

Advantage MA#: 18P 22042200000000000114

STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
Agreement to Purchase Services

THIS AGREEMENT, made this 19<sup>th</sup> day of May, 2022, is by and between the State of Maine, Department of Administrative and Financial Services, hereinafter called "Department," and **Karasch and Associates**, located at 1646 West Chester Pike, Suite 4, West Chester, PA 19382, hereinafter called "Provider", for the period of June 1, 2022 to June 30, 2025, RFP 202107109 allow for one additional renewal option.

The AdvantageME Vendor/Customer number of the Provider is VS0000007012

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B-IT - Payment and Other Provisions
- Rider C – Exceptions to Rider B-IT
- Rider D/E/F – At Department’s Discretion
- Rider G – Identification of Country in Which Contracted Work will be Performed

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

Provider: **Karasch & Associates**

DocuSigned by:  
By: Fred Gasser  
C3516CDE4A694BF  
Fred Gasser, Director of Operations

Date: 5/20/2022

**Department of Administrative and Financial Services**  
**Office of Information Technology**

DocuSigned by:  
By: Frederick Brittain  
052B9AC7F56A489...  
Frederick Brittain, Chief Information Officer

Date: 5/20/2022

and

**Department of Administrative and Financial Services**

DocuSigned by:  
By: Jaime Schorr  
8D8437754DD0459...  
Jaime C. Schorr, Chief Procurement Officer

Date: 5/19/2022

**Total Agreement Amount -- Unencumbered – Work will be performed as needed and encumbered by Delivery Order and billed according to hourly rate schedule.**

RIDER A  
SPECIFICATIONS OF WORK TO BE PERFORMED

<b>Materials in Production</b>
Captioning
N/A
Audio Description
N/A
Transcription
N/A
Additional Related Services
N/A

<b>Materials in Post-Production</b>
Captioning
N/A
Audio Description
N/A
Transcription
N/A
Additional Related Services
N/A

## CART Services

Karasch hires numerous CART captioners as Independent Contractors to fulfill clients' requests and has recently begun hiring captioners as in-house staff. These captioners are NCRA trained and certified and must adhere to Karasch standards to obtain assignments. Once we receive requests for services, Karasch will match the topics for each request with a captioner experienced in that topic.

For any support needs, Karasch provides 24/7 technical support via cell phone text. These texts are monitored by multiple people throughout the normal business day and then to one of our on-call staff after business hours. Each client will also be assigned a Client Manager to handle any day-to-day requests and issues. If there is an emergency need, they will have multiple numbers and emails to contact to ensure all needs are handled as quickly as possible.

- **Client Manager:** One client manager will be assigned to each requesting entity. Their role will be a main point of contact for all scheduling needs, requests, issues and meetings. They will be available for any questions, trainings, and any general communication needs. They review the requests and pass them to our scheduling team.
- **Scheduling Team:** Our scheduling team reviews the requests they receive from the client managers. They ensure that all information required is gathered and entered into our scheduling system. They ensure proper captioners are assigned, taking into account the topic of each so that the captioner's skill set matches each topic. If they deem technical support is needed, they inform our technical team.
- **Technical Team:** Our technical team handles all trainings, walkthroughs and any technical issues. This includes issues with our delivery systems and end user and provider technical issues. They work with our client managers to schedule these trainings and walkthroughs. Each requester and end user will be able to text our team anytime there is an issue with a live event. This text line is available and monitored 24/7.
- **Captioners:** Our captioners are responsible for captioning audio that they hear during events. They create specific dictionary entries for each event using prep material, they listen to the live event and generate the captioning, they clean up the final captioning notes if any names or terms were misspelled and upload the final captioning notes document to our web portal for download and review.
- **Financial Team:** Our financial team invoices weekly for all events that occurred during the previous week. Each invoice is specific for each student. This will make it easier to track and verify what services were provided.

1. Entities within the State of Maine identify an event that requires captioning
2. They gather all relevant information
  - a. event name/topic
  - b. starting and end dates
  - c. reoccurring days for each week if applicable (i.e. MWF, TTh)
  - d. event starting and end times
  - e. prep material (including outlines, agendas, PowerPoints, etc)
  - f. end user's name (if applicable)
  - g. service type required
  - h. connection information for platform being used (including captioning API's, tokens, links, etc)
  - i. any other information relevant
3. They send all information to their Karasch Client Manager
  - a. Sent prior to 24 hours of the scheduled start time
  - b. NOTE – to ensure enough time for walkthroughs and trainings, we recommend sending this information at least one week prior
4. Karasch Client Manager reviews the request
5. Karasch Client Manager sends request to Scheduling Team
6. Karasch Client Manager works with Technical Team to scheduling walkthroughs and trainings
7. Scheduling Team assigns appropriate captioner to the request
8. Technical Team conducts trainings and walkthroughs as needed
9. Captioner joins event
  - a. Audio is connected
  - b. Captioning is connected to platform being used
  - c. End user activates captioning (or views captioning on web browser)
10. Captioner provides live captioning services
11. Captioner uploads final captioning note file to Karasch's Online Portal – within 24 hours of event concluding
12. State of Maine orders edited transcript (if needed)
13. Users log into Karasch's Online Portal and download notes as needed
14. Invoice for services is sent – weekly

CART captioning services are performed by trained and certified captioners. These are live human beings that do not use any AI or automatic transcription or captioning technologies. These captioners use steno machines connected to laptops that have captioning software installed on them. This software contains dictionaries that captioners use to assist them in keeping a high level of accuracy and quality. Captioners can then output from that software into various other delivery platforms.

We are able to provide captioning using many platforms. Below is a list of some of the most popular systems. Our service and our captioners are completely flexible to meet the needs of The State of Maine and the services can be used in most systems.

- Webex
- Zoom
- Microsoft Teams
- Adobe Connect
- Blackboard Collaborate
- Streamtext
- YouTube
- Facebook Live
- Vimeo

All CART captioners are NCRA trained or certified. This training contains information on HIPAA and confidentiality. Each event is kept strictly confidential.

Cancellation Policy: 24-hour cancellation policy for remote CART services and a 48-hour cancellation policy for on-site CART services. If an event is cancelled within those hours, full payment is due for the entire scheduled time.

## **RIDER B-IT**

### **METHOD OF PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT** \$ Unencumbered – Work will be performed as needed and encumbered by Delivery Order and billed according to the Appendix A Cost Sheet.

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

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Agreement Administrator. All invoices require the following:

- A. All invoices must include the Vendor Code number assigned when registering as a vendor with the State of Maine. This number appears on all Contracts and Purchase Orders and can be acquired from the agency contact.
- B. All invoices must include the vendor's Federal ID Number.
- C. All invoices must include either the Purchase Order number or the Contract number relating to the commodities/services provided.
- D. In cases where hourly rates of contracted resources are concerned, invoices must contain a copy or copies of time sheets associated with that invoice. Time sheets will need to be reviewed and approved by the State's contract administrator.

Payments are subject to the Provider's compliance with all items set forth in this Agreement. The Department will pay the Provider within thirty (30) days following the receipt of an approved invoice.

The Department may withhold a Retainage for project-based services in the following manner:

- The allowable payment amount from each project milestone payment will be multiplied by ten (10) percent, giving the amount that will be withheld from payment. Ninety (90) percent of the allowable project milestone payment amount will be paid to the Provider.
- The Retainage will be held by the Department until the end of the warranty period.

The charges described in this Agreement are the only charges to be levied by the Provider for the products and services to be delivered by it. There are no other charges to be made by the Provider to the Department, unless they are performed in accordance with the provisions of Section 5, Changes in the Work. The Provider shall maintain documentation for all charges against the Department under this Agreement.

3. **INDEPENDENT CAPACITY** In the performance of this Agreement, the Provider shall act in the capacity of an independent contractor and not as an employee or agent of the State.

4. **AGREEMENT ADMINISTRATOR** The Agreement Administrator is the Department's representative for this Agreement. S/he is the single authority to act on behalf of the Department for this Agreement. S/he shall approve all invoices for payment. S/he shall make decisions on all claims of the Provider.

The Provider shall address all contract correspondence and invoices to the Agreement Administrator. The following person is the Agreement Administrator for this Agreement:

Name: Kathy Paquette  
E-mail address: Kathy.L.Paquette@maine.gov  
Address: Burton M. Cross Building  
Telephone: 207-624-7877

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

Name: Joe Alberici  
E-mail address: jalberici@karasch.com  
Telephone: 800-621-5689 x122

**5. CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to the execution of the changed work.

**6. SUBCONTRACTORS** The Provider may not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees.

The Provider is solely responsible for the performance of work under this Agreement. The approval of the Department for the Provider to subcontract for work under this Agreement shall not relieve the Provider in any way of its responsibility for performance of the work.

All Subcontractors shall be bound by the terms and conditions set forth in this Agreement. The Provider shall give the State immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement. The Provider shall indemnify and hold harmless the Department from and against any such claim, loss, damage, or liability as set forth in Section 16, State held Harmless.

**7. SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign, or otherwise dispose of this Agreement, or any portion thereof, or of its right, title, or interest therein, without the written approval of the Department. Such approval shall not in any case relieve the Provider of its responsibility for performance of work under this Agreement.

**8. EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider certifies as follows:

1. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a *bona fide* occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed, and employees are treated

during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Provider shall, in all solicitations or advertising for employees placed by, or on behalf of, the Provider, relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

3. The Provider shall send to each labor union, or representative of the workers, with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section, and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.

4. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against itself by any individual, as well as any lawsuit regarding alleged discriminatory practice.

5. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment, and in the provision of service, to include accessibility and reasonable accommodations for employees and clients.

6. Contractors and Subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

7. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**9. EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Provider shall not engage on a full-time, part-time, or any other basis, during the period of this Agreement, any personnel who are, or have been, at any time during the period of this Agreement, in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time, or any other basis, during the period of this Agreement, any retired employee of the Department, who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement, so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.



**10. STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, due to his employment by, or financial interest in, the Provider, or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**11. NO SOLICITATION** The Provider certifies that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, any company or person, other than a *bona fide* employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from, the award of this Agreement. For breach or violation of this provision, the Department shall have the right to terminate this Agreement without liability or, at its discretion, to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**12. ACCOUNTING, RECORDS, AND AUDIT**

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.
2. Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.
3. Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.
4. Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.
5. The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.
6. Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under this Agreement are being performed, to inspect,

monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

7. **ACCESS TO PUBLIC RECORDS** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

**13. TERMINATION** The performance of work under this Agreement may be terminated by the Department in whole or in part, whenever, for any reason the Agreement Administrator shall determine that such termination is in the best interests of the Department. Any such termination shall be effected by the delivery to the Provider of a Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated, and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

Upon receipt of the Notice of Termination, the Provider shall:

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;
2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval of the Agreement Administrator, settle all outstanding liabilities and claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement;

6. Transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Agreement Administrator, equipment and products purchased pursuant to this Agreement, and all files, source code, data manuals, or other documentation, in any form, that relate to all the work completed, or in progress, prior to the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

Notwithstanding the above, nothing herein shall limit the right of the Department to pursue any other legal remedies against the Provider.

**14. GOVERNMENTAL REQUIREMENTS** The Provider shall comply with all applicable governmental ordinances, laws, and regulations.

**15. GOVERNING LAW** This Agreement shall be governed by, interpreted, and enforced in accordance with the laws, statutes, and regulations of the State of Maine, without regard to conflicts of law provisions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and of the Uniform Computer Information Transactions Act shall not apply to this Agreement. Any legal proceeding against the Department regarding this Agreement shall be brought in the State of Maine in a court of competent jurisdiction.

**16. STATE HELD HARMLESS** The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.

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

For instance, if this Agreement is valued at \$15,000,000, then the Provider's liability is up to \$25,000,000. But if this Agreement is valued at \$100,000, then the Provider's liability is no greater than \$400,000.

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

**18. NOTICE OF CLAIMS** The Provider shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed related in any way to this Agreement, or which may affect the performance of duties under this Agreement, and prompt notice of any claim made against the Provider by any

Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement.

**19. APPROVAL** This Agreement must be approved by the State Controller and the State Purchases Review Committee before it can be considered a valid enforceable document.

**20. INSURANCE REQUIREMENTS** The Provider shall procure and maintain insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection to, the fulfillment of this Agreement, by the Provider, its agents, representatives, employees, or Subcontractors. The insurance shall be secured by the Provider, at the Provider's expense, and maintained in force, at all times during the term of this Agreement, and, for any claims-made (as opposed to occurrence-based) policy(ies), for a period of not less than two (2) years thereafter.

1. **Minimum Coverage**

1. Errors & Omissions, or Professional Liability Insurance, or Insurance by any other name, covering the following:

- A) All acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
- B) Network security and privacy risks, including, but not limited to, unauthorized access, failure of security, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of confidential information, related regulatory defense, and penalties in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;
- C) Data breach expenses, in an amount not less than (*see NOTE below and insert the appropriate limit based upon the number of Personally Identifiable Information records*) \$\_\_\_\_\_, and payable, whether incurred by the Department or the Provider; for and on behalf of the Department, including, but not limited to:
  - C.1) Consumer notification, whether or not required by law;
  - C.2) Forensic investigations;
  - C.3) Public relations and crisis management fees; and
  - C.4) Credit or identity monitoring, or similar remediation services.

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

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

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

<b><i>Number of PII Records</i></b>	<b><i>Insurance per Occurrence</i></b>
<i>1 through 3,000</i>	<i>\$400,000</i>
<i>3,001 through 100,000</i>	<i>\$1,000,000</i>
<i>100,001 through 1,000,000</i>	<i>\$5,000,000</i>
<i>Greater than 1,000,000</i>	<i>\$10,000,000</i>

2. Workers' Compensation and employer's liability, as required by law;
  3. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
  4. Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
  5. Crime, in an amount not less than \$\_\_\_\_\_ (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and
  6. Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.
2. **Other Provisions** Unless explicitly waived by the Department, the insurance policies shall contain, or be endorsed to contain, the following provisions:
1. The Provider's insurance coverage shall be the primary and contributory. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.
  2. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  3. The Provider shall furnish the Department with certificates of insurance, and with those endorsements, if any, affecting coverage, required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.
  4. All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason, including nonpayment.
  5. The Department will not grant the Provider, or any sub-contractor of the Provider, "Additional Insured" status and the Department will not grant any Provider a "Waiver of Subrogation".

**21. NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the Department does not receive sufficient funds to pay for the work to be performed under this Agreement, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

**22. SEVERABILITY** The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the remainder of said provision, or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

**23. INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B-IT (except for expressed exceptions to Rider B-IT included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

**24. FORCE MAJEURE** Either party may be excused from the performance of an obligation under this Agreement in the event that performance of that obligation by a party is prevented by an act of God, act of war, riot, fire, explosion, flood, or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, strike or labor dispute, provided that any such event, and the delay caused thereby, is beyond the control of, and could not reasonably be avoided by that party. Upon the occurrence of an event of force majeure, the time period for performance of the obligation excused under this section shall be extended by the period of the excused delay, together with a reasonable period, to reinstate compliance with the terms of this Agreement.

**25. SET-OFF RIGHTS** The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement, up to any amounts due and owing to the State with regard to this Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

**26. INTERPRETATION OF THE AGREEMENT**

1. **Reliance on Policy Determinations** The Department shall determine all program policy. The Provider may, from time to time, request the Department to make policy determinations, or to issue operating guidelines required for the proper performance of this Agreement, and the Agreement Administrator shall respond in writing in a timely manner. The Provider shall be entitled to rely upon, and act in accordance with, such written policy determinations and operating guidelines, unless subsequently amended, modified, or changed in writing by the Department, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Agreement, or in any agreement, determination, operating guideline, or other communication from the Department shall relieve the Provider of its obligation to keep itself informed of applicable State and Federal laws, regulations, policies, procedure, and guidelines, to be in complete compliance and conformity therewith.

2. **Titles Not Controlling** Titles of sections and paragraphs used in this Agreement are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of the language.

3. **No Rule of Construction** This is a negotiated Agreement and no rule of construction shall apply that construes ambiguous or unclear language in favor of or against any party.

27. **PERIOD OF WORK** Work under this Agreement shall begin no sooner than the date on which this Agreement has been fully executed by the parties and approved by the Controller and the State Purchases Review Committee. Unless terminated earlier, this Agreement shall expire on the date set out on the first page of this Agreement, or at the completion and acceptance of all specified tasks, and delivery of all contracted products and services as defined in this Agreement, including performance of any warranty and/or maintenance agreements, whichever is the later date.

28. **NOTICES** All notices under this Agreement shall be deemed duly given: 1) upon delivery, if delivered by hand against receipt, or 2) five (5) business days following posting, if sent by registered or certified mail, return receipt requested. Either party may change its address for notification purposes by giving written notice of the change and setting forth the new address and an effective date.

29. **ADVERTISING AND PUBLICATIONS** The Provider shall not publish any statement, news release, or advertisement pertaining to this Agreement without the prior written approval of the Agreement Administrator. Should this Agreement be funded, in whole or in part, by Federal funds, then in compliance with the Steven's Amendment, it will be clearly stated when issuing statements, press releases, requests for proposals, bid solicitations, and other documents: (1) the percentage of the total cost that was financed with Federal moneys; and (2) the dollar amount of Federal funds.

30. **CONFLICT OF INTEREST** The Provider certifies that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of its services hereunder. The Provider further certifies that in the performance of this Agreement, no person having any such known interests shall be employed.

31. **LOBBYING**

1. **Public Funds** No Federal or State-appropriated funds shall be expended by the Provider for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress or State Legislature, an officer or employee of Congress or State Legislature, or an employee of a member of Congress or State Legislature, in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. Signing this Agreement fulfills the requirement that Providers receiving over \$100,000 in Federal or State funds file with the Department on this provision.

2. **Federal Certification** Section 1352 of Title 31 of the US Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Provider or grantee (such as the Department) certifies that no Federal funds will be used to lobby or influence a Federal officer or member of Congress.

The certification the Department has been required to sign provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report.

As a sub-recipient, the Provider understands and agrees to the Federal requirements for certification and disclosure.

3. **Other Funds** If any non-Federal or State funds have been or will be paid to any person in connection with any of the covered actions in this section, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form to the Department.

### **32. PROVIDER PERSONNEL**

1. The parties recognize that the primary value of the Provider to the Department derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals whose résumés were offered by the Provider in the Proposal. Therefore, the parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.

2. The Department shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Department's judgment, are not appropriate for the performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Department shall act reasonably and in good faith.

3. During the course of this Agreement, the Department reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Department. In considering the Provider's employees' acceptability, the Department shall act reasonably and in good faith.

4. In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Agreement, including any Subcontractors, including persons or corporations who have critical influence on or control over this Agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal or State department or agency.

5. During the course of this Agreement, the Department reserves the right to require a background check on any of the Provider's personnel (employees and Subcontractors) that are in any way involved in the performance of this Agreement.

**33. STATE PROPERTY** The Provider shall be responsible for the proper custody and care of any Department or State owned property furnished for the Provider's use in connection with the performance of this Agreement, and the Provider will reimburse the Department for its loss or damage, normal wear and tear excepted.

### **34. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS**

1. The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider, at its expense, shall



defend, indemnify, and hold harmless the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees.

2. The Provider may not publish or copyright any data without the prior approval of the Department. The State and the Federal Government, if applicable, shall have the right to publish, duplicate, use, and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

**35. PRODUCT WARRANTY** The Provider expressly warrants its products and services for one full year from their final written acceptance by the Department. The responsibility of the Provider with respect to this warranty is limited to correcting deficiencies in any deliverable using all the diligence and dispatch at its command, at no additional cost to the Department. The Provider is also responsible for correcting and/or updating any documentation affected by any operational support performed under this warranty provision.

**36. OPPORTUNITY TO CURE** The Agreement Administrator may notify the Provider in writing about the Department's concerns regarding the quality or timeliness of a deliverable. Within five (5) business days of receipt of such a notice, the Provider shall submit a corrective action plan, which may include the commitment of additional Provider resources, to remedy the deliverable to the satisfaction of the Agreement Administrator, without affecting other project schedules. The Department's exercise of its rights under this provision shall be not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 13, Termination.

**37. COVER** If, in the reasonable judgment of the Agreement Administrator, a breach or default by the Provider is not so substantial as to require termination, and reasonable efforts to induce the Provider to cure the breach or default are unavailing, and the breach or default is capable of being cured by the Department or by another contractor without unduly interfering with the continued performance by the Provider, then the Department may provide or procure the services necessary to cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

**38. ACCESSIBILITY** All IT products must be accessible to persons with disabilities, and must comply with State Accessibility Policy and Standards and the Americans with Disabilities Act. All IT applications must comply with the Digital Accessibility Policy (<https://www.maine.gov/oit/policies/DigitalAccessibilityPolicy.pdf>). All IT applications and content delivered through web browsers must comply with the State Web Standards (<https://www.maine.gov/oit/policies/webstandards.html>) and the Digital Accessibility Policy.

**39. STATE IT POLICIES** All IT products and services delivered as part of this Agreement must conform to the State IT Policies, Standards, and Procedures (Maine.Gov/oit/policies) effective at the time this Agreement is executed

**40. CONFIDENTIALITY**

1. All materials and information given to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information.

2. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and the Department shall take all necessary steps to protect confidential information regarding all persons served by the Department, including the proper care, custody, use, and preservation of

records, papers, files, communications, and any such items that may reveal confidential information about persons served by the Department, or whose information is utilized in order to accomplish the purposes of this Agreement.

3. In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately.

4. The Provider shall comply with the Maine Public Law, Title 10, Chapter 210-B (Notice of Risk to Personal Data Act).

#### **41. OWNERSHIP**

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

2. Upon termination of this Agreement for any reason, or upon request of the Department, the Provider agrees to convey to the Department good titles to purchased items free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

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

1. The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.

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

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

1. This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the OTS

software supplied by the Provider, installed at the Department's site, at mutually agreed upon times. In the event that a separate license agreement accompanies the OTS software, then the terms of that separate license agreement supersede the above license granted for that OTS software.

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

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

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

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

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

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

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

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

**45. THIS ITEM IS INTENTIONALLY LEFT BLANK**

**46. THIS ITEM IS INTENTIONALLY LEFT BLANK**

**47. ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to this Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise an option or election under this Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, but the same shall continue in full force and effect. Use of one remedy shall not waive the Department's right to use other remedies. Failure of the Department to use a particular remedy for any breach shall not be deemed as a waiver for any subsequent breach. No waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies under this Agreement.

RIDER C  
EXCEPTIONS TO RIDER B-IT

N/A

## RIDER D


Not Required: For use at Department's Discretion

**State of Maine**  
**Department of Administrative and Financial Services**  
**DEBARMENT, PERFORMANCE, and NON-COLLUSION CERTIFICATION**  
**Captioning, Audio Description, and CART Services**

<b>Organization Name:</b>	<b>Karasch Enterprises Inc DBA Karasch &amp; Associates</b>
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*By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this proposal:*

- a. *Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
- b. *Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
  - i. *Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.*
  - ii. *Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.*
- c. *Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification.*
- d. *Have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.*
- e. *Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

<b>Name (Print):</b> Fred Gasser	<b>Title:</b> Director of Operations
<b>Authorized Signature:</b>  <small>C3519CDF4A694BE...</small>	<b>Date:</b> 5/20/2022



RIDER F

Not Required: For use at Department's Discretion

N/A



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

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

**United States. Please identify state: ME**

**Other. Please identify country: \_\_\_\_\_**

**Notification of Changes to the Information**

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

**Business Associate Agreement  
(Included at Department's Discretion)**

**State of Maine  
Department of Administrative and Financial Services  
Business Associate Agreement**

This Business Associate Agreement ("Agreement") is made this 19<sup>th</sup> day of May, 2022 (the "Effective Date") by and between the State of Maine, Department of Administrative & Financial Services, Division of Procurement Services (the Covered Entity, hereinafter, the "Department") and Karasch & Associates ("Business Associate"), together (the "Parties"); and

WHEREAS, Business Associate may use, disclose, create, receive, maintain or transmit protected health information in a variety of form or formats, including verbal, paper and electronic (together, "PHI") on behalf of the Department in connection with Business Associate's performance of its obligations under the following agreement between the parties: 22042200000000000114 (the "Underlying Agreement"); and

WHEREAS, the Parties intend to ensure the confidentiality, privacy and security of Department's PHI as required by law, including the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), and its implementing regulations at 45 CFR Parts 160 and 164 (the Privacy, Security, Breach Notification and Enforcement Rules or "HIPAA Rules") as updated by the Health Information Technology for Economic and Clinical Care Act (HITECH) enacted under Title XII of the American Recovery and Reinvestment Act of 2009, and its implementing Regulations (together, the "HIPAA and HITECH Rules"); and

WHEREAS, the Parties agree that certain federal and state laws, rules, regulations and accreditation standards also impose confidentiality restrictions that apply to this business relationship, and may include, but are not limited to: 42 CFR 2 *et. seq.*; 5 M.R.S.A. §19203-D; 22 M.R.S.A. §§42, 261, 815, 824, 833, 1494, 1596, 1711-C, 1828, 3173, 3292, 4008, 5328, 7250, 7703, 8754; 10 M.R.S.A 1346 *et. seq.*; 34-B M.R.S.A. §1207; 14-193 C.M.R, Ch. 1, Part A, § IX; and applicable accreditation standards of The Joint Commission or other appropriate accreditation body regarding confidentiality.

NOW THEREFORE, the parties agree as follows:

**Specific Definitions for the Purpose of this Agreement:**

**Breach** means the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such PHI. A security or privacy incident that involves PHI is presumed to be a breach requiring notification unless the Department proves, through specific risk analysis steps, that there is a low probability that the PHI was compromised or a) the incident does not involved unsecured PHI, or b) the incident falls into another exception or safe harbor as set forth in the HIPAA and HITECH Rules.

**Business Associate** is a person or entity that creates, receives, maintains or transmits PHI on behalf of, or provides services to, a covered entity, as set forth in the HIPAA Rules and other than in the capacity of a workforce member.

**Covered Entity** is a 1) health plan, (2) health care clearinghouse, or 3) health care provider who electronically transmits any health information in connection with transactions for which HHS has adopted standards. Generally, these electronic transactions concern billing and payment for services or insurance coverage.

**Designated Record Set** means the billing and medical records about individuals maintained by or for a covered provider: the enrollment, claims adjudication, payment, case or medical management

record systems maintained by or for a health plan; or that are used in whole, or in part, by the covered entity to make decisions about individuals.

**Individual** means the person who is the subject of the PHI.

**Protected Health Information** means information that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual and is transmitted or maintained in electronic or any other form or medium.

**Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information [or PHI] or interference with system operation in an information system.

**Subcontractor means** a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private, to whom a business associate has delegated a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

**Unsecured Protected Health Information** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Department of Health and Human Services ("HHS") in its guidance.

**General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA and HITECH Rules: Data Aggregation, Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Required by Law, and Use.

## **1. Permitted Uses and Disclosures**

- a. Business Associate agrees to use or disclose the PHI authorized by this Agreement only to perform the services of the Underlying Agreement between the Parties, or as required by law.
- b. Business Associate may use or disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, only where a) the use or disclosure does not violate any law governing the protection of the PHI, including, but not limited to, prohibitions under 42 CFR Part 2 (Part 2 Regulations), and b) the disclosures are required by law or c) Business Associate agrees only to disclose the minimum necessary PHI to accomplish the intended purpose and i) obtains reasonable assurances from the person or entity to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity, and ii) the person or entity agree to immediately notify Business Associate of any instances of which it is aware that the confidentiality, privacy or security of the information has been actually or potentially breached.
- c. Business Associate may provide data aggregation services relating to the health care operations of the Department, or de-identify the Department's PHI, only when such specific services are permissible under the Underlying Agreement or as otherwise preapproved in writing by the Department.

## **2. Obligations and Activities of the Business Associate**

- a. **Compliance.** Business Associate agrees to comply with the HIPAA and HITECH Rules, and other applicable state or federal law, to ensure the protection of the Department's PHI, and only use and disclose PHI consistent with the Department's minimum necessary policy and the legal requirements of this Agreement. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA or HITECH Rules or other state or federal law if performed by the Department.

- b. *Safeguards.* In complying with the HIPAA and HITECH Rules, Business Associate agrees to use appropriate administrative, technical and physical safeguards, and comply with any required security or privacy obligations, to protect the confidentiality, integrity and availability of the Department's PHI.
- c. *Reporting.* Business Associate agrees to report to the Department any inappropriate use or disclosure of the Department's PHI of which it becomes aware, i.e. any use or disclosure not permitted in this Agreement or in violation of any legal requirement, including actual and suspected breaches of unsecured PHI, and any actual or potential security incident of which it becomes aware. Such report will be made to the Department's Director of Healthcare Privacy or her designee within twenty-four (24) hours of when the Business Associate becomes aware of an actual or suspected incident or breach. In the event that a breach is determined to have occurred under the authority of the Business Associate, Business Associate will cooperate promptly with the Department to provide all specific information required by the Department for mandatory notification purposes.
- d. *Subcontractors and Agents.* In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any third parties, agents or subcontractors (together, "Subcontractors") that use, disclose, create, acquire, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI. Business Associate shall obtain and maintain a written agreement with each Subcontractor that has or will have access, through Business Associate, to the Department's PHI, ensuring that the Subcontractor agrees to be bound to the same restrictions, terms and conditions that apply to Business Associate under this Agreement.
- e. *Mitigation.* The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement.
- f. *Accounting of Disclosures.* To the extent required by the terms of this Agreement, Business Associate will maintain and make available the information and/or documentation required to provide an accounting of disclosures as necessary to satisfy the Department's obligations under 45 CFR 164.528.
- g. *Access.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate will use commercially reasonable efforts to make PHI available in the format requested, and as necessary to satisfy the Department's obligation under 45 C.F.R. 164.524, within 30 days from the time of request. Business Associate will inform the Department of the individual's request within 5 (five) business days of the request.
- h. *Amendment.* In the event that Business Associate creates or maintains PHI in a designated record set, Business Associate agrees to make any amendment(s) to the PHI as directed or agreed to by the Department, or take other measures as necessary to satisfy the Department's obligations under 45 CFR 164.526, in such time period and in such manner as the Department may direct.
- i. *Restrictions.* Upon notification from the Department, Business Associate shall adhere to any restrictions on the use or disclosure of PHI agreed to by or required of the Department pursuant to 45 CFR 164.522.
- j. *Audit by the Department or the HHS Secretary.* The Business Associate will make its internal practices, books and records relating to the use or disclosure of PHI received from the Department or used, acquired, maintained, created or received by the Business Associate on behalf of the Department, available to either the Department or the HHS Secretary for the purposes of determining the compliance of either the Department or the Business Associate

with the Medicaid Act, and the HIPAA and HITECH Rules, or any other federal, state or accreditation requirement. 45 C.F.R. 164.504.

- k. *Other Obligations*: To the extent that Business Associate is to carry out one or more of the Department's obligations under the HIPAA and HITECH Rules or other federal or state law, Business Associate agrees to comply with the legal requirements that apply to the Department in performing that obligation;

### **3. Obligations of the Department**

- a. The Department shall notify Business Associate of a) any limitation in any applicable Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate and b) any changes, revocations, restrictions or permissions by an individual to the use and disclosure of his/her PHI to which the Department has agreed, to the extent such restrictions or limitations may affect the performance of Business Associate's services on behalf of the Department.
- b. The Department shall not request that Business Associate use or disclose PHI in any format, and in any manner, that would be prohibited if performed by the Department.

### **4. Hold Harmless**

Business Associate agrees to indemnify and hold harmless the Department, its directors, officers, agents, shareholders, and employees against any and all claims, demands, expenses, liabilities or causes of action that arise from any use or disclosure of PHI not specifically permitted by this Agreement, applicable state or federal laws, licensing, accreditation or other requirements.

### **5. Term of Agreement**

- a. *Term*. This Agreement shall be effective as of the Effective Date and shall terminate at the end of the term of the Underlying Agreement. To the extent that the Underlying Agreement automatically renews, this Agreement shall also automatically renew itself for the same renewal period unless the Department terminates this Agreement for cause as set forth in Section 5(c). Either party may terminate the Agreement consistent with the written notice provision regarding termination in the Underlying Agreement.
- b. *Auto-renewal*. In the event that this Agreement is automatically renewed, the Business Associate agrees to be bound by the terms of this Agreement and laws referenced in this Agreement that are current and in effect at the time of renewal.
- c. *Termination for Cause*. Notwithstanding the foregoing, Business Associate authorizes termination of this Agreement by the Department if the Department determines that Business Associate has violated a material term of the Agreement. The Department shall either, at its sole discretion:
  - i. Provide the Business Associate an opportunity to cure or end the violation within a time frame and upon such conditions as established by the Department; and
  - ii. Immediately terminate this Agreement in the event the Business Associate has either failed to cure in the time frame provided by the Department or if cure is not possible.
- d. *Obligations of the Business Associate upon Termination*. Upon termination of this Agreement for any reason, Business Associate, shall

- i. Return or destroy all PHI used, created, accessed, acquired, maintained, or received by the Business Associate on behalf of the Department, and retain no copies in any format. Business Associate shall ensure that its Subcontractors do the same.
- ii. If the Department agrees that Business Associate may destroy all PHI in its possession, Business Associate shall certify such destruction to the Department.
- iii. If returning or destroying PHI is not feasible, Business Associate agrees to protect the confidentiality of the PHI and retain only that PHI which is necessary for the Business Associate to continue its proper management and administration, or to carry out its legal responsibilities. Business Associate shall not use or disclose the PHI for other than the purpose for which it was retained, and return to the Department, or destroy if approved by the Department, such PHI when no longer required. Furthermore, Business Associate shall continue to use appropriate safeguards and comply with the HIPAA and HITECH Rules, other applicable state and federal law, with respect to PHI in any format for as long as Business Associate retains the PHI.
- iv. Upon appropriate direction from the Department, Business Associate shall transmit the PHI to another business associate of the Department consistent with all legal and regulatory safeguards delineated in this Agreement.

## **6. Qualified Service Organization Agreement**

To the extent that in performing its services for or on behalf of the Department, Business Associate uses, discloses, maintains or transmits PHI that is protected by the Part 2 Regulations, Business Associate acknowledges that it is a Qualified Service Organization for the purpose of such federal law; acknowledges that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 Regulations; and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 Regulations.

## **7. Survival of Business Associate Obligations**

The obligations of the Business Associate under this Agreement shall survive the termination of this Agreement indefinitely.

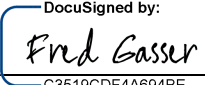
## **8. Miscellaneous**

- (a) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA and HITECH Rules, and/or other applicable laws or requirements. This Agreement may only be amended in writing, signed by authorized representatives of the Parties.
- (b) *Injunction.* The Department and Business Associate agree that any violation of the provisions of this Addendum may cause irreparable harm to the Department. Accordingly, in addition to any other remedies available to the Department, Department shall be entitled to seek an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without bond or other security being required and without the necessity of demonstrating actual damages.
- (c) *Interpretation.* Any ambiguity in this Agreement shall be resolved to ensure that the Department is in compliance with the HIPAA and HITECH Rules, or other applicable laws or privacy or security requirements.

(d) *Legal References.* A reference in this Agreement to a section in the HIPAA or HITECH Rules or to other federal or state law, means the section as in effect or as amended.

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement as of the Effective Date.

**Business Associate**

Signature :  \_\_\_\_\_  
DocuSigned by:  
C3519CDF4A694BE...

Name: Fred Gasser \_\_\_\_\_

Title: Director of operations \_\_\_\_\_

Date: 5/20/2022 \_\_\_\_\_

## Appendix A

**Captioning, Audio Description, and CART Services**

<b>Materials in Production</b>	<b>Unit</b>	<b>Proposed Cost per Unit</b>	<b>Expedited Delivery Cost</b>
Captioning	Minute	<b>NA</b>	<b>NA</b>
Audio Description	Minute	<b>NA</b>	<b>NA</b>
Transcription	Audio Minute	<b>NA</b>	<b>NA</b>
Additional Related Services (add lines as necessary)		<b>NA</b>	<b>NA</b>
<b>Materials in Post-Production</b>			
Captioning	Minute	<b>NA</b>	<b>NA</b>
Audio Description	Minute	<b>NA</b>	<b>NA</b>
Transcription	Audio Minute	<b>NA</b>	<b>NA</b>
Additional Related Services (add lines as necessary)		<b>NA</b>	<b>NA</b>

<b>CART for Live and Live-recorded Events</b>	
Hourly Rate: Business hours 8:00-5:00, Mon-Fri (Eastern Time)	<b>\$139.00</b>
Hourly Rate: Non-business hours	\$144.00
Transcript Costs (per transcript):	\$0 unedited - \$2.75 per minute edited (72-hour turnaround)
Other Fees (Please specify. Add rows as needed):	\$1.35 per minute (5-day turnaround)
	\$3.30 per minute (1-day turnaround)