, landscape architecture, and engineering services (See APL II-H *Procedures for Obtaining Design and Contracting Services for Capital Construction Projects*)

Contracts with individuals (as defined by IRS guidelines) will be made in accordance with APL Section VII-H and System Guidelines for Determining Employee or Independent Contractor/Consultant Status, but are still subject to this APL if there are other qualified providers of the service readily available. Collective bargaining agreements or individual employment contracts with University employees are not covered by this APL.

In the competitive procurement process, the award will be made to the vendor with the lowest responsible and responsive quotation, bid or proposal unless, in the judgment of the authorized purchasing agent, the best interests of the University would not be served by such an award. Whenever practicable and in the best interest of the University, purchases will be grouped together to take advantage of quantity discounts.

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Purchase orders will be created in the Purchasing System for all procurements with a value above the University's petty cash limit (unless the purchase is made using a Purchasing Card) including:

- equipment and vehicle leases and lease/purchase agreements,
- maintenance agreements,
- any services

Exceptions may be made (i.e., a purchase order may not be required) for the following, subject to the needs of the individual universities:

- publications, subscriptions, memberships, and registrations,
- UMS contract office supply orders,
- telephone expenses,
- postage and shipping
- travel,
- energy contracts,
- water and sewer,
- insurance,
- interdepartmental services, and
- reimbursements of expenses to non-employees.

Each University and the System Office (SWS) is responsible for developing internal procedures for implementing the policies described in this APL.

II. AUTHORITY

- A. The Chancellor and Presidents of the universities by virtue of their office may authorize purchases from the budgets provided them by the Board of Trustees within the requirements of Board policy. They may re-delegate purchasing authority to designated employees, except as provided below. Each University shall maintain a list of employees authorized to approve purchase orders and purchasing card transactions. If the University requires electronic approval of all purchase orders or purchasing card transactions, a list of employees authorized to approve orders in these systems is adequate.
- B. Only those employees specifically designated are authorized to make purchases in the name of the University. Unauthorized purchases become the obligation and financial responsibility of the individual who made the commitment.

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- C. The University of Maine System (UMS) Director of Strategic Procurement (“Director”) has the administrative responsibility for the procurement process of all purchases of \$50,000 or more for all universities and the System office. Additionally, the Director (or designee) will provide advisory and consultative services to the universities in such areas as product evaluations, product/service specifications, price comparisons, user/vendor mediation, and training in appropriate UMS procurement procedures.
- D. Within the guidelines of this APL (and the purchasing procedures of each University) universities may approve purchases which are less than \$50,000.

III. DEFINITIONS

- A. Competitive Procurement Process: refers to all methods of obtaining prices from multiple vendors.
- B. Quotation: refers to pricing obtained by direct contact with vendors through a number of informal, generally rapid, methods, including telephone, faxed or written quotations. Advertised prices, whether on paper or electronic media, are not considered quotations.
- C. Bid: refers only to pricing obtained through a formal sealed bid process.
- D. Proposal: refers only to information obtained from a vendor concerning goods or services through a formal sealed proposal process.
- E. Request for Bid (RFB): refers to the document issued to solicit bids and is used when the goods or services being procured can be precisely described. Price is generally the determining factor in the award provided all other criteria set forth in the RFB are met. There is a public opening of the bids. The award is made to the lowest responsible and responsive bidder, unless in the judgment of the authorized purchasing agent, the best interests of the University would not be served by such an award.
- F. Request for Proposal (RFP): refers to the document used to solicit proposals from vendors when a product or service cannot be specifically defined. Price may or may not be the determining factor. The award will be made to the vendor whose proposal is determined to best meet the needs of the University taking into consideration the evaluation criteria set forth in the RFP. There is no public opening of proposals and all proposals are kept confidential until an award is made, at which time the winning proposal becomes public information subject to a written request referencing the Public Access laws. All proposals must be retained.

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- G. Responsible Bidder: refers to a bidder or proposer who has the capability in all respects to perform the contract requirements in a manner which will assure reliability and good performance.

IV. COMPETITIVE PROCUREMENT PROCESS REQUIRED

- A. Except as otherwise provided herein, purchases of services, supplies, materials and equipment, needed by the University must be based on a principle of competitive procurement. Although purchases with a total cost less than \$10,000 do not require 3 written quotations, it is highly recommended that designated employees obtain quotes from several sources to obtain the best prices unless the purchase is made from an approved university contract.

- B. Competitive Procurement Process Thresholds. While all purchases should be made through a competitive process, the following thresholds exist:

1. Purchases with a total cost equal to or greater than \$10,000 and less than \$50,000 shall require solicitation of at least 3 written quotations.
2. Purchases with total costs greater than or equal to \$50,000 will be made only after following the formal sealed competitive process, specified in paragraph V. below.
3. Splitting orders: Orders should not be split in order to avoid the thresholds. Splitting orders is defined as making more than one transaction (through any purchasing mechanism) to the same vendor for the same or similar goods or services (or for the same project), when, if combined, a different competitive process would be required.
4. Standing orders: Thresholds for a standing order shall be determined based on the dollar amount of purchases expected to be made against the order in one fiscal year or for the period of the order, whichever is less.
5. Multi-year contracts: Thresholds for equipment and vehicle leases and multi-year contracts of all kinds shall be determined based on the total of the payments to be made.

- C. Exceptions may be made to the competitive process for:

1. Purchases of a total amount less than \$10,000.

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2. **Emergency Purchases.** These may be made only to meet bona fide emergencies arising from unforeseeable causes. Emergency purchases should be made on the basis of competitive procurement whenever practicable. Appropriate documentation shall be maintained on the justification for any departure from the competitive process. See section V. A. for emergency purchases greater than or equal to \$50,000.
 3. **Sole Source Purchases.** Sole source purchases are made when goods or services, because of unique characteristics or other reasons, are available from only one source. The authorization and justification for these purchases shall be documented on a sole source form. See section V.A. for sole source purchases greater than or equal to \$50,000
 4. **Cooperative purchases with the State, a state agency, or another governmental entity** where there is a sharing of responsibility and/or costs or where it is possible for the University to purchase from an established state contract.
 5. **Library Books, Periodicals.** Purchase of materials for addition to a library collection including costs of books, catalogs, periodicals, audiovisual and electronic media, and other publications. Each University is responsible for developing purchasing policies and procedures for the library collections. Appropriate documentation shall be maintained on these purchases.
 6. **Purchase for Resale.** Textbooks, course related materials, food, beverages and other items purchased for resale. Appropriate documentation shall be maintained on these purchases.
 7. **Purchases from UMS approved contracts** that were established as a result of a competitive process administered by UMS or other cooperative procurement group.
- D. **Retention of documentation.** Records documenting purchases and the competitive process must be kept in accordance with APL Section IV-D.

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V. FORMAL SEALED COMPETITIVE PROCESS

- A. Purchases and contracts with total costs equal to or greater than \$50,000 generally are to be made only after following the formal sealed competitive process in this section. Personal approval in writing from the UMS Director of Strategic Procurement and the Chief Financial Officer of the affected University (UMS Director of Strategic Procurement and the UMS Treasurer for System office and UNET purchases) is required for any purchases equal to or greater than \$50,000 that are emergency purchases, sole source purchases or do not conform to these procedures.
- B. Purchases under \$50,000 shall be made under the formal sealed competitive process when deemed appropriate by the authorized purchasing agent.
- C. Communication between parties.
 1. RFB's: Once competitive bids have been opened, "negotiations" between the University and bidders, as to price for the goods or services specified, are prohibited. Communications between the University and bidders shall be limited to demonstrations or to clarifications of submissions.
 2. RFP's: Once competitive proposals have been opened, "negotiations" between the University and proposers may take place but shall not significantly alter the original proposal. If negotiations lead to a contract that is outside the original scope of the RFP, all vendors should be given an opportunity to respond to the revised scope, under normal circumstances.
- D. All RFB's and RFP's for goods and services of an amount greater than or equal to \$50,000 must be publicly advertised unless a modified process is deemed appropriate by the UMS Director of Strategic Procurement .
- E. All RFB's and RFP's must contain the following statements:
 1. "The University reserves the right to reject any or all bids/proposals, in whole or in part, and is not necessarily bound to accept the lowest cost bid/proposal if that bid/proposal is contrary to the best interests of the University."
 2. "Bidders may appeal the award decision by submitting a written protest to the UMS Director of Strategic Procurement within 5 business days of the date of the award notice with a copy of the protest to the successful bidder. The protest must contain a statement of the basis for the challenge."

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- F. The University will not consider non-responsive bids or proposals, i.e., those with material deficiencies, omissions, errors or inconsistencies.
- G. Tie Bids. When two equal bids are received, there shall be a preference for “in-state bidders”. When tie bids are both in-state or both out-of-state, the award will be made to the bid that arrives first in the office designated to receive the bids.

VI. PROTESTS OF THE COMPETITIVE PROCUREMENT PROCESS

- A. Protests of Procurement Awards greater than or equal to \$50,000
 - 1. Notice of Award: Once an award decision has been made, notice of the award will be made promptly to all bidders or proposers.
 - 2. Protest of Award.
 - a. A bidder or proposer may submit a protest in writing to the UMS Director of Strategic Procurement within 5 business days of the date of the notice of award with a copy to the bidder or proposer that was awarded the contract.
 - b. The protest must contain a brief statement of the basis for the challenge.
 - c. The Director may stay the award until the protest has been resolved, unless continuation of the procurement without delay is necessary to protect substantial interests of the University.
 - 3. Authority to Resolve Protest.
 - a. The Director will base his or her decision on a review of the facts. There will be no hearing, no testimony, and no additional information unless the Director deems that additional information is necessary to resolve the appeal.
 - b. The Director will communicate his or her decision to the protesting bidder or proposer, the affected University and the bidder or proposer originally awarded the contract.

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- c. If a protest is not resolved to the satisfaction of the protesting bidder or proposer, he or she may file an appeal with the UMS Treasurer within ten business days of the date of the written decision of the Director with a copy to the bidder or proposer originally awarded the contract. The determination of the Treasurer is final and will be given in writing and submitted to the protesting bidder or proposer, affected University and the bidder or proposer originally awarded the contract.

B. Protests of Procurement Awards under \$50,000

1. If a timely protest is made concerning any purchase under \$50,000 the UMS Director of Strategic Procurement will promptly review the protest and communicate his/her decision to the protesting vendor and the affected University. The Director's decision is final. The Director will document the protest and the decision.

VII. SPECIAL CONDITIONS

A. Leases

1. All leases, regardless of whether they are leases to purchase the item or operating leases, are subject to the same thresholds as other purchases as described in Section IV. B based on the total value of the payments to be made. Signature authority and the need for review by University Counsel is addressed in APL IV-C *Signature Authority*.
2. Real Estate leases must be made in accordance with APL II-G *Acquisition of Real Property Through Purchase, Gift, Lease, or License* and Section 801 of the Policy and Procedures Manual of the University of Maine System Board of Trustees.

- B. Hazardous Material Products.** All solicitations for the purchase of chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning supplies and chemicals of all types, shall require the vendor to certify and warrant that the items or products to be delivered shall be properly labeled as required by federal and state law and that by delivery of the items or products the vendor does not violate any of the prohibitions of federal and state law. Whenever toxic or hazardous chemicals are purchased, the vendor shall provide Material Safety Data Sheets (MSDS) to the University. The System Office of Facilities shall be consulted for the latest information about legal requirements.

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- C. On-site Labor. If there will be significant on-site labor as a component of a purchase over \$50,000, there are additional legal requirements under the labor laws of the State of Maine concerning the minimum wages that must be paid to each category of laborers, workers and mechanics used in the performance of the contract. The System Office of Facilities should be consulted for information about these requirements.
- E. Insurance Certificates. For all purchases or projects where a vendor or contractor is on University property for services beyond delivery, insurance certificates must be obtained prior to the work. The University System Risk Manager can supply the requirements.
- E. Property and Liability Insurance. Procurement of any property or liability insurance must be coordinated through the University System Risk Manager.
- F. Computer software and services. In order to ensure all volume based System-wide purchasing opportunities have been considered and to review any associated licensing agreements for appropriate terms and the reduction of risk, purchases of computer software and/or services of \$25,000 or more must be reviewed by the UMS Chief Information Officer and Office of Strategic Procurement.

VIII. PROCUREMENT OF PROFESSIONAL SERVICES AND CONSULTANTS

The University of Maine System often finds it necessary to engage the services of a professional or consultant. In doing so, it must retain a sufficient element of control over the level and context of work performed to insure that it receives adequate value for its money. A fair process and an agreement or contract is necessary to assure that:

- the University is obtaining the services of the best alternative,
- the scope of work is clearly defined,
- responsibilities and expectations are clearly defined
- the University receives what it contracted for,
- the cost of services and expenses are clearly stated,
- the contractor is paid for services rendered,
- there is no actual or apparent wrong-doing or conflict of interest,
- employee vs. independent contractor status is clear,
- adequate records are maintained to withstand the scrutiny of an audit.

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Professional services procurement presents a unique set of conditions that require different procedures from those used in acquisition of other products or services. The following paragraphs describe the process which authorized members of the University community should use when entering into contracts for professional services. Arrangements to secure professional services should only occur when a determination has been made that the services cannot be performed economically or satisfactorily by existing University staff during the course of their normal University responsibilities or duties.

Contracts for legal services must be coordinated through the Office of University Counsel per board policy, section 210.

A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word 'professional' implies attainments in special knowledge as distinguished from mere skill. Usually, professional services are those that utilize the skills of licensed practitioners with advanced degrees who have served required internships prior to licensing. In addition, their work exposes them to certain professional liability responsibility, which is protected by specific errors and omissions insurance coverage.

Consultants possess specialized knowledge, experience and expertise that enables them to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice.

Professional services may be provided by companies or individuals. Contracts with individuals (as defined by IRS guidelines) will be made in accordance with APL Section VII-H, but are still subject to the selection process defined in this APL if there are other qualified providers of the service available. See the flowchart in Attachment III to determine the correct contract to use.

A. PROCEDURES FOR PROFESSIONAL SERVICES AND CONSULTANTS**1. Process:**

- a. Describe the services needed, including any required reports or other deliverables, desired outcomes, the time frame for work to be completed, and any insurance requirements. Insurance requirements may be obtained from the UMS Risk Manager. If there are insurance requirements, they should be included in the Professional Services Contract (Attachment I to this APL) as Attachment B.

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- b. Identify possible providers (a minimum of 3, if possible) of the service. A legal advertisement in an appropriate newspaper is one way to identify viable providers.
- c. Solicit proposals in writing from all identified providers. The solicitation should include one due date for all proposals, the description of services needed, time frames of work to be performed, minimum qualifications required, selection criteria (qualifications, cost, references, etc.), the insurance requirements and a copy of the Contract for Professional Services in Attachment I with any applicable attachments (for information only – not to be filled out). Obtain from each provider a summary of their qualifications, references, the cost of obtaining the service, and any other pertinent information.
- d. Select the desired provider, using the stated criteria, from among those submitting proposals. Retain documentation of the selection process.
- e. Fill out the Contract for Professional Services. You may elicit the assistance of University Counsel for wording specific to your contract. When completing the contract include Attachment C, Standards for Safeguarding Information whenever a service provider will have access to, or be provided with, Compliant Data or Business Sensitive Information, which the University requires to be safeguarded. Consult University Counsel if you are uncertain whether Attachment C is applicable.

Compliant Data is defined as data that the University needs to protect in accordance with statute, contract, law, or agreement. Examples include the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), Gramm-Leach-Bliley Act (GLBA), Maine Data Act, and the Payment Card Industry Data Security Standards (PCI-DSS).

Business Sensitive Information is defined as data which is not subject to statutory or contractual obligations, but where compromise or exposure of the information could result in damage or loss to the University.

Based on the nature or scope of the contract, the offices of Strategic Procurement, University Counsel, and/or Information Security may need to be consulted to include wording tailored to the services engagement. Examples of services engagements requiring special contract terms include contracts;

1. for information systems development work,
2. that involves large-scale interactions with University Compliant Data or Business Sensitive Information,

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3. that involves data requiring special protections such as classified national security information or export control data (data that is legally restricted from export outside the United States),
 4. that includes storage, transmission, or processing of personal health information subject to HIPAA that requires a special Business Associate Agreement (Note that the terms of the Business Associate Agreement vary based on the services provided. Consult with University Counsel for appropriate terms),
 5. where the Contractor proposes their own Terms and Conditions.
- f. **IMPORTANT: Please inquire with your Campus Purchasing Department regarding specific procedures for reviewing Contracts prior to signature.** Once the Professional Services Contract is completed (including proof of insurance), have the Contractor sign the contract. The signature for the University should be that of a person authorized by APL Section IV-C to sign such documents. In order to create the encumbrance in General Ledger, submit a requisition in MaineStreet Marketplace and attach a scanned copy of the contract to the requisition. The purchase order should be sent to the Contractor and the purchase order number referenced on Contractor invoices.

2. Miscellaneous notes:

- a. Contracts funded fully or in part by federal or state agencies shall meet all applicable standards and shall contain all necessary clauses required by federal or state statutes, rules and regulations. The burden of complying with the requirements of the funding source rests with the Account Administrator.
- b. If the services will cost less than \$ 10,000, the project may be exempted from this process with the approval of the Chief Financial Officer (or designee) of the University. A contract still needs to be written and must contain the Standards for Safeguarding Information, if applicable.
- c. If a competitive process is not used there must be documentation in support of the contract which includes:
 - why the service is restricted to the particular contractor,
 - a description of any efforts taken to identify other sources,
 - a cost comparison to determine that the charge is not out of line with current market pricing for similar services, **or**
 - if the provider is sole source, a statement to that effect, and that availability of other providers has been thoroughly researched.

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- d. The party with whom the University unit wishes to contract may have a contract they prefer to use over the one provided herein. Attachment C, Standards for Safeguarding Information, must be used in conjunction with any alternate contract that involves Compliant Data or Business Sensitive Information, which the University requires to be safeguarded. Any alternate contracts **must be reviewed and approved** by University Counsel.
- e. For previously issued contracts that did not, but should, contain Standards for Safeguarding Customer Information language, Attachment C, Standards for Safeguarding Customer Information, should be issued.
- f. Any changes to a signed contract should be in writing and signed by all parties. If the change affects the dollar amount of the contract, a change order in the purchasing system should be issued as well.
- g. In some cases, the University unit contracting for professional services may wish to use a formal Request for Proposals (RFP) process as described in section V.

Related Documents:

APL Section II: Facilities

APL Section II-B Motor Vehicle Administration and Guidelines

APL Section II-F Sale or Lease of Real Property to Third Parties

APL Section II-G Acquisition of Real Property Through Purchase, Gift, Lease, or License

APL Section IV: General Administration

APL Section IV-C Signature Authority

APL Section IV-D Record Retention Practices

APL Section VII: Procurement

APL Section VII-B Procurement Standards of Conduct

APL Section VII-C Purchasing Cards

APL Section VII-D Cellular Telephone Acquisition, Use and Reimbursement

APL Section VII-H Determining Employee Versus Independent Contractor Status

APPROVED

Vice Chancellor Finance & Administration

**UNIVERSITY OF MAINE SYSTEM
CONTRACT FOR PROFESSIONAL SERVICES
(not for use for architectural or engineering design contracts)**

This Contract entered into this ____ day of _____, _____, by and between the University of Maine System, hereinafter referred to as the "University", and _____, hereinafter referred to as "Contractor".

WHEREAS, the University desires to enter into a contract for professional services, and the Contractor represents itself as competent and qualified to accomplish the specific requirements of this Contract to the satisfaction of the University;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. **Specifications of Work** : The Contractor agrees to perform the Specifications of Work as described in **Attachment A**, hereby incorporated by reference.
2. **Term** : This Contract shall commence on _____ and shall terminate on _____, unless terminated earlier as provided in this Contract.

3. **Payment** :

A. The total of **all** payments made against this contract shall not exceed \$ _____. Any expenses not listed here will not be reimbursed.

B. The University shall compensate the Contractor at the rate of \$ _____ per _____ (hour, week, semester, entire project.) Payment will be made within 30 days upon submittal and approval of invoices.

C. Reimbursement for travel:

_____ All travel, lodging and meals are part of the compensation described in section A. No additional reimbursement will be made.

OR

_____ Contractor will be reimbursed for pre-approved travel, lodging and meals in an amount not to exceed \$ _____. Copies of receipts or itemized bills for expenses must be submitted for reimbursement.

D. Other expenses (postage, printing, phone, etc.) shall not exceed \$ _____. Copies of receipts or itemized bills for expenses must be submitted for reimbursement.

4. **Termination**: This Contract may be terminated by mutual agreement of the parties or by either party upon thirty (30) days prior written notice to the other. If at any time the Contractor fails to comply with the provisions of this Contract, the University shall have the right to terminate this Contract immediately with written notice. Termination does not release the Contractor from its obligations to provide services per the terms of the Contract during the notification period.
5. **Obligations Upon Termination**: Any materials produced in performance of this agreement are the property of the University and shall be turned over to the University upon request. The University shall pay the Contractor for all services performed to the effective date of termination subject to offset of sums owed by the Contractor to the University.
6. **Conflict of Interest**: No officer or employee of the University shall participate in any decision relating to this contract which affects his or her personal interest in any entity in which he or she directly or indirectly has interest. No employee of the University shall have any interest, direct or indirect, in this contract or proceeds thereof.
7. **Modification**: This Contract may be modified or amended only in a writing signed by both parties.
8. **Assignment**: This Contract, or any part thereof, may not be assigned, transferred or subcontracted by the Contractor without the prior written consent of the University.
9. **Applicable Law**: This Contract shall be governed and interpreted according to the laws of the State of Maine.
10. **Administration**: _____ shall be the University's authorized representative in all matters pertaining to the administration of the terms and conditions of this Contract and to whom all notices must be sent.
11. **Non-Discrimination**: In the execution of the contract, the Contractor shall not discriminate on the basis of race, color, religion, sex, sexual orientation, transgender status or gender expression, national origin or citizenship status, age, disability, genetic information, or veteran status and shall provide reasonable accommodations to qualified individuals with disabilities upon request. The university encourages the employment of qualified individuals with disabilities.

- 12. Indemnification:** The Contractor shall comply with all applicable federal, state and local laws, rules, regulations, ordinances and orders relating to the services provided under this Contract. Contractor shall indemnify, defend and hold the University, its Trustees, officers, employees, and agents, harmless from and against any and all loss, liability, claims, damages, actions, lawsuits, judgments and costs, including reasonable attorney's fees, that the University may become liable to pay or defend arising from or attributable to any acts or omissions of the Contractor, its agents, employees or subcontractors, in performing its obligations under this Contract, including, without limitation, for violation of proprietary rights, copyrights, or rights of privacy, arising out of a publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under the Contract or based on any libelous or other unlawful matter contained in such data.
- 13. Contract Validity:** In the event one or more clauses of this Contract are declared invalid, void, unenforceable or illegal, that shall not affect the validity of the remaining portions of this Contract.
- 14. Independent Contractor:** Contractor is an independent contractor of the University, not a partner, agent or joint venturer of the University and neither Party shall hold itself out contrary to these terms by advertising or otherwise, nor shall either party be bound by any representation, act or omission whatsoever of the other. Contractor, its employees and subcontractors if any, is/are independent contractors for whom no Federal or State Income Tax will be deducted by the University, and for whom no retirement benefits, social security benefits, group health or life insurance, vacation and sick leave, Worker's Compensation and similar benefits available to University's employees will accrue. The parties further understand that annual information returns as required by the Internal Revenue Code and Maine Income Tax Law will be filed by the University with copies sent to Contractor. Contractor will be responsible for compliance with all applicable laws, rules and regulations involving but not limited to, employment, labor, Workers Compensation, hours of work, working conditions, payment of wages, and payment of taxes, such as unemployment, social security and other payroll taxes, including other applicable contributions from such persons when required by law.
- 15. Intellectual Property:** Any information and/or materials, finished or unfinished, produced in performance of this Contract, and all of the rights pertaining thereto, are the property of the University and shall be turned over to the University upon request.
- 16. Entire Contract:** This Contract sets forth the entire agreement between the parties on the subject matter hereof and replaces and supersedes all prior agreements on the subject, whether oral or written, express or implied.

17. **Licensing**: Contractor shall secure in its name and at its expense all federal, state, and local licenses and permits required for operation under this Contract. Contractor shall provide proof of such licensure or permit to the University prior to commencing work under this Contract.
18. **Record Keeping, Audit and Inspection of Records**: The Contractor shall maintain books, records and other compilations of data pertaining to the requirements of the Contract to the extent and in such detail as shall properly substantiate claims for payment under the Contract. All such records shall be kept for a period of seven years or for such longer period as specified herein. All retention periods start on the first day after the final payment of the Contract. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. The University, the grantor agency (if any), or any of their authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records and other compilations of data of the Contractor pertaining to this Contract. Such access shall include on-site audits.
19. **Publicity, Publication, Reproduction and use of Contract's Products or Materials**: Unless otherwise provided by law or the University, title and possession of all data, reports, programs, software, equipment, furnishings and any other documentation or product paid for with University funds shall vest with the University. The Contractor shall at all times obtain the prior written approval of the University before it, any of its officers, agents, employees or subcontractors, either during or after termination of the Contract, makes any statement bearing on the work performed or data collected under this Contract to the press or issues any material for publication through any medium of communication. If the Contractor or any of its subcontractors publishes a work dealing with any aspect of performance under the Contract, or of the results and accomplishments attained in such performance, the University shall have a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.
20. **Confidentiality**: The contractor shall comply with all laws and regulations relating to confidentiality and privacy including but not limited to any rules or regulations of the University.
21. **Force Majeure**: Neither party shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, flood, epidemics, strikes, embargoes or unusually severe weather. Dates or time of performance shall be extended to the extent of delays excused by this section provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

22. **Notices:** Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and addressed to the persons and addresses below.

23. **Insurance Requirements: Attachment B**, hereby incorporated by reference.

24. **Standards for Safeguarding Information or Safeguarding Customer Information: Attachment C**, hereby incorporated by reference.

25. **Signatures:**

FOR THE UNIVERSITY OF MAINE
SYSTEM:

BY: _____
(signature)

Name: _____
(print or type)

Title: _____

Address: _____

Telephone: _____

Fax: _____

Date: _____

FOR THE CONTRACTOR:

LEGAL NAME: _____

BY: _____
(signature)

Name: _____
(print or type)

Title: _____

Address: _____

Telephone: _____

Fax: _____

Date: _____

Tax ID #: _____

Substitute Form W-9 - Taxpayer Identification Number Request & Certification

Please complete the following information. We are required by law to obtain this information from you when making a reportable payment to you. If you do not provide us with this information, your payments may be subject to federal income tax backup withholding. Use this form only if you are a **U.S. person** (including U.S. resident alien.). If you are a foreign person, use the appropriate Form W-8.

Part 1 Tax Status:

Print Name: _____
Address (number, street, and apt. or suite no.): _____
City: _____ State: _____ Zip: _____
Phone: (____) _____

Complete One:

Individual/Sole Proprietor Business Name, if different from above _____
Social Security Number ____ - ____ - _____
- or - Business EIN ____ - _____

Partnership EIN ____ - _____

Corporation EIN ____ - _____

Please answer questions below if you are a corporation:

1. Corporation providing legal services? **Y** **N**

2. Corporation providing medical services? **Y** **N**

Limited Liability Company EIN ____ - _____

Tax-Exempt or Not-for-Profit under § 501(C)(3) EIN ____ - _____

Government Entity EIN ____ - _____

Estate or Trust EIN ____ - _____

All other Entities EIN ____ - _____

Part 2 Exemption: If exempt from Form 1099 reporting, check here:
and circle your qualifying exemption reason below

1. An organization exempt from tax under IRC section 501(a)
2. The United States or any of its agencies or instrumentalities
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities
5. An international organization or any of its agencies or instrumentalities
6. Other: _____

Part 3 Certification:

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, **and**
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of U.S. person: _____ Date: _____

Please return this form with the attached contract. Thank you for your cooperation.

**UNIVERSITY OF MAINE SYSTEM
STANDARDS FOR SAFEGUARDING INFORMATION
ATTACHMENT C**

This Attachment addresses the Contractor's responsibility for safeguarding Compliant Data and Business Sensitive Information consistent with the University of Maine System's Information Security Policy and Standards. (infosecurity.maine.edu)

Compliant Data is defined as data that the University needs to protect in accordance with statute, contract, law or agreement. Examples include Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), Gramm-Leach-Bliley Act (GLBA), Maine Notice of Risk to Personal Data Act, and the Payment Card Industry Data Security Standards (PCI-DSS).

Business Sensitive Information is defined as data which is not subject to statutory or contractual obligations but where the compromise or exposure of the information could result in damage or loss to the University.

1. Standards for Safeguarding Information: The Contractor agrees to implement reasonable and appropriate security measures to protect all systems that transmit, store or process Compliant Data and Business Sensitive Information or personally identifiable information from Compliant Data and Business Sensitive Information furnished by the University, or collected by the Contractor on behalf of the University, against loss of data, unauthorized use or disclosure, and take measures to adequately protect against unauthorized access and malware in the course of this engagement.
 - A. Compliant Data and Business Sensitive Information may include, but is not limited to names, addresses, phone numbers, financial information, bank account and credit card numbers, other employee and student personal information (including their academic record, etc.), Drivers License and Social Security numbers, in both paper and electronic format.
 - B. If information pertaining to student educational records is accessed, transferred, stored or processed by Contractor; Contractor shall protect such data in accordance with FERPA.
 - C. If information pertaining to protected health information is accessed, used, collected, transferred, stored or processed by Contractor; Contractor shall protect such data in accordance with HIPAA and Contractor shall sign and adhere to a Business Associate Agreement.
 - D. If Contractor engages in electronic commerce on behalf of the University or cardholder data relating to University activities is accessed, transferred, stored or processed by Contractor; Contractor shall protect such data in accordance with current PCI-DSS guidelines.

- E. If information pertaining to protected “Customer Financial Information” is accessed, transferred, stored or processed by Contractor; Contractor shall protect such data in accordance with GLBA.
2. Prohibition of Unauthorized Use or Disclosure of Information: Contractor agrees to hold all information in strict confidence. Contractor shall not use or disclose information received from, or created or received by, Contractor on behalf of the University except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by the University.
3. Return or Destruction of Compliant or Business Sensitive Information:
- A. Except as provided in Section 3(B), upon termination, cancellation, or expiration of the Agreement, for any reason, Contractor shall cease and desist all uses and disclosures of Compliant Data or Business Sensitive Information and shall immediately return or destroy (if the University gives written permission to destroy) in a reasonable manner all such information received from the University, or created or received by Contractor on behalf of the University, provided, however, that Contractor shall reasonably cooperate with the University to ensure that no original information records are destroyed. This provision shall apply to information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of University information, including any compilations derived from and allowing identification of any individual's confidential information. Except as provided in Section 3(B), Contractor shall return (or destroy) information within 30 days after termination, cancellation, or expiration of this Agreement.
- B. In the event that Contractor determines that returning or destroying any such information is infeasible, Contractor shall provide to University notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of such information is infeasible, Contractor shall extend the protections of this Agreement to such information and limit further uses and disclosures of such information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such information.
- C. Contractor shall wipe or securely delete Compliant Data or Business Sensitive Information and personally identifiable information furnished by the University from storage media when no longer needed. Measures taken shall be commensurate with the standard for “clearing” as specified in the National Institute of Standards and Technology (NIST) Special Publication SP800-88: Guidelines for Media Sanitization, prior to disposal or reuse.
4. Term and Termination:

- A. This Attachment shall take effect upon execution and shall be in effect commensurate with the term of the Agreement
5. Subcontractors and Agents: If Contractor provides any Compliant Data or Business Sensitive Information received from the University, or created or received by Contractor on behalf of the University, to a subcontractor or agent, the Contractor shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on Contractor by this Agreement.
 6. Contractor shall control access to University data: All Contractor employees shall be adequately screened, commensurate with the sensitivity of their jobs. Contractor agrees to limit employee access to data on a need-to-know basis. Contractor shall impose a disciplinary process for employees not following privacy procedures. Contractor shall have a process to remove access to University data immediately upon termination or re-assignment of an employee by the Contractor.
 7. Unless otherwise stated in the agreement, all Compliant Data or Business Sensitive Information is the property of the University and shall be turned over to the University upon request.
 8. Contractor shall not amend or replace hardware, software or data without prior authorization of the University.
 9. If mobile devices are used in the performance of this Agreement to access University Compliant Data or Business Sensitive Information, Contractor shall install and activate authentication and encryption capabilities on each mobile device in use.
 10. Reporting of Unauthorized Disclosures or Misuse of Information: Contractor shall report to the University any use or disclosure of Compliant Data or Business Sensitive Information not authorized by this Agreement or in writing by the University. Contractor shall make the report to the University not more than one (1) business day after Contractor learns of such use or disclosure. Contractor's report shall identify; (i) the nature of the unauthorized use or disclosure, (ii) the information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate the effects of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the University. Contractor shall keep University informed on the progress of each step of the incident response. Contractor shall indemnify and hold University harmless from all liabilities, costs and damages arising out of or in any manner connected with the security breach or unauthorized use or disclosure by Contractor of any University Compliant Data or Business Sensitive Information. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a security breach or use or disclosure of Compliant Data or

Business Sensitive Information by Contractor in violation of the requirements of this Agreement. In addition to the rights of the Parties established by this Agreement, if the University reasonably determines in good faith that Contractor has materially breached any of its obligations, the University, in its sole discretion, shall have the right to:

- Inspect the data that has not been safeguarded and thus has resulted in the material breach, and/or
- Require Contractor to submit a plan of monitoring and reporting, as the University may determine necessary to maintain compliance with this Agreement;
- and/or Terminate the Agreement immediately.

11. Survival: The respective rights and obligations of Contractor under Section 12 of the Agreement or Section 3 of this Attachment shall survive the termination of this Agreement.

12. Contractor Hosted Data: If Contractor hosts University Compliant Data or Business Sensitive Information in or on Contractor facilities, the following additional clauses should be used.

- A. Contractor computers that host University Compliant Data or Business Sensitive Information shall be housed in secure areas that have adequate walls and entry control such as a card controlled entry or staffed reception desk. Only authorized personnel shall be allowed to enter and visitor entry will be strictly controlled.
- B. Contractor shall design and apply physical protection against damage from fire, flood, earthquake, explosion, civil unrest, and other forms of natural or man-made disasters. Contractor shall protect hosted systems with Uninterruptible Power Supply (UPS) devices sufficient to meet business continuity requirements.
- C. Contractor shall backup systems or media stored at a separate location with incremental back-ups at least daily and full back-ups at least weekly. Incremental and full back-ups shall be retained for 15 days and 45 days respectively. Contractor shall test restore procedures not less than once per year.
- D. Contractor shall provide for reasonable and adequate protection on its network and system to include firewall and intrusion detection/prevention.
- E. Contractor shall use strong encryption and certificate-based authentication on any server hosting on-line and e-commerce transactions with the University to ensure the confidentiality and non-repudiation of the transaction while crossing networks.
- F. The installation or modification of software on systems containing University Compliant Data or Business Sensitive Information shall be subject to formal change management procedures and segregation of duties requirements.

G. Contractor who hosts University Compliant Data or Business Sensitive Information shall engage an independent third-party auditor to evaluate the information security controls not less than every two (2) years. Such evaluations shall be made available to the University upon request.

13. If Contractor employees work under University Management direction, Contractor employees will receive security awareness training and be subject to the same information security standards as University employees. If the Contractor accesses University systems, Contractor shall agree to the University's Acceptable Use Policy.

14. If the Contractor provides system development, Compliant Data or Business Sensitive Information shall not be used in the development or test environments. Records that contain these types of data elements may be used if that data is first de-identified, masked or altered so that the original value is not recoverable. For programs that process University data, initial implementation as well as applied updates and modifications must be produced from specifically authorized and trusted program source libraries and personnel. Contractor shall provide documentation of a risk assessment of new system development or changes to a system.

UNIVERSITY

By: _____
Signature

Date

Printed

Title

Address

CONTRACTOR

By: _____
Signature

Date

Printed

Title

Address