

ADMINISTRATIVE PRACTICE LETTER

**SUBJECT: GUIDELINES FOR DETERMINING
EMPLOYEES OR INDEPENDENT CONTRACTOR RELATIONSHIPS**

INDEPENDENT CONTRACTORS MANUAL

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I. INTRODUCTION

The purpose of this manual is to provide assistance to University of Maine System campuses in identifying the appropriate classification for **individuals** who provide a service (Independent Contractors). These guidelines **do not** apply to contracts with corporations under which professional services may be provided. The Internal Revenue Service has set forth certain conditions that must be considered in determining if an individual is an independent contractor or employee. When an individual **does not** meet the conditions of an independent contractor, the IRS says an employee/employer relationship exists and they must be paid on payroll. An employer who does not treat an individual as an employee is subject to penalties for failure to withhold taxes and to pay social security taxes on that employee (e.g., up to 40% of FICA taxes).

This manual will explain the conditions established by the IRS. It will outline the methods of payment to be used in these situations and address questions often asked by campuses regarding Independent Contractors. Campuses will be responsible for implementing the guidelines and making determinations about the proper payment method and will be responsible for monitoring payments made to individuals through the accounting system to assure consistent application of the guidelines.

The material in this manual is intended to be only a guide. It is not to be viewed as a comprehensive treatment of all University policy in relation to Independent Contractors. Campus questions should be directed to either the SWS Office of Human Resources or the SWS Controller's Office.

II. EMPLOYEE OR INDEPENDENT CONTRACTOR ?

One of the most frequent questions arising under the employment tax laws is whether an individual worker should be treated as an "employee" or an "independent contractor" for payroll tax purposes.

Independent contractors are considered self-employed persons who provide a professional service not readily available within the University System. They are responsible for making their own tax payments and the employer has no tax withholding or tax payment obligations with respect to compensation paid to an independent contractor.

DEFINED

The primary method used to determine whether an employee-employer relationship exists is the Common Law test. The central focus of the Common Law test is determining who has the right to control two basic elements: (1) what must be done, and (2) how it must be done. Under this test, a worker is considered an employee subject to payroll tax withholding if the employer has the right to control **both** the result to be accomplished **and** the method or means by which the result is achieved. If the employer has the right to control or direct **only the result** of the work and not the means used to accomplish the result, the individual generally qualifies as an independent contractor.

The Common Law test can be difficult to apply to specific cases or situations. Proper application of the test requires an employer to consider a number of factors or characteristics of the work in question to determine whether an employee-employer relationship exists. For example, two characteristics typically indicating that an individual has "employee status" are: (1) the employer has the right to discharge the worker, and (2) the employer supplies the worker with tools and a place to work. On the other hand, individuals who offer their services to the general public in the pursuit of an independent trade, business or profession normally are not considered employees. Keep in mind, however, that no one factor or set of factors is automatically controlling. All the facts and circumstances of a particular situation must be taken into account in determining whether an individual worker should be treated as an employee or as an independent contractor.

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FACTORS USED BY THE IRS

In determining the status of a worker the IRS has a number of work factors or characteristics that it takes into account in deciding whether an employer's control over an individual is sufficient to establish an employer-employee relationship. None of the factors, standing alone, is necessarily controlling or decisive. Rather, the IRS stresses, "All information that provides evidence of the degree of control and the degree of independence must be considered".

Facts that provide evidence of the degree of control and independence fall into three categories:

- Behavioral Control
- Financial Control
- The Type of Relationship of the Parties

BEHAVIORAL CONTROL: Facts that show whether the University has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

- **Compliance with Instructions** – An individual who must comply with another person's instructions about when, where or how to work, generally is considered an employee. This applies even if the other person simply has the right to require compliance, but does not exercise that right.
- **Training** – Requiring that an individual be trained through such methods as working with an experienced employer, attending instructional sessions or training courses, or corresponding with the employer is indicative of employee status because it shows that the employer wants to control the way the work is done or the method used. Independent contractors, on the other hand, normally are not trained by the purchasers of their services.
- **Personal Services Required** – Employee status is suggested if an individual is required to personally render the services in question. Such an arrangement, says the IRS, indicates the employer is interested in controlling the methods used to accomplish the results. By contrast, an individual's right to substitute another's services without the employer's knowledge suggests the existence of an independent contractor relationship.
- **Control Over the Hiring, Supervising and Paying of Assistants** – An employer that hires, supervises and pays an individual's assistants usually is viewed as controlling the work (and the individual performing the services) in question. On the other hand, individuals who hire, supervise and pay other workers in accordance with an arrangement in which they have agreed to provide the labor needed to attain a certain result are generally treated as independent contractors.
- **Set Hours of Work** – A requirement that individuals adhere to certain work hours established by the employer generally is viewed as a factor indicating employer control. Independent Contractors set their own work hours.
- **Full-time Work Requirement** – Employee status is suggested if an individual must work on a substantially full-time basis for the employer since this indicates that the employer controls the amount of time the individual spends working and thus essentially restricts the worker's ability to perform for someone else. By contrast, independent contractors are free to work when and for whom they choose.

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- **Working on the Employer's Premises** – Performance of the work on employer's premises may be viewed as evidence of employer control, especially if the work could be done elsewhere. While performance at an off-premises site demonstrates some freedom from employer control, it does not by itself mean that the worker is an independent contractor. Employer control is suggested when the employer has the right to have the worker work at a specific place.
- **Furnishing of Tools and Materials** – An employer-employee relationship is indicated where an employer supplies a worker with a significant amount of tools, materials or other equipment. Moreover, in some occupations and industries where it is customary for individuals to provide their own tools, these workers also may be treated as employees.
- **Required Work Order Sequence** – A degree of control is suggested, says the IRS, where an individual is required to submit regular oral or written reports to the employer.

FINANCIAL CONTROL: Facts that show whether the University has a right to control the business aspects of the worker's job include:

- **Payment by the Hour, Week or Month** – Employees generally are paid by the hour, day or month, while independent contractors typically are paid by the job or on a lump sum or straight commission basis.
- **Payment of Business or Travel Expenses** – Employer payment of work related business or travel expense generally indicates employee status.
- **Investment in Facilities** – Workers are like to be viewed as independent contractors if they have a significant investment in facilities they use in the course of performing services.
- **Worker's Availability to the General Public** – Individuals who make their services available to the public on a "regular and consistent basis" are generally treated as independent contractors.
- **Working for More Than One Firm** – Individuals who perform services for a number of businesses or people at the same time usually are considered independent contractors. IRS cautions however, that "a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement".

THE TYPE OF RELATIONSHIP OF THE PARTIES: Facts that show the parties' type of relationship include:

- **Employer's Discharge Rights** – If an employer has the right to discharge an individual, that worker is viewed as an employee. Independent contractors cannot be fired as long as they perform in accordance with their contract specifications.
- **Integration into the Business** – The fact that an individual's services are so integrated into an employer's operations that the success or continuation of the business depends on the performance of the services generally indicates that the individual is subject to a certain amount of control by the owner of the business.
- **Worker's Termination Rights** – Employees typically can end their employment relationship at any time without incurring liability, whereas independent contractors might be liable for a breach of contract if they leave without completing their work.

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- Written Contracts – Written contracts describe the relationship the parties intended to create. (see Personal Services Contract link on page 1)
- Employee Type Benefits – Whether or not the University provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay, will determine the type of relationship that exists. Employees typically are paid benefits while Independent Contractors are not.
- Permanency of the Relationship – If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that your intent was to create an employer-employee relationship. Independent Contractors are hired to perform a service over a limited and specified amount of time which is spelled out in the written contract.

It is irrelevant that the employer allows the individual considerable discretion and freedom in deciding how to perform or carry out the work of the job. Rather, the decisive factor is that the employer possesses the legal right to control or direct both the results and the method of the work or services in question. As long as the employer is entitled to control both, what must be done and how it gets done, the individual worker is **NOT** an independent contractor.

If it is determined that there is an independent contractor relationship, i.e., not an employee, then a Personal Service Contract needs to be signed and maintained on file.

Note: Reference APL VII-A.2 Purchasing Procedures and APL IV.C Signature Authority to ensure appropriate University of Maine System purchasing procedures and signature authority guidelines are followed.

III: Misclassification of Employees as Independent Contractors

The work factors used by the IRS are not, however, the last word in determining worker status. There are hundreds of court cases and rulings that further complicate this difficult question.

An employer who classifies an employee as an independent contractor, with no reasonable basis for doing so, may be held liable for employment taxes for that worker.

Adding even more complications is Section 530 of the 1978 Revenue Act which may provide some measure of protection “safe harbor” to the employer that has treated certain classes of workers as independent contractors on a consistent basis since 1978.

In order to be covered under this “safe harbor” provision, an employee must meet the following conditions:

1. A Form 1099 must have been consistently issued to the independent contractor.
2. Workers who do basically the same type of work must NOT have been treated as employees after 1977.
3. The employer has a “reasonable basis” for treating this particular individual as an independent contractor. The “reasonable basis” can be met by having relied on court cases and rulings or by IRS audits that did not result in worker being reclassified as an employee or long-standing, recognized industry practice.

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Even with the safety net provided in Section 530, missing just one 1099 Form can be critical and the safe harbor protection is afforded to employers only for employment taxes. Employees can face trouble from the IRS in other employment related areas such as retirement plans. It should be noted that the IRS takes the position that arguing for safe harbor relief from payroll taxes is an admission by the employer that a worker is an employee under the Common Law Test.

IV. UNIVERSITY OF MAINE SYSTEM GUIDELINES

The PERSONAL SERVICE CONTRACT is applicable to **individuals only** and is **not** to be used in the following circumstances:

- Contracts with corporations.
- Part-time faculty teaching credit or developmental course work.
- Individuals who do not qualify as independent contractors and may in fact be employees.

The following guidelines will be used throughout the University of Maine System in contracting services from individuals. These guidelines should be reviewed and adhered to when entering into a contractual agreement with individuals who are **NOT** to be considered employees of the University, but who perform services to a campus, department or program specific to the terms of a contractual agreement. **Contact your campus Human Resources Department to inquire about specific guidelines that may pertain to your campus.**

1. An independent contractor is defined as an individual over whom the University would have the right to control or direct **ONLY** the result of the work performed. The University would not have the right to control or direct the methods or means of accomplishing the result of the work.
2. The factors used by the IRS and discussed in Section II will be used as criteria in determining the status of individuals who perform services for the University of Maine System. If employee status is determined to be appropriate, the existing mechanisms for recruitment, search, hiring and payment of wages that are used for regular or temporary employees are to be used. If an independent contract is determined to be appropriate, payment for services will be in accordance with accounts payable procedures specific for personal contract services.
3. These criteria are in accordance with federal government regulations pertaining to the determination of whether an individual is an employee or an independent contractor. The State of Maine may also be involved in this determination for taxation or other purposes such as unemployment compensation. Under State of Maine, Department of Labor criteria specific to unemployment compensation, the State has the following standards, commonly referred to as the "ABC Test". The State of Maine Employment Security Act considers an individual to be an **independent contractor** if all three of the following criteria are met.
 - a. The individual has been and will continue to be free from control or direction over the performance of such services under their contract of service; and
 - b. The service is either outside the usual course of the business for which such service is performed or outside of all places of business of the enterprise for which such service is performed; and

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- c. The individual is customarily engaged in an independently established trade, occupation or business.
4. Individuals who provide services to the University of Maine System will comply with policies and procedures established by the Board of Trustees as well as those established by this document. The campus, department, program or college that enters into a contractual agreement shall be responsible for assurance of compliance by both the University and the contractor to the terms of the agreement. The campus, college, department or program shall also be responsible for determining whether an individual is to be considered an employee, independent contractor or external consultant.
5. When a campus, college, department or program of the University of Maine System enters into a contractual agreement with **an individual** for the performance of a service it will be necessary to complete the UNIVERSITY OF MAINE SYSTEM PERSONAL SERVICE CONTRACT. Prior to entering into an agreement for the services of an independent contractor the University official signing the Personal Service Contract should review the guidelines outlined in this manual.
6. A Personal Service Contract may not be used to acquire the services of an individual who is to teach credit courses or develop course work. Such an individual must be employed as an employee of the University and may also be subject to terms of a collective bargaining agreement.

Once the appropriate University official(s) has determined that the individual is an independent contractor then the PERSONAL SERVICE CONTRACT should be completed. A detailed description of the services to be rendered should also be provided as Attachment A to the PERSONAL SERVICE CONTRACT. A completed W-9 form will be required for first time contractors.

When completing the PERSONAL SERVICE 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.

Following these guidelines may not guarantee the contractor's relationship with the University will not be challenged by the Internal Revenue Service, but it will certainly add strength to the University's case that it is indeed an independent contractor relationship.

Under a PERSONAL SERVICE CONTRACT, payments made to an independent contractor will result in the University issuing a 1099-Misc form. It should also be understood that an independent contractor is NOT eligible for any University provided benefits or programs.

IMPORTANT: Please inquire with your Campus Purchasing Department regarding specific procedures for reviewing Contracts prior to signature. Once the Personal Service 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.

V. EXAMPLES

Example 1: Independent Contractor

The University's department of Chemical Engineering expanded their degree program and needed a computerized database program to manage the student records. The department contracted the professional services of John James, a local self-employed computer programmer.

Mr. James has his own office, uses his own equipment, offers his service to the general public and overall controls the details and the results of the work he does. Mr. James is considered an Independent Contractor and must complete a contract for personal services with the Department of Chemical Engineering.

The fee of \$1,000 for Mr. James's services will be paid through the accounts payable system. A check request should be submitted by the Chemical Engineering Department to Accounts Payable (or other designated) office .

Example 2: Payment to an Individual Who Does Not Meet Independent Contractor Conditions

The University Press needed editorial services to meet a publication deadline and used the services of Amy Snow, an Administrative Assistant II in the library. Ms. Snow offered to work for the press on Saturdays and evenings and obtained the permission of her supervisor at the library.

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Ms. Snow will be paid through the University Payroll System because she does not meet any of the independent contractor conditions.

The University Press must pay Ms. Snow at her overtime rate and use an additional compensation form to authorize payment from University Press funds to Ms. Snow.

Example 3: Can a worker be an Employee and an Independent Contractor

A University System employee works as a faculty member in the College of Arts and Sciences. He is an employee in that role. Outside of his role as a University employee he acts as a freelance photographer. On occasion he is asked by the University to photograph special events. Where the freelance photography is not in his job description as a University employee and he provides this service to the general public, he is an independent contractor when doing the freelance photography and he is an employee when acting as a faculty member.

References: Portions of this document have been taken from the following resources:

- IRS Website: www.irs.gov
- Journal of Accountancy, May 1991
- Bureau of National Affairs, Payroll Administration Guide

Vice Chancellor Finance and Administration

**UNIVERSITY OF MAINE SYSTEM
PERSONAL SERVICE CONTRACT**

PROJECT TITLE _____
DOLLAR AMOUNT\$ _____ COMMENCEMENT DATE _____ TERMINATION DATE _____

THIS AGREEMENT, made this _____ day of _____, _____ is by and between the University of Maine System hereinafter called the "University" and the Contractor. This document consists of _____ pages, including attachments.

WHEREAS THE UNIVERSITY AND THE CONTRACTOR DO MUTUALLY AGREE THAT:

- 1) This contract shall commence upon the date it is signed by both parties and shall terminate on _____.
- 2) The individual Contractor agrees to the Specifications of Work, to be Performed as described in ATTACHMENT A, herein incorporated. Any materials produced in performance of this agreement are the property of the University and shall be turned over to the University upon request.
- 3) The University shall pay the Contractor for personal services rendered upon submittal and approval of invoices, net 30, as follows:
 - 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 pay the Contractor at the rate of \$_____ per (hour, week, semester, entire project).
 - C. Reimbursement for travel: (check one)

____ 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 with invoice for reimbursement.
 - D. Other expenses (postage, printing, phone, etc.) shall not exceed \$_____. Copies of receipts or itemized bills for expenses must be submitted with invoice for reimbursement.
- 4) The Contractor is an Independent Contractor 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, workers' compensation and similar benefits available to University employees will accrue. The Contractor further understands that annual information returns as required by the Internal Revenue Code and Maine's Income Tax Law will be filed by the University with copies sent to the Contractor. The Contractor is obligated to pay all taxes as may be required by IRS and/or State laws. (Complete and return W9, attached)
- 5) Contractor agrees that the University controls only the result of the work as described in Attachment A but does not control the means used to accomplish the result as specified.
- 6) Contractor agrees that the University does not set the hours per day or number of days per week that Contractor works. The Contractor is responsible for setting hours per day and days per week in order to successfully complete the work as specified.
- 7) Contractor agrees to be responsible for the hiring and paying of additional workers and resources as may be necessary to successfully complete the work as specified in Attachment A.
- 8) Contractor agrees to provide all materials and tools required to perform as per the contract.
- 9) The University understands that the Contractor is free to seek out business opportunities with other individuals or companies, as is its normal course of business, throughout the term of this contract.

- 10) The Contractor will indemnify, defend and save harmless the University, its officers, agents and employees from any claim or loss resulting to any person, firm or corporation in connection with the performance of this agreement, including costs for violation of proprietary rights, copyrights, or rights of privacy, arising out of a publication, translation, reproduction, delivery, performance, use of disposition of any data furnished under this agreement or based on any libelous or other unlawful matter contained in such data.
- 11) This agreement may be amended only in writing with the mutual consent of both parties.
- 12) 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. 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.
- 13) This Contract, or any part thereof, may not be assigned, transferred or subcontracted by the Contractor without the prior written consent of the University.
- 14) 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.
- 15) This Contract shall be governed and interpreted according to the laws of the State of Maine without reference to its conflicts of laws provisions.
- 16) 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) 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.
- 18) 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.
- 19) Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and addressed to the persons and addresses below.

IN WITNESS WHEREOF, the University and the Contractor have executed this Agreement

BY THE CONTRACTOR

FOR THE UNIVERSITY

Signed _____

Signed _____

Name _____

Name _____

Title _____

Title _____

Address _____

Address _____

SS# Fed ID _____

Univ. Acct.# _____

Date _____

Date _____

Equal Opportunity STATEMENT: In the execution of the contract, the Contractor and all subcontractors agree, consistent with University of Maine System policy, not to discriminate on the grounds of race, color, religion, sex, sexual orientation, transgender status or gender expression, national origin or citizenship status, age, disability, genetic information, or veteran's status and to provide reasonable accommodations to qualified individuals with disabilities upon request. The University encourages the employment of individuals with disabilities. Questions and complaints about discrimination in any areas of the University should be directed to the campus Equal Opportunity Director.

Attachment A

Specifications of Work to be Performed

The individual Contractor agrees to the **Specifications of Work to be Performed** as follows:

Additional Attachments, if applicable:

_____ Insurance Requirements: Attachment B hereby incorporated by reference.

_____ Standards for Safeguarding Information or Safeguarding Customer

_____ Information: Attachment C, hereby incorporated by reference.

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 US. 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.

Attachment B

Contractor's Liability Insurance: During the term of this agreement, the Contractor shall maintain the following insurance:

<u>Insurance Type</u>	<u>Coverage Limit</u>
1. Commercial General Liability (Written on an Occurrence-based form)	\$1,000,000 per occurrence or more (Bodily Injury and Property Damage)
2. Automobile Liability (Including Hired & Non-Owned)	\$1,000,000 per occurrence or more (Bodily Injury and Property Damage)
3. Workers Compensation	Required for all personnel (In Compliance with Applicable State Law)

The University of Maine System shall be named as Additional Insured on the Commercial General Liability insurance.

Certificates of Insurance for all of the above insurance shall be filed with:

Office of Strategic Procurement
University of Maine System
16 Central Street
Bangor, Maine 04401

Certificates shall be filed prior to the date of performance under this Agreement. Said certificates, in addition to proof of coverage, shall contain the standard Acord statement pertaining to written notification in the event of cancellation, with a thirty (30) day notification period.

As additional insured and certificate holder, the University should be included as follows:

University of Maine System
16 Central Street
Bangor, Maine 04401

The Contractor shall not commence work under this contract until the Contractor has obtained all insurance coverages and limits required under this section and such insurance has been approved by the University; nor shall the Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of subcontractor have been so obtained and approved by the Contractor.

**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