



Administered by  
**UNIVERSITY OF MAINE SYSTEM**  
Office of Strategic Procurement

**REQUEST FOR PROPOSALS (RFP)**

**TRADEMARK LICENSING AGENCY SERVICES**

**University of Maine**

**RFP# 32-15**

ISSUE DATE:

January 20, 2015

PROPOSALS MUST BE RECEIVED BY:

February 20, 2015

DELIVER PROPOSALS TO:

University Services  
Strategic Procurement  
Attn: Jim Gilmore  
5761 Keyo Building  
Orono, ME 04469

## SECTION ONE

### 1.0 GENERAL INFORMATION:

- 1.1 Purpose: The University of Maine System, acting through the University of Maine is seeking proposals from qualified companies to provide domestic trademark licensing services.

This Request for Proposals (RFP) states the instructions for submitting proposals, the procedures and criteria by which a vendor may be selected and the contractual terms by which the University of Maine System intends to govern the relationship between it and the selected vendor. In addition, the University would like to have the ability to add campuses to the contract as the needs arise. Any contract resulting from this RFP shall be open to the other campuses of the University of Maine System (UMS). UMS is comprised of six other universities throughout the State in addition to the Orono campus.

- 1.2 Definition of Parties: The University of Maine will hereinafter be referred to as the "University". Respondents to the RFP shall be referred to as "Bidder(s)" or "bidder(s)". The Bidder to whom the Contract is awarded shall be referred to as the "Contractor."

- 1.3 Scope: The selected Contractor will be the University's exclusive agent to license the use of marks and logos. Promotion of a positive image for the University is expected, thereby increasing the desire of legitimate companies to enter into product licensing and promotional agreements. The Contractor is expected to work with the University to provide: protection from unauthorized use of its trademarks, administration of the licensing program, legal services, compliance audits, programs to expand markets, and assistance to licensees.

The University of Maine enjoys a rich heritage, national acclaim and a prestigious reputation as an outstanding public institution of higher education, research, and public service. The growth of the University, its alumni base, and the national attention received by its athletic programs have produced a strong demand for products that display the trademarks, logos, and symbols associated with the University.

The University of Maine is one campus of the seven in the University of Maine System. It is the flagship campus with over 11,000 students. The University's Department of Marketing and Communications administers is responsible for the trademark licensing program.

The University currently has a 10.0% royalty rate resulting in annual gross revenues of:

#### July 1st through June 30<sup>th</sup>

| <b>FY2010</b> | <b>FY2011</b> | <b>FY2012</b> | <b>FY2013</b> | <b>FY2014</b> |
|---------------|---------------|---------------|---------------|---------------|
| \$ 83,524     | \$ 87,478     | \$ 81,915     | \$ 89,361     | \$ 84,765     |

- 1.4 Evaluation Criteria: Proposals will be evaluated on criteria deemed to be in the University's best interests, including, but not limited to:

| <b>Criteria</b>  | <b>Maximum Possible Points</b> |
|--|--------------------------------|
| 1. Customer service and support                        | 35                             |
| 2. Vendor maintenance and support                      | 25                             |
| a. Police vendors for copyright protection             |                                |
| b. Ability to set up and support new vendors           |                                |
| 3. Online accessibility for the University and vendors | 25                             |
| 4. Royalty payments to be made quarterly               | 15                             |
| <b>Total</b>   | <b>100</b>                     |

- 1.5 Communication with the University: It is the responsibility of the bidder to inquire about any requirement of this RFP that is not understood. Responses to inquiries, if they change or clarify the RFP in a substantial manner, will be forwarded by addenda to all parties that have received a copy of the RFP. Addenda will also be posted on our web site, [www.maine.edu/strategic/upcoming\\_bids.php](http://www.maine.edu/strategic/upcoming_bids.php). It is the responsibility of all bidders to check the web site before submitting a response to ensure that they have all pertinent documents. The University will not be bound by oral responses to inquiries or written responses other than addenda.

Inquiries must be made to:                      University Services  
    Strategic Procurement  
    Attn: Jim Gilmore  
    5761 Keyo Building  
    Orono, Maine 04469  
    Tel: 207-581-2678  
    Email: james.m.gilmore@maine.edu

The deadline for inquiries is February 3, 2015

The University will respond to written inquiries not later than close of business February 6, 2015.

- 1.6 Award of Proposal: Presentations and samples may be requested of two or more bidders deemed by the University to be the best suited among those submitting proposals on the basis of the selection criteria. After presentations have been conducted, the University may select the bidder which, in its opinion, has made the proposal that is the most responsive and most responsible and may award the Contract to that bidder. The University reserves the right to waive minor irregularities. Scholarships, donations, or gifts to the University, will not be considered in the evaluation of proposals. The University reserves the right to reject any or all proposals/submissions, in whole or in part, and is not necessarily bound to accept the lowest cost proposal/submission if that proposal/submission is contrary to the best interests of the University. The University may cancel this Request for Proposals or reject any or all proposals in whole or in part. Should the University determine in its sole discretion that only one bidder is fully qualified, or that one bidder is clearly more qualified than any other under consideration, a contract may be awarded to that bidder without further action.

- 1.7 Award Protest: Bidders may appeal the award decision by submitting a written protest to the University of Maine System's Director of Strategic Procurement within five (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.
- 1.8 Confidentiality: The information contained in proposals submitted for the University's consideration will be held in confidence until all evaluations are concluded and a vendor selected (the successful bidder). At that time the University will issue bid award notice letters to all participating bidders and the successful bidder's proposal may be made available to participating bidders upon request. After the protest period has passed and the contract is fully executed, the winning proposal will be available for public inspection. Pricing and other information that is an integral part of the offer cannot be considered confidential after an award has been made. The University will honor requests for confidentiality for information of a proprietary nature to the extent allowed by law. Clearly mark any information considered confidential.

The University must adhere to the provisions of the Maine Freedom of Access Act (FOAA), 1 MRSA §401 et seq. As a condition of accepting a contract under this section, a contractor must accept that, to the extent required by the Maine FOAA, responses to this solicitation, and any ensuing contractual documents, are considered public records and therefore are subject to freedom of access requests.

- 1.9 Costs of Preparation: Bidder assumes all costs of preparation of the proposal and any presentations necessary to the proposal process.
- 1.10 Debarment: Submission of a signed proposal in response to this solicitation is certification that your firm (or any subcontractor) is not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal department or agency. Submission is also agreement that the University will be notified of any change in this status.
- 1.11 Proposal Understanding: By submitting a proposal, the bidder agrees and assures that the specifications are adequate, and the bidder accepts the terms and conditions herein. Any exceptions should be noted in your response.
- 1.12 Proposal Validity: Unless specified otherwise, all proposals shall be valid for ninety (90) days from the due date of the proposal.
- 1.13 Non-Responsive Proposals: The University will not consider non-responsive proposals, i.e., those with material deficiencies, omissions, errors or inconsistencies.

- 1.14 Specification Protest Process and Remedies: If a bidder feels that the specifications are written in a way that limits competition, a specification protest may be sent to the Chief Procurement Officer. Specification Protests will be responded to within five (5) business days of receipt. Determination of protest validity is at the sole discretion of the University. The due date of the proposal may be changed if necessary to allow consideration of the protest and issuance of any necessary addenda. Specification protests shall be presented to the University in writing as soon as identified, but no less than five (5) business days prior to the bid opening date and time. No protest against the award due to the specifications shall be considered after this deadline. Protests shall include the reason for the protest and any proposed changes to the specifications. Protests should be delivered to the Purchasing Department in sealed envelopes, clearly marked as follows:

SPECIFICATION PROTEST, RFP# 32-15

- 1.15 Proposal Submission: A signed original and one virus-free electronic copy ( e.g., CD, thumb drive) must be submitted to University Services, Strategic Procurement, Attn. Jim Gilmore, 5761 Keyo Building, Orono, Maine 04469, in a sealed envelope by the close of business February 20, 2015 to be date stamped by the Purchasing Department in order to be considered. Normal business hours are 8:00 am to 5:00 pm Monday through Friday.

Faxed or e-mail proposals will not be accepted. The envelope must be clearly identified on the outside as follows:

Name of Bidder  
Address of Bidder  
Date  
RFP# 32-15

- 1.16 Authorization: Any contract or agreement for services that will, or may, result in the expenditure by the University of \$50,000 or more must be approved in writing by the Chief Procurement Officer and it is not approved, valid or effective until such written approval is granted.

## SECTION TWO

### 2.0 GENERAL TERMS AND CONDITIONS:

- 2.1 **Contract Administration:** The Manager of Creative Services, Division of Marketing and Communications, University of Maine or his/her designee shall be the University's authorized representative in all matters pertaining to the administration of this Contract.
- 2.2 **Contract Documents:** If a separate contract is not written, the Contract entered into by the parties shall consist of the RFP, the signed proposal submitted by the Contractor, the specifications including all modifications thereof, and a purchase order or letter of agreement requiring signatures of the University and the Contractor, all of which shall be referred to collectively as the Contract Documents.
- 2.3 **Contract Modification and Amendment:** The parties may adjust the specific terms of this Contract (except for pricing) where circumstances beyond the control of either party require modification or amendment. Any modification or amendment proposed by the Contractor must be in writing to the Contract Administrator. Any agreed upon modification or amendment must be in writing and signed by both parties.
- 2.4 **Contract Term** The contract term shall be four (4) years with the option to renew for one (1) additional one-year term with mutual written consent of both parties. The effective date of this agreement shall be the date of contract execution.
- 2.5 **Contract Validity:** In the event one or more clauses of the Contract are declared invalid, void, unenforceable or illegal, that shall not affect the validity of the remaining portions of the Contract.
- 2.6 **Non-Waiver of Defaults:** Any failure of the University to enforce or require the strict keeping and performance of any of the terms and conditions of this Contract shall not constitute a waiver of such terms, conditions, or rights.
- 2.7 **Cancellation/Termination:** If the Contractor defaults in its agreement to provide personnel or equipment to the University's satisfaction, or in any other way fails to provide service in accordance with the contract terms, the University shall promptly notify the Contractor of such default and if adequate correction is not made within 30 days, the University may take whatever action it deems necessary to provide alternate services and may, at its option, immediately cancel this Contract with written notice. Cancellation does not release the Contractor from its obligation to provide goods or services per the terms of the Contract during the notification period.
- 2.8 **Employees:** The Contractor shall employ only competent and satisfactory personnel and shall provide a sufficient number of employees to perform the required services efficiently and in a manner satisfactory to the University. If the Contract Administrator or designee, notifies the Contractor in writing that any person employed on this Contract is incompetent, disorderly, or otherwise unsatisfactory, such person shall not again be employed in the execution of this Contract without the prior written consent of the Contract Administrator.
- 2.9 **Clarification of Responsibilities:** If the Contractor needs clarification of or deviation from the terms of the Contract, it is the Contractor's responsibility to obtain written clarification or approval from the Contract Administrator.

- 2.10 Litigation: This Contract and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Maine without reference to its conflicts of laws principles. The Contractor agrees that any litigation, action or proceeding arising out of this Contract, shall be instituted in a state court located in the State of Maine.
- 2.11 Assignment: Neither party of the Contract shall assign the Contract without the prior written consent of the other, nor shall the Contractor assign any money due or to become due without the prior written consent of the University.
- 2.12 Equal Opportunity: In the execution of the Contract, the Contractor and all subcontractors agree, consistent with University policy, not to discriminate on the grounds of race, color, religion, sex, sexual orientation, including 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.
- 2.13 Independent Contractor: Whether the Contractor is a corporation, partnership, other legal entity, or an individual, the Contractor is an independent contractor. If the Contractor is an individual, the Contractor's duties will be performed with the understanding that the Contractor is a self-employed person, has special expertise as to the services which the Contractor is to perform and is customarily engaged in the independent performance of the same or similar services for others. The manner in which the services are performed shall be controlled by the Contractor; however, the nature of the services and the results to be achieved shall be specified by the University. The Contractor is not to be deemed an employee or agent of the University and has no authority to make any binding commitments or obligations on behalf of the University except as expressly provided herein. The University has prepared specific guidelines to be used for contractual agreements with individuals (not corporations or partnerships) who are not considered employees of the University.
- 2.14 Sexual Harassment: The University is committed to providing a positive environment for all students and staff. Sexual harassment, whether intentional or not, undermines the quality of this educational and working climate. The University thus has a legal and ethical responsibility to ensure that all students and employees can learn and work in an environment free of sexual harassment. Consistent with the state and federal law, this right to freedom from sexual harassment was defined as University policy by the Board of Trustees. Failure to comply with this policy could result in termination of this Contract without advanced notice. Further information regarding this policy is available from the Director of Equal Opportunity, North Stevens Hall, (207) 581-1226
- 2.15 Indemnification: The Contractor agrees to be responsible for, and to protect, save harmless, and indemnify the University and its employees from and against all loss, damage, cost and expense (including attorney's fees) suffered or sustained by the University or for which the University may be held or become liable by reason of injury (including death) to persons or property or other causes whatsoever, in connection with the operations of the Contractor or any subcontractor under this agreement.
- 2.16 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<br>(Written on an Occurrence-based form) | \$1,000,000 per occurrence or more<br>(Bodily Injury and Property Damage) |
| 2. Vehicle Liability<br>(Including Hired & Non-Owned)                    | \$1,000,000 per occurrence or more<br>(Bodily Injury and Property Damage) |
| 3. Workers Compensation<br>(In Compliance with Applicable State Law)     | Required for all personnel  |

The University of Maine System shall be named as Additional Insured on the Commercial General Liability insurance and as additional insured and certificate holder.

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 statement pertaining to written notification in the event of cancellation, with a thirty (30) day notification period.

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

University of Maine System  
Risk Manager  
16 Central Street  
Bangor, Maine 04401

- 2.17 Smoking Policy: The University of Maine is a tobacco free campus. This policy applies to faculty, staff, contractors, vendors, and visitors. The use of tobacco and all smoking products is not permitted on any University owned property, which includes but is not limited to buildings, university grounds, parking areas, walkways, recreational and sporting facilities, and University owned vehicles.

Tobacco is by definition includes possession of any lighted tobacco products, or use of any type of smokeless tobacco.

Additional information regarding the tobacco free campus policy is located at: <http://umaine.edu/tobaccofree/>.

- 2.18 Payments: Payment will be upon submittal of an invoice to the address shown on the purchase order by the Contractor on a Net 30 basis unless discount terms are offered. Invoices must include a purchase order number. The University is using several, preferred methods of payment: Bank of America's ePayables and PayMode electronic payment systems. Please indicate your ability to accept payment via any or all of these methods.



## SECTION THREE

### 3.0 PERFORMANCE TERMS AND CONDITIONS:

- 3.1 Scope of Work: The Contractor shall demonstrate a comprehensive knowledge of our market and the University, providing full license management, complying with all applicable Federal and State Laws and University of Maine Systems policies and procedures.
- 3.2 Brand Protection.
  - 3.2.1 The Contractor shall establish, define and maintain a comprehensive program of trademark enforcement and anti-counterfeiting services.
  - 3.2.2 Maintain an effective anti-sweatshop disclosure collection enforcement program by all licensees and enforcement of adherence to the code set forth by the Fair Labor Association.
  - 3.2.3 Provide legal and trademark search/registration assistance.
- 3.3 Brand Management.
  - 3.3.1 Assign one representative to be the single point of contact for the University. The representative shall remain dedicated to this project; personnel changes require prior notification and approval of the University.
  - 3.3.2 Establish, maintain and operate an effective and secure program for royalty collection and payment.
  - 3.3.3 Establish, maintain and operate an effective program for non-royalty licensees to access to access trademark media for internal promotional items.
  - 3.3.4 Submit royalty payments to the Contract Administrator on quarterly basis, accompanied by reporting documentation supporting the remittance. Royalty collection and accounting services.
  - 3.3.5 Provide reports quarterly and annually, providing retail overview, royalty totals, branding and promotion “hot topics” and other updates and reports as the University may request.
- 3.4 Brand Development
  - 3.4.1 Actively pursue and participate in marketing and retail support opportunities for the University.
  - 3.4.2 Provide, maintain and enhance web-based process for the University to approve or deny every product submission.
  - 3.4.2 Provide, maintain and enhance web-based marketing, merchandising and brand development services including online resources for licensees to become licensed and online resources for current licensees to access current, accurate University trademarks and logos.

## SECTION FOUR

### 4.0 PROPOSAL CONTENT:

Bidders shall ensure that all information required herein is submitted with the proposal. All information provided should be verifiable by documentation requested by the University. Failure to provide all information, inaccuracy or misstatement may be sufficient cause for rejection of the proposal or rescission of an award. Responses to each requirement below should be in order and clearly marked with the section number to which they respond.

4.1 Business Profile: No financial statements are required to be submitted with your proposals, however, prior to an award the University may request financial statements from your company, credit reports and letters from your bank and suppliers.

4.1.1 Name, address, phone number, fax number, and e-mail address of your company.

4.1.2 Length of time in business, brief historical background of your company and number of employees.

### 4.2 Administration

4.2.1 Provide a sample of your standard licensing agreement for university clients. Point out any areas of conflict between the RFP language and your firm's agreement.

4.2.2 Provide a sample of the standard licensing agreement for licensees. Describe the process for approving new licenses.

4.2.3 Provide a sample report of licensees and their aliases.

4.2.4 Provide a sample quarterly royalty report furnished to client institutions, with analysis.

4.2.5 Provide a current Certificate of Insurance.

### 4.3 Experience and Qualifications

4.3.1 Provide a list of all institutions currently represented by your firm.

4.3.2 Provide a list of institutions that have left your firm and reasons why.

4.3.3 Provide a presentation, (PowerPoint, whitepaper, or Executive Summary) explaining how your firm will increase the University's visibility in the local, New England and national marketplace. Describe activities in conducting client educational conferences and any presence your firm has at the major conferences and tradeshow concerning collegiate licensing.

4.3.4 Staffing. Provide an overview and professional biography of individual professional employees proposed to service the account.

### 4.4 Fees

4.4.1 Provide a fee, as a percentage of gross sales, for services for the entire term of the contract. Explain in detail services included within the fee.

- 4.4.2 Include a list of any fees charged to university clients for services not covered in the above fee.
- 4.5 Client Services
  - 4.5.1 Explain the Firm's commitment to providing human resources in the University's primary market areas to check for infringement activities, for example, number of annual visits to Maine
  - 4.5.2 Describe legal services available and related costs, if any.
  - 4.5.3 Explain your license audit procedures and frequency.
  - 4.5.4 Provide information about the availability of camera ready art to licensees and cost, if any.
  - 4.5.5 Describe your Firm's artwork approval procedures.
  - 4.5.6 Provide information about how licensees obtain collegiate licensed product labels and the cost, if any.
  - 4.5.7 Provide information about any other client services that be available to the University.
- 4.6 Contract: A copy of the University's Services Contract is included in this document for your consideration. (Attachment A) Do not complete the form at this time; it is for review only. This contract template will be amended as mutually agreed upon by the Bidder and University and applied to this RFP.
- 4.7 Confidential Information: All confidential and/or proprietary information must be clearly indicated. (Section 1.8)
- 4.8 Payment Method: Indicate your ability to accept electronic payments. (Section 2.18)
- 4.9 References: Provide the names and contact information of at least three (3) references from colleges or universities for work performed with in the last three (3) years on projects of similar size and scope.
- 4.10 Authorized Signature: Provide the name, title, signature and contact information (including e-mail addresses) of the individual authorized to submit the proposal on behalf of the institution.

SIGNATURE PAGE

COMPANY NAME: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Phone)

\_\_\_\_\_  
(Cell Phone)

\_\_\_\_\_  
(E-mail Address)

\_\_\_\_\_  
(Date)

**ATTACHMENT A**

**UNIVERSITY OF MAINE SYSTEM  
CONTRACT FOR SERVICES**

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 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. Employees of the University of Maine System may perform work under a contract (resulting from RFQ 37-13) as long as the employee complies with all applicable laws, rules and regulations, including but not limited to University of Maine System policies on conflict of interest and outside commitment in effect at the time of the response to the RFQ and the performance of any work under the contract.

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:** The Contract Administrator 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. 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 #: \_\_\_\_\_

**Per University policy, "Any contract or agreement for services that will, or may, result in the expenditure by the University of \$50,000 or more must be approved in writing by the Director of Strategic procurement and it is not approved, valid or effective until such written approval is granted."**

BY: \_\_\_\_\_

Title: Director of Strategic Procurement

Date: \_\_\_\_\_



## 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: \_\_\_\_\_

**UNIVERSITY OF MAINE SYSTEM  
CONTRACT FOR SERVICES  
INSURANCE REQUIREMENTS**

**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<br>(Written on an Occurrence-based form) | \$1,000,000 per occurrence or more<br>(Bodily Injury and Property Damage) |
| 2. Vehicle Liability<br>(Including Hired & Non-Owned)                    | \$1,000,000 per occurrence or more<br>(Bodily Injury and Property Damage) |
| 3. Workers Compensation<br>(In Compliance with Maine Law)                | Required for all personnel  |

Coverage limit requirements can be met with a single underlying insurance policy or through the combination of an underlying insurance policy plus an Umbrella insurance policy.

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 statement pertaining to written notification in the event of cancellation, with a thirty (30) day notification period.

The University reserves the right to change the insurance requirement or to approve alternative insurances or limits, at the University's discretion.

**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 University-owned 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 Data, in or on Contractor facilities, the following additional clauses apply.
  - 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.
  - H. Contractor shall require strong passwords for any user accessing personally identifiable information or data covered under law, regulation, or standard such as HIPAA, FERPA, or PCI. Strong passwords shall be at least eight characters long; contain at least one upper and one lower case alphabetic characters; and contain at least one numeric or special character.
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