



# State of Maine Department of Administrative and Financial Services

Document Type	Contractor Name	Advantage CT or RQS Number
<b>Contract</b>	<b>Kainos Worksmart Inc</b>	<b>20190611000000003816</b>
Department	Contract Start Date	Internal Department Contract Number
<b>18F-Controller's Office</b>	<b>7/1/2019</b>	
Short Description of Goods or Services	Contract End Date	Contract Amount
<b>Information Technology Services</b>	<b>6/30/22</b>	<b>\$677,404.00</b>
		Approval Date Time
		<b>6/19/19 7:54 AM</b>

**This contract has been approved by the Division of Purchases, Chair of the State Procurement Review Committee and encumbered by the Office of the State Controller.**

## Ladd, Billy J.

---

**From:** Lee, Ellen  
**Sent:** Tuesday, June 18, 2019 3:58 PM  
**To:** Ladd, Billy J.  
**Cc:** Demerchant, Terry L  
**Subject:** FW: Kainos Contract

**From:** Laubenstein, William  
**Sent:** Tuesday, June 11, 2019 11:04 AM  
**To:** Lee, Ellen <Ellen.Lee@maine.gov>  
**Subject:** RE: Kainos Contract

Nice to one contract done.

*[handwritten]*

**From:** Lee, Ellen  
**Sent:** Monday, June 10, 2019 4:26 PM  
**To:** Laubenstein, William <William.Laubenstein@maine.gov>  
**Subject:** FW: Kainos Contract

The results of your good work! 😊

**From:** Niall McPeake <n.mcpeake@kainos.com>  
**Sent:** Monday, June 10, 2019 4:06 PM  
**To:** Ennis, Tonia <Tonia.Ennis@maine.gov>; Chris Murray <C.Murray@kainos.com>  
**Cc:** Lee, Ellen <Ellen.Lee@maine.gov>  
**Subject:** RE: Kainos Contract

**EXTERNAL:** This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Tonia and Ellen

Thank you for the swift return of the documents.

I am very pleased to say I was able to accept all of the redline returned by your AG department and I believe we are there.

I have now compiled the complete document. Operationally, I added some small items (really dates which I have set based on your deadline of June 15<sup>th</sup>, but I am happy to change as you see fit). I have attached 2 documents, (1) the redline document showing in tracks the additions I have made and clarifying some items in the redline returned by your AG, and (2) if you agree, the final document, cleaned which can be executed.

### **Redline document – “BP 54 IT contract WHL Edits\_NMCP\_06.10.19”**

1. In Rider A, below the Order Form, I have added a clause which allows your organisation to begin to avail of the Smart Services as soon as the Agreement is signed, free of charge, until the Subscription date starts, which I

have set as July 1<sup>st</sup>. I have clarified that invoicing commences from July 1<sup>st</sup> to avoid any confusion around invoicing.

2. Subscription date on Order Form in Rider a beginning July 1<sup>st</sup>
3. I inserted the Kainos Smart MSA into Rider A below the Order Form (I did not track this – it is the final agreed version with Maine governing law)
4. Rider B, Section 20.1.C – I have clarified that the Data breach insurance is \$5m “in the aggregate”.
5. Rider C – I have removed my original redline number 8 re Section 36. Your legal department wanted to discuss this item before being able to accept/reject it. To expedite matters, I can agree to remove my redline.

**Clean document - “BP 54 IT contract WHL Edits\_NMCP\_06.10.19 (Clean)”**

1. If you are in agreement with the above, this is the document ready for execution. Again happy to revisit dates.

I note there are also 2 blocks in section 4 of Rider B for details of the Agreement Administrator if you are required to fill these out?

In terms of execution, we use DocuSign and, if you wish, I am more than happy to arrange signature for the parties.

I look forward to hearing from you.

Kind Regards,  
Niall

**Niall McPeake** | Senior Commercial Associate | Kainos Commercial | T: +44 (0) 28 9057 1921 | [n.mcpeake@kainos.com](mailto:n.mcpeake@kainos.com)

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**From:** Ennis, Tonia <[Tonia.Ennis@maine.gov](mailto:Tonia.Ennis@maine.gov)>

**Sent:** 10 June 2019 15:31

**To:** Niall McPeake <[n.mcpeake@kainos.com](mailto:n.mcpeake@kainos.com)>; Chris Murray <[C.Murray@kainos.com](mailto:C.Murray@kainos.com)>

**Cc:** Lee, Ellen <[Ellen.Lee@maine.gov](mailto:Ellen.Lee@maine.gov)>

**Subject:** RE: Kainos Contract

Hi Chris and Niall,

Just checking in. We would love to get this signed early this week. I am out on Thursday/Friday, so anything we can do to move this along would be great.

Thanks!

Tonia

## Ladd, Billy J.

---

**From:** Lee, Ellen  
**Sent:** Tuesday, June 18, 2019 4:22 PM  
**To:** Ladd, Billy J.  
**Subject:** FW: Kainos Smart Contract  
**Attachments:** BP 54 IT contract WHL Edits..docx

**From:** Laubenstein, William  
**Sent:** Friday, June 7, 2019 12:42 PM  
**To:** Lee, Ellen <Ellen.Lee@maine.gov>  
**Subject:** RE: Kainos Smart Contract

My edits and comments.

**From:** Lee, Ellen  
**Sent:** Friday, June 7, 2019 8:53 AM  
**To:** Laubenstein, William <William.Laubenstein@maine.gov>  
**Cc:** Ennis, Tonia <Tonia.Ennis@maine.gov>  
**Subject:** FW: Kainos Smart Contract

Hi Bill,

Since this is a contract (from a Procurement Perspective, target date to receive contracts is today), can you please make this your priority. So many things getting pushed at is, it is hard to keep track. Please note that you have already reviewed the MSA and the only change you required was court of jurisdiction be the State of Maine. The MSA (which we have agreed to) will be included in Rider A unless you have another preference related to order of precedence. Kaonis liked it to be part of Rider A.

Tonia, there are some names, etc. that need to be added to the contract. You should also take a read so it contains exactly what your expectations are.

Much thanks!  
Ellen

**From:** Niall McPeake <n.mcpeake@kainos.com>  
**Sent:** Thursday, June 6, 2019 4:09 PM  
**To:** Howker, Thomas N. <Thomas.N.Howker@maine.gov>  
**Cc:** Chris Murray <C.Murray@kainos.com>; Lee, Ellen <Ellen.Lee@maine.gov>; Ennis, Tonia <Tonia.Ennis@maine.gov>  
**Subject:** Fwd: Kainos Smart Contract

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Tom

Thank you for your recent email re the Kainos MSA.

I am forwarding you on this email I had sent earlier to Ellen as she is out of the office. It is our markup of the main paper for your legal department's review.

We can negate the comments around governing law as this is now dealt with as per our recent emails and the amended Kainos MSA with Maine law can be slotted into Rider A.

Perhaps we can arrange a call with your legal department to go through the document to expedite matters?

I look forward to hearing from you.

Kind Regards,  
Niall McPeake

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From: Niall McPeake  
Sent: Thursday, 6 June, 15:51  
Subject: RE: Kainos Smart Contract  
To: Lee, Ellen, Ennis, Tonia  
Cc: Chris Murray

Hi Ellen

In order to expedite the matter and perhaps assist your legal department with our Kainos MSA, please now see attached my mark up of your paper. As discussed previously, I have;

Added our Order Form to Rider A and left space for Kainos MSA/Additional Terms in Rider B, I have put comments against certain provisions we require more information on or why they are not applicable to the Smart service set out in Rider C the Rider B provisions that Kainos are unable to agree to and/or suggested alternative wording/workarounds.

I'd be grateful to receive a copy of the Kainos MSA markup from your legal team as soon as possible.

I am also happy to facilitate a call between our legal departments if this would help speed matters up.

I look forward to hearing from you.

Kind Regards,  
Niall

**Niall McPeake** | Senior Commercial Associate | Kainos Commercial | T: +44 (0) 28 9057 1921 | [n.mcpeake@kainos.com](mailto:n.mcpeake@kainos.com)

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**From:** Niall McPeake  
**Sent:** 05 June 2019 17:03  
**To:** Lee, Ellen <[Ellen.Lee@maine.gov](mailto:Ellen.Lee@maine.gov)>; Ennis, Tonia <[Tonia.Ennis@maine.gov](mailto:Tonia.Ennis@maine.gov)>  
**Cc:** Chris Murray <[C.Murray@kainos.com](mailto:C.Murray@kainos.com)>  
**Subject:** RE: Kainos Smart Contract

Hello Ellen

I was hoping you might have the Kainos Smart MSA returned with the State's requested redlines?

I am close to finishing my mark-up but I was hoping to see the Kainos MSA redline before returning – I hope it will speed the process up by reducing redline and then we can deal with all paper elements together.

Many thanks

Kind Regards,  
Niall

**Niall McPeake** | Senior Commercial Associate | Kainos Commercial | T: +44 (0) 28 9057 1921|  
[n.mcpeake@kainos.com](mailto:n.mcpeake@kainos.com)

[kainos.com](http://kainos.com) / [Facebook](#) / [Twitter](#) / [LinkedIn](#)

**From:** Lee, Ellen <[Ellen.Lee@maine.gov](mailto:Ellen.Lee@maine.gov)>  
**Sent:** 04 June 2019 12:51  
**To:** Niall McPeake <[n.mcpeake@kainos.com](mailto:n.mcpeake@kainos.com)>; Ennis, Tonia <[Tonia.Ennis@maine.gov](mailto:Tonia.Ennis@maine.gov)>  
**Cc:** Chris Murray <[C.Murray@kainos.com](mailto:C.Murray@kainos.com)>  
**Subject:** RE: Kainos Smart Contract

I will take a look at it Nial, but don't believe the AG's Office is going to approve any changes to Rider B.

The MSA (once the changes requested by the State) can be included in Rider A along with the Order Form.

**From:** Niall McPeake <[n.mcpeake@kainos.com](mailto:n.mcpeake@kainos.com)>  
**Sent:** Monday, June 3, 2019 5:02 PM  
**To:** Lee, Ellen <[Ellen.Lee@maine.gov](mailto:Ellen.Lee@maine.gov)>; Ennis, Tonia <[Tonia.Ennis@maine.gov](mailto:Tonia.Ennis@maine.gov)>  
**Cc:** Chris Murray <[C.Murray@kainos.com](mailto:C.Murray@kainos.com)>  
**Subject:** Kainos Smart Contract

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Hi Ellen

Thank you for your and Tonia's time today on our call earlier, we appreciate you are very busy at the minute.

Just so that I can hit the ground running tomorrow, can I run my suggested approach to the paper past you please;

Rider A - I suggest we simply put our Order Form in which compactly sets out the services, duration, cost etc  
Rider C – whilst it says exceptions – we put in the Kainos Smart MSA (which really sets out operationally what Smart is) as additional terms. To preserve your Rider B terms, we would have your Rider B terms take precedence over conflicting terms in Rider C. This would involve a small rewording to the order of priority in clause 23 of Rider B.  
Exceptions – any exceptions to Rider B that should have been placed in Rider C, are simply redlined on Rider B itself. If we can insert out Kainos Smart MSA, I believe the redline to Rider B would be very minimal and intentionally so on my end.

The above would be the most efficient way to move the paper forward so that we can maintain our vital Smart service provisions as well as uphold the terms of your paper. When returning the markup I will highlight the big ticket items, if any, we would then need to focus our discussions on.

I hope the above is acceptable and I look forward to hearing from you.

Kind Regards,  
Niall

**Niall McPeake** | Senior Commercial Associate | Kainos Commercial | T: +44 (0) 28 9057 1921 |  
[n.mcpeake@kainos.com](mailto:n.mcpeake@kainos.com)

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<https://www.kainos.com/corporate-information/>. Further terms and conditions may be found on our website [www.kainos.com](http://www.kainos.com)

Advantage CT#: yyymmdd\*#####

STATE OF MAINE  
DEPARTMENT OF  
Agreement to Purchase Services

THIS AGREEMENT, made this June day of 2019, is by and between the State of Maine, Department of..., hereinafter called "Department," and Kainos Worksmart Inc. ~~Vendor Legal Name in Advantage~~, located at WeWork Tower Place, 3340 Peachtree Road, Atlanta, Georgia, 30326, USA ~~Address in Advantage~~, hereinafter called "Provider", for the period of Enter Start Date to Enter End Date.

Commented [NM1]: To be completed once dates finalized.

The AdvantageME Vendor/Customer number of the Provider is VC or VS#

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: Kainos Worksmart Inc.

By: \_\_\_\_\_  
Nigel Hutchinson, VP North America Provider Representative  
Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Frederick Brittain, Chief Information Officer  
Date: \_\_\_\_\_

And

Department of \_\_\_\_\_

By: \_\_\_\_\_  
Name and Title, Department Representative  
Date: \_\_\_\_\_

Commented [NM2]: Is a third party signing?

**Total Agreement Amount \$**

The approval and encumbrance of this Agreement by the Chair of the State Procurement Review Committee and the State Controller is evidenced only by a stamp affixed to this page or by a Case Details Page from the Division of Procurement Services.



AGREEMENT TO PURCHASE SERVICES (BP54-IT)

RIDER A  
 SPECIFICATIONS OF WORK TO BE PERFORMED

Kainos Smart services ("Smart Service" or "Service")

Customer Details	
Customer Name	State of Maine
Registered Office Address	State House Station, Augusta, USA, ME 04333
Customer Contact, Number & Email	Tonia Ennis, +1 (207) 212-5365, Tonia.Ennis@maine.gov
Invoice Contact, Number & Email	Tonia Ennis, +1 (207) 212-5365, Tonia.Ennis@maine.gov
Purchase Order Number	SO011769
Hosting Platform Location	USA

Kainos Details	
Kainos Name	Kainos WorkSmart Inc.
Registered Office Address	WeWork Tower Place, 3340 Peachtree Road, Atlanta, Georgia, 30326, USA
Kainos Contact, Number & Email	Chris Murray, +1(805) 284-2635, c.murray@kainos.com
Kimble Code	SO011769 v1.0

Subscription Term						
Effective Date (start date)	Day	01	Month	06	Year	2019
End Date	Day	31	Month	05	Year	2022

Commented [NM3]: Exact dates to be confirmed

Modules included in the Subscription Service (Select applicable Module(s))	
Smart HCM Business Process & Integrations Module	<input checked="" type="checkbox"/>
Smart Financials Business Process & Integrations Module	<input type="checkbox"/>
Smart Security Module	<input checked="" type="checkbox"/>
Smart Payroll Module	<input checked="" type="checkbox"/>

Charging Bands (Select applicable Charging Band)		
Staff Number	Subscription Service Charge (annual)	Select
10,001 – 15,000	\$173,250	<input checked="" type="checkbox"/>
15,001 – 20,000	\$231,000	<input type="checkbox"/>
20,001 – 25,000	\$284,000	<input type="checkbox"/>

Summary of Charges			
Services	Invoiced	Duration	Total Charges
Gold (FSE) more than 4K Subscription Service	\$173,250 annually in advance	3 years	\$519,750
On boarding Implementation detailed below;	Total of \$157,654 on the following milestones: <ul style="list-style-type: none"> <li>• 25% (\$39,413.50) - Planning and Discovery Complete</li> <li>• 25% (\$39,413.50) - End to End Testing Complete</li> <li>• 50% (\$78,827.00) - Go-Live</li> <li>• Backstop for payments on January 31st 2020</li> </ul>	Fixed Price	\$157,654
Total			\$677,404

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## AGREEMENT TO PURCHASE SERVICES (BP54-IT)

### On boarding Implementation Customers

#### On boarding overview:

Smart On boarding includes remote Smart Product Specialist time and expertise to define, build and customize Smart Core Test Pack/s in line with Customers Workday configuration. This includes:

1. Setup the Smart Tenant and connection to Customer's Workday tenant;
2. Defining, building and customizing Smart Core Test Pack(s) in line with Customers Workday configuration;
3. Assisting Customer with executing Smart Core Test Pack/s during On boarding;
4. Key Meetings as per Smart Engagement Process below;
5. Training Customers on how to execute, maintain and expand Smart Core Test Pack(s) post Smart go-live.

On boarding duration will be aligned with the customer's Workday deployment plan, subject to fulfilment of the Customer Obligations below.

Note: targeted Workday tenants and duration will be dependent on which Smart Modules Customer has purchased Test Pack(s):

The number of unique test scenarios included in the Test Packs will be dependent on which Smart modules Customer has contracted and will vary depending on Customers Workday configuration and priorities.

Once Kainos receives access to Customer's Workday tenant a Smart Product Specialist will define the scope of the Test Packs on Customers behalf.

Test Pack scope is defined based on Kainos best practice in line with the Workday recommended testing methodology and has been matured and refined based on over 100 customer deployments including directly with Workday on Workday.

1. Smart HCM contracted - HCM Test Pack scope:
  - a) Contains unique business process tests to validate configuration conditions
  - b) Worker lifecycle tests which will mirror the hire through to terminate steps
  - c) Eligibility tests for Compensation, Absence and Benefits eligibility rules - 1 positive and 1 negative test for each eligibility rule
  - d) Data staging scenarios for outbound integrations (assumed 50 scenarios for Payroll integrations and 15 for other worker integrations)
  - e) Packs will be consolidated at the end of the implementation phase for use in regression

HCM Test Case Summary		
Test Description	No of Tests	Tenant Targeted
HCM - Business Process	50	Configuration Review
HCM - Worker Lifecycles	20	Test (E2E)
HCM - Comp Eligibility	200	Configuration Review
HCM - Absence Eligibility	200	Configuration Review
HCM - Benefits Eligibility	200	Configuration Review
HCM - Payroll Integration Data Staging	0	Test (E2E)
HCM - Integration Data Staging	225	Test (E2E)
HCM - Integrations Integrity Test	5	Test (E2E)
HCM - Reports Integrity Test	10	Test (E2E)
HCM - Recruiting	50	Configuration Review
Total	960	

2. Smart Payroll contracted - Payroll Core Test Pack scope:
  - a) Unit test packs will be created by the customer and Kainos will deliver training to end user for creation of unit test scenarios
  - b) End to End test packs contain 25 worker flows for complex countries (with up to 10 transactions per flow) with 15 worker flow unique test cases designed for automating and simulating common payroll transactions; these End to End test packs will be available as post go-live regression packs.

Note: Unit test packs will be built in the Config Tenant, End to End tests will be built in the Test tenant, and Parallel tests in the Parallel tenant.

- c) Parallel activity will be a handover/training session for each of the given parallel runs to ensure that the parallel comparison tool can be built by the customer with legacy payroll results imported.

**AGREEMENT TO PURCHASE SERVICES (BP54-IT)**

Payroll Test Case Summary		
Test Description	No of Tests	Tenant Targeted
Payroll - Unit Test	1	Configuration Review
Payroll - End to End	250	Test (E2E)
Payroll - Parallel	1	Parallel
<b>Total</b>	<b>252</b>	

3. Smart Security contracted -- Security Core Test Pack scope:
  - a) Contains Security Tests across the functional modules in scope:
    - i. User based security groups
    - ii. Role based security groups
    - iii. Custom and intersection security groups

Tests targeted at both user-based and role-based security groups will be built in either the Config or Test tenant (as directed by Customer). Tests targeting key workers will be built in Customer's Sandbox tenant post Workday go live.

- b) Customer may substitute role/user-based security groups for other supported types of Workday security groups (e.g. intersection, aggregation, location based etc.) however such substitutions may not be offered on a 1:1 basis due to varying effort between types of security groups.

Security Test Case Summary		
Test Description	No of Tests	Tenant Targeted
HCM Security - Single Security Group	1150	Configuration Review
HCM Security - Intersection Single Security Group	230	Configuration Review
HCM Security - Key Worker	575	Production Sandbox
<b>Total</b>	<b>1955</b>	

**Training:**

Training is primarily intended for Customers internal Workday administration team or HRIS team and requires an audience who are knowledgeable in both Workday and Customers Workday implementation. The purpose of the training is to teach users how to use Smart, execute, maintain and expand Core Test Pack(s).

**Training structure:**

1. Structured live training sessions tailored to Customer's Smart Core Test Pack(s).
2. Broken into separate digestible sessions intended to focus on:
  - a) Smart provisioning and general navigation.
  - b) Per Smart module overview and Core Test Pack execution training.
  - c) Extracting reports, Test case maintenance and creation.

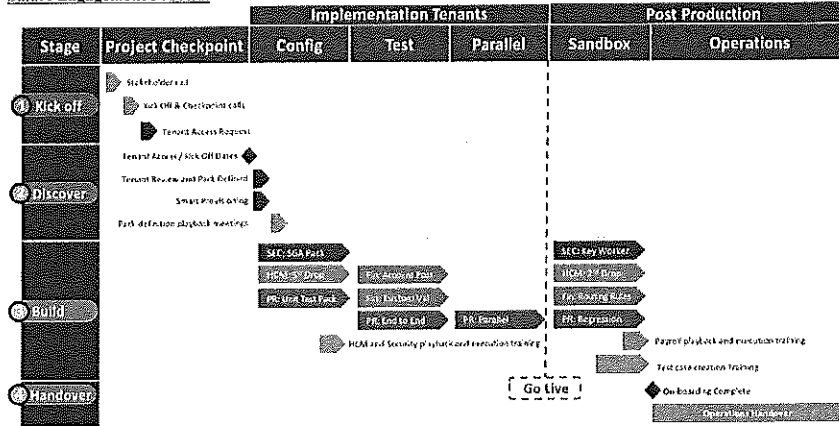
**Customer Obligations:**

Kainos targets completing the build of the Core Test Pack(s) within 4-weeks (per tenant) from Kainos receiving Workday Implementer Access to Customers relevant Workday tenant (or a later date as agreed with the Customer). However, as each deployment of Smart is individually configured to test a unique and Customer specific configuration of Workday, success is dependent on Customers active participation during each stage of On boarding. As such Customer must adhere to the following Customer Obligations:

1. Provide Kainos with Workday Implementer Access to Customers relevant Workday tenant in a timely manner.
2. Adhere to the agreed project plan, time lines and methodologies as per the Kainos Smart Engagement Process detailed below.
3. Ensure the appropriate Customer staff attend and participate in the Key Meetings and activities outlined in the Smart Engagement Process.
4. Attend and actively participate during Core Test Pack definition playback meetings, training and during the Operations Handover phase.
5. Attend Smart training and handover sessions.

## AGREEMENT TO PURCHASE SERVICES (BP54-IT)

### Smart Engagement Process:



### Key Meetings

Task	Customer Participation	Purpose
Stakeholder call	1 Hour	Target Audience: Kainos and Customer stakeholder(s) Purpose: Communicate Smart On boarding goals and mutual expectations.
Kick off call	1 – 1.5 hours	Target Audience: Customer project team. Purpose: Introduce project teams and communicate Smart On boarding process to project team.
Pack definition playback	1 hour (per pack)	Target Audience: Smart Users / Customers Workday Subject Matter Experts ("SMEs") Purpose: To communicate to Customer definition of Core Test Pack(s).
Live remote training (session 1)	1 hours	Target Audience Smart users / Customers Workday SMEs Purpose: Kainos to train Customers users in Smart navigation and general functionality.
Pack build playbacks	1 – 2 hours (per pack)	Target Audience Smart Users / Customer's Workday SMEs Purpose: To communicate to Customer what Kainos has built within their Core Test Pack(s) and train Customer to execute Core Test Pack(s), review and extract results.
Stakeholder check-in	30 mins (typically, twice)	Target Audience Kainos and Customer stakeholder(s) Purpose: Stakeholder checkpoint and follow-up on agreeing longer term success criteria.
Live remote training (session 2)	3.5 hours	Target Audience Smart users / Customer's Workday SMEs Part I - Purpose: Teach Customer how to extract results and build reports from Smart. Part II - Purpose: Kainos to train Customers users in test case maintenance, creation and troubleshooting. <b>Note: Part II is optional for Platinum Service Customers.</b>
Operations handover period	1 – 4 hours (Two separate meetings over a two-week period).	Target Audience Smart users / Customer's Workday SMEs Purpose: Phased handover from Smart On boarding to Support and to give Customers users a chance to raise any questions post-handover.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

KAINOS SMART MSA

**RIDER B-IT**

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$677,404
2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

1. Onboarding Implementation services – Total \$157,654:
  - 25% (\$39,413.50) - Planning and Discovery Complete
  - 25% (\$39,413.50) - End to End Testing Complete
  - 50% (\$78,827.00) - Go-Live
  - Backstop for payments on January 31st 2020

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2. Gold Subscription Services - \$173,250 per year for 3 years, invoiced annually in advanced based on the Effective Date (start date) of the Subscription Term set out in Rider A above.

Total Onboarding and 3-year Gold Subscription Service = \$677,404.

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.

**Commented [NM4]:** 1. Onboard – is upfront but we have agreed to split. We cannot further accept a withholding of 10% up to 1 year.  
2. Annual subscription is payable in advance – again we cannot accept only 90% payment with remaining 10% held until end of the year.  
We ask this highlighted section is removed as set out in Rider C.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

The following individual is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement. All project status reports, day to day operational issues and project program material and issues shall be directed to this individual.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

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.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.



AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

Commented [NM5]: To confirm, Kainos holds a Cyber policy and a PI policy and all claims are in the aggregate in terms of limits.

**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;

Commented [NM6]: This is fine

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;

Commented [NM7]: This is fine

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

C) Data breach expenses, in an amount not less than \$ 5,000,000 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.

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, \$2,000,000 annual aggregate;

4. Automotive Liability of not less than \$400,000 per occurrence single limit, \$1,000,000 annual aggregate, if the Provider will use vehicles to fulfill the contract;

5. Crime, in an amount not less than \$ 0 (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.

Commented [NM8]: Please confirm figure

Commented [NM9]: Is fine but this is capped at \$2m in the aggregate, please confirm this complies

Commented [NM10]: Is fine but capped at \$1m aggregate, please confirm this complies.

Commented [NM11]: Kainos does not have Crime insurance - set out in Rider C below.

Commented [NM12]: This is fine.

Commented [NM13]: For clarity, if the claims are related to the same occurrence, they would be treated as a single claim arising from the same related source.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

4. All policies should contain a revised cancellation clause allowing thirty (30) days notice to Provider. Provider shall notify to the Department in the event of any such cancellation for any reason, including nonpayment.

Commented [NM14]: Notice is only to Kainos. It would then be for Kainos to notify you. Please confirm this is compliant.

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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

Commented [NM15]: Who is this?

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 TO PURCHASE SERVICES (BP54-IT)

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.



AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

Commented [NM16]: What does this mean? What data are we talking about here under this section?  
Commented [LW17]: May be applicable if federal money is involved.

**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 the State Accessibility Policy and the Americans with Disabilities Act. All IT applications must comply with the Computer Application Program Accessibility Standard (Maine.gov/oit/accessiblesoftware). All IT

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

applications and contents delivered through web browsers must comply with the Website Standards (Maine.Gov/oit/webstandard) and the Website Accessibility Policy (Maine.Gov/oit/accessibleweb).

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

Commented [NM18]: There are 40 (multi-page) policies at this address.

Customer is aware of the Smart service. Please confirm the applicable policies to a SaaS service such as Smart.

Commented [NM19]: Confidentiality provisions must be mutual.

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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- 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. PRICE PROTECTION**

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

2. If Federal funding is used for the acquisition of products and/or services under this Agreement, interest cannot be paid under any installment purchase or lease-purchase agreement entered into as a part of this Agreement.

OR

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

**46. IRREVOCABLE LETTER OF CREDIT** In order to assure the Provider's faithful adherence to the terms and conditions of this Agreement, the Provider shall submit an irrevocable letter of credit, acceptable to the Department, that is payable on demand. This letter of credit will be procured at the expense of the Provider, naming the Department as the beneficiary, in the entire Agreement amount. In lieu of this requirement, the Department will accept a commitment letter from a recognized financial institution or investment fund stating that the Provider has sufficient capital to fund the obligations, and has legally committed such capital to fund the obligations, in accordance with this Agreement. The letter of credit, or the equivalent commitment letter, shall specifically refer to this Agreement, and shall bind the parties to all the terms and conditions of this Agreement. The Provider shall have fifteen (15) calendar days from the date of execution of this Agreement to

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

furnish the letter of credit or the equivalent commitment letter. Should the Provider fail to comply with this section, then the Department shall have the right to terminate this Agreement without liability.

OR

**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.

# State of Maine Waiver of Competitive Bidding Request Form

**Form Instructions:** Please provide the requested information in the white boxes below. This form is to precede all contract requests that are not the direct result of a competitive bid process.

<b>Requesting Department's Contract Administrator:</b>	Tonia Ennis	<b>Office/Division/Program of Contract Administrator:</b>	DAFS/OIT
<b>Est. Contract Amount:</b>	\$ 677,404	<b>Contract or RQS Number:</b>	18F
<b>Proposed Start Date:</b>	5/13/19	<b>Proposed End Date:</b>	5/14/20
<b>Vendor/Provider Name, City, State</b>	Kainos WorkSmart, 4 <sup>th</sup> floor, 470 Atlantic Avenue, Boston, MA 02210		
<b>Short Description of Good or Service:</b>	Sole source need for a SaaS Test Automation Product and implementation services for the Workday Maine project.		
<b>Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Procurement Services website for a period of seven consecutive calendar days.</b>		<b>To be completed by the Division of Procurement Services</b> Posting dates on Division of <i>Procurement Services</i> website: From: <u>05/30/2019</u> To: <u>06/05/2019</u>	
<b>Notice of Intent to Waive Competitive Bidding Number:</b>		NOI# 0520190777	
<b>1. Statutory Justification</b>			
State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification which applies to this specific request.			
<input type="checkbox"/>	A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;		
<input type="checkbox"/>	B. The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services;		
	<i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the Governor's "designee") sign and date on the right.</i>	<i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i> <b>Signature:</b>	
		<b>Printed Name:</b>	<b>Date:</b>
<input checked="" type="checkbox"/>	C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;		
<input type="checkbox"/>	D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;		
<input type="checkbox"/>	E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs;		
	<i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Procurement Services "GOVCOOP" form, found here: <a href="http://www.maine.gov/purchases/info/forms/govcoop.doc">http://www.maine.gov/purchases/info/forms/govcoop.doc</a>.</i>		
<input type="checkbox"/>	F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids;		
<input type="checkbox"/>	G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.		
<input type="checkbox"/>	If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:		

# State of Maine Waiver of Competitive Bidding Request Form

Please note that the following four points below (#2 through 5) all require a response.

## 2. Description of Specific Need

Please identify, and fully describe, the specific problem, requirement, or need the resulting non- competitive contract would address and which makes the goods or services necessary. Explain how the requesting Department determined that the goods or services are critical and/or essential to agency responsibilities or operations.

The state of Maine is implementing Workday for the state's HRMS system. Workday is a SaaS solution that is automatically upgraded every six months and patched weekly. Each upgrade requires testing of all business processes that are configured in the system, for as long as the tool is in production. The implementation project requires services of an automated testing solution for end to end testing. Testing is required as part of each remaining phase of the project (Configure & Prototype, Test and Deploy).

The State of Maine requires an automated testing tool to be implemented for:

- End-to end testing prior to implementation
- All production upgrades and weekly patching
- All business process workflows

This tool must:

- Be updated and tested to work with new Workday releases prior to the release of Workday upgrades to the public
- Have an automation testing framework that is 100% maintained and updated by software provider

The software provider must be a certified Workday Select Partner.

The software must be implemented by July 15, 2019 and be ready for end to end testing.

Test cases must be written and coded by vendor for testing of HCM, payroll, security, configuration and reports/integrations.

Vendor must have certified Workday consultants providing implementation services.

Kainos WorkSmart offers both project implementation testing services as well as production testing. Kainos is the only Workday Select Partner. This certification level allows Kainos to have direct access to the Workday QA environments and Workday developers, enabling Kainos to test and update Smart to work with the latest versions of Workday, before Workday releases them to their customers. This allows Kainos to ensure Smart is always up-to-date with all versions of Workday.

It is critical this agreement is in place prior to June 1<sup>st</sup> to ensure the testing can be completed within the project plan timelines. Otherwise any delays will significantly delay the Workday project. The automation tool reduces testing time and effort both during the project implementation and throughout production.

## 3. Availability of other Public Resources

Please explain how the requesting Department concluded that sufficient staffing, resources, or expertise is not available within the State of Maine's government, or other governmental entities (local, other state, or federal agencies) external to the requesting Department, which would be able to address the identified need more efficiently and effectively than the identified vendor.

The state of Maine lacks the specialized skillset needed to complete this assignment. In addition, this work requires an automation tool that the state does not currently own. The use of an automation tool will reduce manual testing effort by 90%.

# State of Maine Waiver of Competitive Bidding Request Form

## 4. Cost

Since a waiver of competitive bidding is being requested for this procurement, please explain how the requesting Department concluded the negotiated costs, fees, or rates are **fair and reasonable**.

The automation testing implementation onboarding and advisory cost is \$157,654.  
The Gold three-year total subscription cost is \$519,750 (annual subscription cost is \$173,250).  
Total is \$677,404

In comparison, several other automation testing tools were priced ranging from \$6,500-\$12,000 per license. The project team would require a minimum of nine licenses totaling, \$58,500-\$108,000. Additionally, the services of managing the automation framework and test case management would require a minimum of two technical staff totaling approximately \$395,200. For us to implement a service comparable to the Kainos Gold Services subscription, we estimate that we would pay a minimum of \$453,700 per year, or \$1.36 million over three years.

## 5. Future Competition

Please describe potential opportunities which may be available to foster competition for these goods or services in the future.

Department does not anticipate the needs for any additional agreements, but if so will issue a competitive procurement for services.

**Please note that only one of the two points below ("Uniqueness" or "Timeframe") requires a response. Requesting Departments are not required to respond to both points.**

## 6. Uniqueness

Please explain if the goods or services required are unique to a specific vendor. Describe the unique qualifications, abilities, and/or expertise of the vendor and how those particular unique factors address the specific need identified above. If the vendor has unique equipment, facilities, or proprietary data, also explain the necessity of these particular unique assets.

Kainos is uniquely qualified to provide the state of Maine a testing automation tool.

- Kainos Smart is the only Workday specific testing solution
- Kainos has a unique partnership with Workday that gives access to the Workday QA environments, enabling Kainos to test and update Smart to work with the latest versions of Workday, before Workday releases them to their customers. This allows Kainos to ensure Smart is always up-to-date with all versions of Workday
- The Smart automation framework is 100% maintained by Kainos to be in line with Workday, there is no effort required by the state of Maine when Workday pushes their weekly changes. (Workday does not offer support for third party automation tools so this maintenance by Kainos to be in line with Workday eliminates significant maintenance by the state of Maine required with tools that do not offer this maintenance within their solution.)
- They are the only Workday Select Partner for automation testing.
- Kainos implementers are Workday certified consultants.
- They have 1000s of configuration tests, Workday screenshots of test failures, security testing, sequenced BP testing, posting rules testing, and detailed audit evidence.
- The Kainos Smart Gold Service includes a weekly Triage report on any issues found, created by Kainos Workday Certified experts.



# State of Maine Waiver of Competitive Bidding Request Form

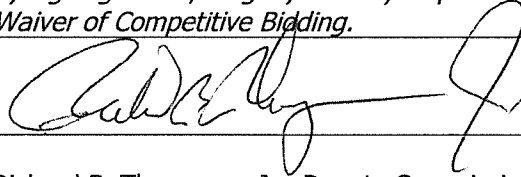
## 7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)

Please explain if time is of the essence and an emergency exists which requires the immediate procurement of goods or services. Describe the nature of this emergency, provide the date by which the goods or services must be delivered, and explain how that date was determined and its significance (i.e. impact if delayed beyond this date). Also, provide information as to how it was determined this vendor is the best option to address this time-sensitive procurement.

Not applicable

**Signature of requesting  
Department's Commissioner  
or Chief Executive  
(or designee within the  
Commissioner's Office):**

*By signing below, I signify that my Department requests, and I approve of, this  
Waiver of Competitive Bidding.*



**Printed Name:**

Richard B. Thompson, Jr., Deputy Commissioner of Operations

**Date:**

5/28/19

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

THIS AGREEMENT, made this 12th day of June, 2019, is by and between the State of Maine, Department of Administrative and Financial Services, hereinafter called "Department," and Kainos Worksmart Inc., located at WeWork Tower Place, 3340 Peachtree Road, Atlanta, Georgia, 30326, USA, hereinafter called "Provider", for the period of July 1<sup>st</sup>, 2019 to June 30<sup>th</sup>, 2022.

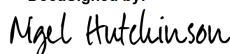
The AdvantageME Vendor/Customer number of the Provider is VC0000235259

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: **Kainos Worksmart Inc.**

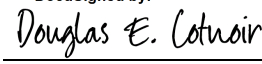
DocuSigned by:  
 By:   
 Nigel Hutchinson, VP North America, Provider Representative  
 Date: 6/13/2019

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

DocuSigned by:  
 By:   
 Frederick Brittain, Chief Information Officer  
 Date: 6/11/2019

And

**Department of Administrative and Financial Services**

DocuSigned by:  
 By:   
 Douglas Cotnoir, State Controller  
 Date: 6/12/2019

**Total Agreement Amount \$677,407**

The approval and encumbrance of this Agreement by the Chair of the State Procurement Review Committee and the State Controller is evidenced only by a stamp affixed to this page or by a Case Details Page from the Division of Procurement Services.

## AGREEMENT TO PURCHASE SERVICES (BP54-IT)

**RIDER A**  
**SPECIFICATIONS OF WORK TO BE PERFORMED**

## Kainos Smart services ("Smart Service" or "Service")

Customer Details	
Customer Name	State of Maine
Registered Office Address	State House Station, Augusta, USA, ME 04333
Customer Contact, Number & Email	Tonia Ennis, +1 (207) 212-5365, <a href="mailto:Tonia.Ennis@maine.gov">Tonia.Ennis@maine.gov</a>
Invoice Contact, Number & Email	Tonia Ennis, +1 (207) 212-5365, <a href="mailto:Tonia.Ennis@maine.gov">Tonia.Ennis@maine.gov</a>
Purchase Order Number	SO011769
Hosting Platform Location	USA

Kainos Details	
Kainos Name	Kainos WorkSmart Inc.
Registered Office Address	WeWork Tower Place, 3340 Peachtree Road, Atlanta, Georgia, 30326, USA
Kainos Contact, Number & Email	Chris Murray, +1(805) 284-2635, <a href="mailto:c.murray@kainos.com">c.murray@kainos.com</a>
Kimble Code	SO011769 v1.0

Subscription Term						
Effective Date (start date)	Day	01	Month	07	Year	2019
End Date	Day	30	Month	06	Year	2022

Modules included in the Subscription Service (Select applicable Module(s))	
Smart HCM Business Process & Integrations Module	<input checked="" type="checkbox"/>
Smart Financials Business Process & Integrations Module	<input type="checkbox"/>
Smart Security Module	<input checked="" type="checkbox"/>
Smart Payroll Module	<input checked="" type="checkbox"/>

Charging Bands (Select applicable Charging Band)		
Staff Number	Subscription Service Charge (annual)	Select
10,001 – 15,000	\$173,250	<input checked="" type="checkbox"/>
15,001 – 20,000	\$231,000	<input type="checkbox"/>
20,001 – 25,000	\$264,000	<input type="checkbox"/>

Summary of Charges			
Services	Invoiced	Duration	Total Charges
<a href="#">Gold (FSE) more than 4K</a> Subscription Service	\$173,250 annually in advance	3 years	\$519,750
On boarding Implementation detailed below;	Total of \$157,654 on the following milestones: <ul style="list-style-type: none"> <li>• 25% (\$39,413.50) - Planning and Discovery Complete</li> <li>• 25% (\$39,413.50) - End to End Testing Complete</li> <li>• 50% (\$78,827.00) - Go-Live</li> <li>• Backstop for payments on January 31st 2020</li> </ul>	Fixed Price	\$157,654
<b>Total</b>			<b>\$677,404</b>

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

The Effective Date, for the purposes of the Smart Services, will be the date of the last signature of this Agreement. This is to allow Customer to use the Smart Services under this Agreement free of charge for a period from the date of last signature until June 30th, 2019 whilst remaining subject to the terms of the Kainos Smart MSA set out in Rider A. For clarity, in respect of the Charges payable under this Agreement, invoicing will begin from July 1<sup>st</sup>, 2019 annually in advance in respect of the Subscription Service, and on the milestones set out in the Summary of Charges in respect of the On boarding Implementation services.

## AGREEMENT TO PURCHASE SERVICES (BP54-IT)

### On boarding Implementation Customers

On boarding overview:

Smart On boarding includes remote Smart Product Specialist time and expertise to define, build and customize Smart Core Test Pack/s in line with Customers Workday configuration. This includes:

1. Setup the Smart Tenant and connection to Customer's Workday tenant;
2. Defining, building and customizing Smart Core Test Pack(s) in line with Customers Workday configuration;
3. Assisting Customer with executing Smart Core Test Pack/s during On boarding;
4. Key Meetings as per Smart Engagement Process below;
5. Training Customers on how to execute, maintain and expand Smart Core Test Pack(s) post Smart go-live.

On boarding duration will be aligned with the customer's Workday deployment plan, subject to fulfilment of the Customer Obligations below.

Note: targeted Workday tenants and duration will be dependent on which Smart Modules Customer has purchased.

Test Pack(s):

The number of unique test scenarios included in the Test Packs will be dependent on which Smart modules Customer has contracted and will vary depending on Customers Workday configuration and priorities.

Once Kainos receives access to Customer's Workday tenant a Smart Product Specialist will define the scope of the Test Packs on Customers behalf.

Test Pack scope is defined based on Kainos best practice in line with the Workday recommended testing methodology and has been matured and refined based on over 100 customer deployments including directly with Workday on Workday.

1. Smart HCM contracted - HCM Test Pack scope:
  - a) Contains unique business process tests to validate configuration conditions
  - b) Worker lifecycle tests which will mirror the hire through to terminate steps
  - c) Eligibility tests for Compensation, Absence and Benefits eligibility rules - 1 positive and 1 negative test for each eligibility rule
  - d) Data staging scenarios for outbound integrations (assumed 50 scenarios for Payroll integrations and 15 for other worker integrations)
  - e) Packs will be consolidated at the end of the implementation phase for use in regression

HCM Test Case Summary		
Test Description	No of Tests	Tenant Targeted
HCM - Business Process	50	Configuration Review
HCM - Worker Lifecycles	20	Test (E2E)
HCM - Comp Eligibility	200	Configuration Review
HCM - Absence Eligibility	200	Configuration Review
HCM - Benefits Eligibility	200	Configuration Review
HCM - Payroll Integration Data Staging	0	Test (E2E)
HCM - Integration Data Staging	225	Test (E2E)
HCM - Integrations Integrity Test	5	Test (E2E)
HCM - Reports Integrity Test	10	Test (E2E)
HCM - Recruiting	50	Configuration Review
Total	960	

2. Smart Payroll contracted - Payroll Core Test Pack scope:
  - a) Unit test packs will be created by the customer and Kainos will deliver training to end user for creation of unit test scenarios
  - b) End to End test packs contain 25 worker flows for complex countries (with up to 10 transactions per flow) with 15 worker flow unique test cases designed for automating and simulating common payroll transactions; these End to End test packs will be available as post go-live regression packs.

Note: Unit test packs will be built in the Config Tenant, End to End tests will be built in the Test tenant, and Parallel tests in the Parallel tenant.

- c) Parallel activity will be a handover/training session for each of the given parallel runs to ensure that the parallel comparison tool can be built by the customer with legacy payroll results imported.

## AGREEMENT TO PURCHASE SERVICES (BP54-IT)

Payroll Test Case Summary		
Test Description	No of Tests	Tenant Targeted
Payroll - Unit Test	1	Configuration Review
Payroll - End to End	250	Test (E2E)
Payroll - Parallel	1	Parallel
Total	252	

3. Smart Security contracted – Security Core Test Pack scope:
- a) Contains Security Tests across the functional modules in scope:
    - i. User based security groups
    - ii. Role based security groups
    - iii. Custom and intersection security groups

Tests targeted at both user-based and role-based security groups will be built in either the Config or Test tenant (as directed by Customer). Tests targeting key workers will be built in Customer's Sandbox tenant post Workday go live.

- b) Customer may substitute role/user-based security groups for other supported types of Workday security groups (e.g. intersection, aggregation, location based etc.) however such substitutions may not be offered on a 1:1 basis due to varying effort between types of security groups.

Security Test Case Summary		
Test Description	No of Tests	Tenant Targeted
HCM Security - Single Security Group	1150	Configuration Review
HCM Security - Intersection Single Security Group	230	Configuration Review
HCM Security - Key Worker	575	Production Sandbox
Total	1955	

**Training:**

Training is primarily intended for Customers internal Workday administration team or HRIS team and requires an audience who are knowledgeable in both Workday and Customers Workday implementation. The purpose of the training is to teach users how to use Smart, execute, maintain and expand Core Test Pack(s).

**Training structure:**

1. Structured live training sessions tailored to Customer's Smart Core Test Pack(s).
2. Broken into separate digestible sessions intended to focus on:
  - a) Smart provisioning and general navigation.
  - b) Per Smart module overview and Core Test Pack execution training.
  - c) Extracting reports, Test case maintenance and creation.

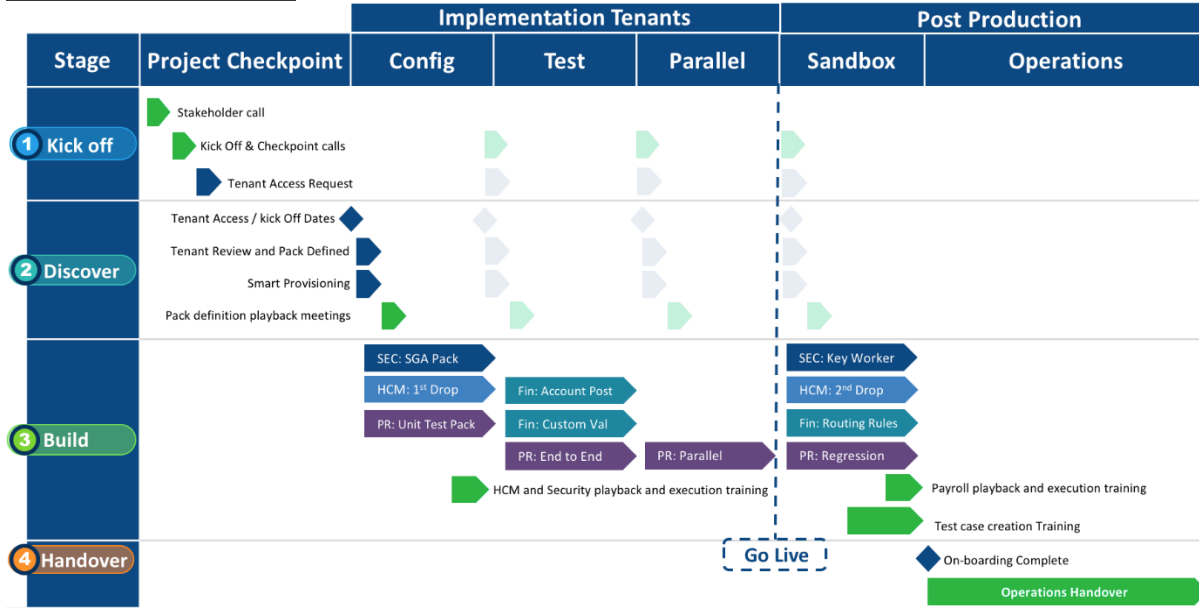
**Customer Obligations:**

Kainos targets completing the build of the Core Test Pack(s) within 4-weeks (per tenant) from Kainos receiving Workday Implementer Access to Customers relevant Workday tenant (or a later date as agreed with the Customer). However, as each deployment of Smart is individually configured to test a unique and Customer specific configuration of Workday, success is dependent on Customers active participation during each stage of On boarding. As such Customer must adhere to the following Customer Obligations:

1. Provide Kainos with Workday Implementer Access to Customers relevant Workday tenant in a timely manner.
2. Adhere to the agreed project plan, time lines and methodologies as per the Kainos Smart Engagement Process detailed below.
3. Ensure the appropriate Customer staff attend and participate in the Key Meetings and activities outlined in the Smart Engagement Process.
4. Attend and actively participate during Core Test Pack definition playback meetings, training and during the Operations Handover phase.
5. Attend Smart training and handover sessions.

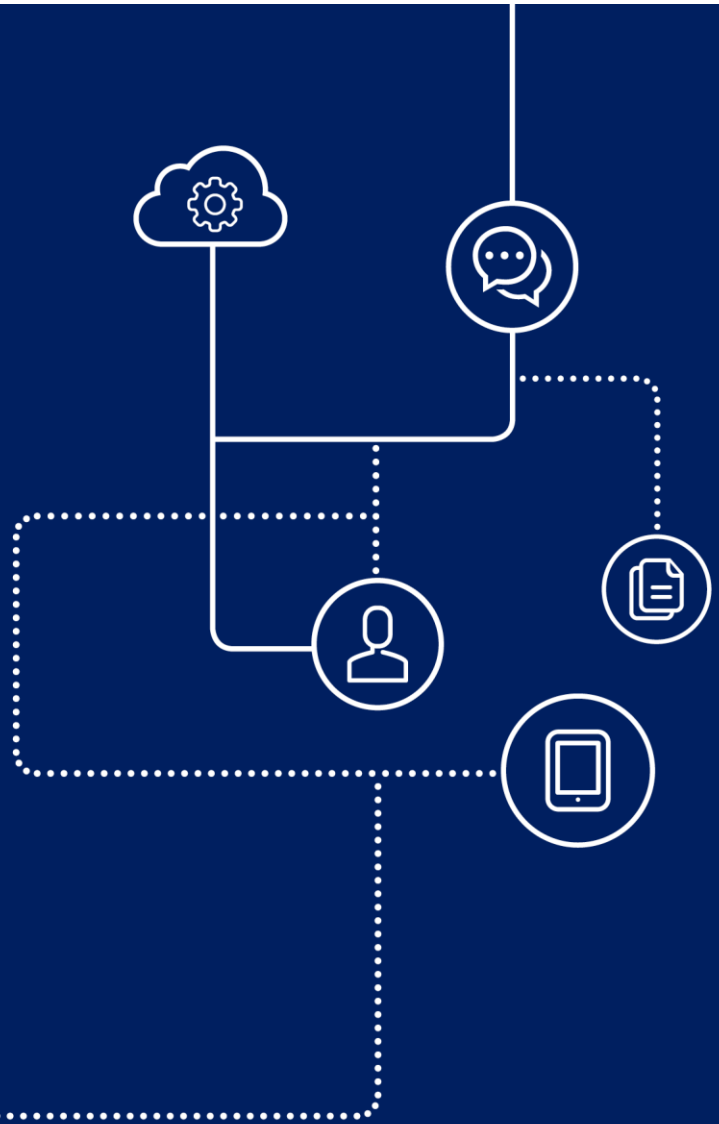
AGREEMENT TO PURCHASE SERVICES (BP54-IT)

**Smart Engagement Process:**



**Key Meetings**

Task	Customer Participation	Purpose
Stakeholder call	1 Hour	<b>Target Audience:</b> Kainos and Customer stakeholder(s) <b>Purpose:</b> Communicate Smart On boarding goals and mutual expectations.
Kick off call	1 – 1.5 hours	<b>Target Audience:</b> Customer project team. <b>Purpose:</b> Introduce project teams and communicate Smart On boarding process to project team.
Pack definition playback	1 hour (per pack)	<b>Target Audience:</b> Smart Users / Customers Workday Subject Matter Experts (“SMEs”) <b>Purpose:</b> To communicate to Customer definition of Core Test Pack(s).
Live remote training (session 1)	1 hours	<b>Target Audience:</b> Smart users / Customers Workday SMEs <b>Purpose:</b> Kainos to train Customers users in Smart navigation and general functionality.
Pack build playbacks	1 – 2 hours (per pack)	<b>Target Audience:</b> Smart Users / Customer’s Workday SMEs <b>Purpose:</b> To communicate to Customer what Kainos has built within their Core Test Pack(s) and train Customer to execute Core Test Pack(s), review and extract results.
Stakeholder check-in	30 mins (typically, twice)	<b>Target Audience:</b> Kainos and Customer stakeholder(s) <b>Purpose:</b> Stakeholder checkpoint and follow-up on agreeing longer term success criteria.
Live remote training (session 2)	3.5 hours	<b>Target Audience:</b> Smart users / Customer’s Workday SMEs <b>Part I - Purpose:</b> Teach Customer how to extract results and build reports from Smart. <b>Part II - Purpose:</b> Kainos to train Customers users in test case maintenance, creation and troubleshooting.  <b>Note:</b> Part II is optional for Platinum Service Customers.
Operations handover period	1 - 4 hours (Two separate meetings over a two-week period).	<b>Target Audience:</b> Smart users / Customer’s Workday SMEs <b>Purpose:</b> Phased handover from Smart On boarding to Support and to give Customers users a chance to raise any questions post-handover.



# Kainos

# Smart MSA



## KAINOS | SMART MSA

The Kainos Smart Master Subscription Agreement (**MSA**) is entered into on (and is effective from) the Effective Date set out in the Order Form, by and between the Kainos WorkSmart entity (**Kainos**) and the Customer entity (**Customer**) set out in the Order Form, each a **Party**, together the **Parties**. The Parties agree as follows:

**1. DEFINITIONS & INTERPRETATION**

1.1 The definitions set out in Exhibit 1 shall apply.

**2. SERVICE**

2.1 Provision of Service. Kainos shall make the Service available to the Customer, and the Authorised Persons in accordance with the Smart SLA, for the Subscription Term, solely for Customer's and the Customer Affiliate's own internal business purposes, subject to the Agreement, including the scope of use defined in the applicable Order Form, the SLA, the Data Processing Exhibit, and the Security Exhibit. Entering into the Agreement is not contingent on the delivery of any future functionality or features or any oral or written comments made by Kainos with respect to the Service.

2.2 Platform. Customer Data will reside at the Hosting Platform Location set out in the Order Form which will not be changed without the Customer's express written consent.

2.3 Staff Numbers & Growth. As of the Effective Date, the Staff Number set out in the Order Form will align with the number of Staff which the Customer has subscribed to under its agreement with Workday. The Staff Number is used to determine the applicable Charging Band. The Parties will review the Staff Number annually. If the Staff Number increases during the Subscription Term, bringing it outside of the applicable Charging Band, the additional Subscription Service Charge payable will be pro-rated and billed, from the date of the increase for the remainder of the Subscription Term.

2.4 Authorised Persons. Customer may permit Authorised Persons to use the Service. Customer is responsible for compliance by the Authorised Persons with the terms of the Agreement as if such Authorised Persons were the Customer. Customer shall identify Authorised Persons to Kainos and promptly notify Kainos of any change in an individual's Authorised Person status under the Agreement.

2.5 On boarding. Kainos will provide On boarding for the charge set out in the Order Form. The description of the On boarding will be referenced in the Order Form. The Order Form will specify which On boarding description is relevant to the Customer. On boarding will be carried out from Kainos' premises. Attendance at the Customer's site is by prior agreement and subject to the recharging of reasonable associated expenses, at cost.

2.6 Support. Upon completion of On boarding Kainos will provide Support for Smart the in accordance with the Smart SLA at Exhibit 3 for the duration of the Subscription Term. The charges for Support are included in the Subscription Service Charge.

2.7 Gold & Platinum Subscription Services. The Customer has the option to contract either the Gold or Platinum Subscription Service and On boarding. The applicable services descriptions will be referenced in the Order Form.

2.8 Additional Modules or services. The Customer has the option to contract additional Smart Modules or services during the Subscription Term by signing an additional Smart Order Form setting out the applicable charges and services descriptions. Upon signature the additional Modules and/or services will be deemed contracted under this MSA.

**3. USE OF THE SERVICE**

3.1 Kainos Responsibilities. In addition to its confidentiality obligations under the Agreement, Kainos shall: (i) not use, modify or disclose the Customer Data to anyone other than Authorised Persons; (ii) to the extent the Customer Data comprises Personal Data and in respect of which Kainos is acting as data processor only: (a) process the Customer Data in accordance with the Agreement; the Customer's written instructions; and the applicable Data Protection Laws; (b) take appropriate technical, organisational and security measures against unauthorised access to or unauthorised alteration, disclosure, destruction or loss of Customer Data; (c) to reasonably ensure that any Kainos

personnel involved in providing the Service are trained to comply with such technical, organisational and security measures; (d) notify the Customer if any data breach, loss of data, cyber-attack and of any complaint, allegation or request is made relating to the processing of Customer Data as soon as reasonably possible; (iii) maintain availability of the Service in accordance with the Smart SLA at Exhibit 3; and (iv) reasonably ensure that any On boarding personnel are informed of and instructed to comply with all reasonable rules, regulations, orders and directions as advised by the Customer, in relation to the Customer's premises.

3.2 Customer Responsibilities. The Customer (i) is responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data and shall ensure that all instructions given by it to Kainos in respect of the Customer Data will be in compliance with applicable Data Protection Laws; (ii) shall arrange access to and shall provide and procure Kainos such facilities, if any, for the performance of On boarding as are reasonably necessary; (iii) shall take commercially reasonable efforts to prevent unauthorised access to, or use of, the Service, and notify Kainos promptly of any such unauthorised access or use; (iv) may not externally publish the results of any tests it conducts to monitor the availability, performance or functionality of the Service; and (v) shall comply with all applicable local, state, federal and foreign laws in respect of the Service, including without limitation all applicable Data Protection Laws. (vii) has sole responsibility for ensuring that the Customer Data, or Customer's use of the Service in violation of the Agreement, does not infringe the rights of, or has otherwise harmed a third party; (viii) shall ensure that Kainos is provided with any Customer information security policies applicable to the project; (ix) shall ensure that Kainos employees have access to the Customer's Smart Tenant and/or the Customer's Workday tenant for the shortest possible timeframe when required to carry out On boarding and access is immediately revoked when not required; (x) shall ensure that it provides access to the minimal amount of data required to fulfil the Service and On boarding and that no access is given to large volumes of data; (xi) shall ensure that, except for Customer Data, no other confidential, sensitive, or proprietary data, including Personal Data, of Customer or third parties is provided to or accessible by Kainos; (xii) shall limit access to Customer Data, both in terms of volume and duration, only to the extent necessary for Kainos to provide the Service; (xiii) shall ensure that its Smart and Workday tenants can only be accessed from trusted networks and devices; (xiv) shall ensure that unencrypted data is not given to Kainos; (xv) shall ensure that data is not sent via email; (xvi) shall not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than to Authorised Persons or as otherwise contemplated by the Agreement; (b) knowingly use the Service to send, process or store unlawful or tortious material; (c) knowingly use the Service to send or store Malicious Code; (d) knowingly interfere with or disrupt the integrity or performance of the Service or the data contained in it; (e) modify or make derivative works based upon the Service or the content; (f) create Internet 'links' to the Service or 'frame' or 'mirror' any content on any other server or wireless or Internet-based device; or (g) reverse engineer or access the Service in order to: (i) build a competitive product or service; (ii) build a product using similar ideas, features, functions or graphics of the Service; or (iii) copy any ideas, features, functions or graphics of the Service. In the event of Customer's failure to adhere to any of its responsibilities in this section 3.2, and as otherwise provided in the Agreement or as required to comply with law or other judicial or government order, Kainos may suspend the Service on notice to Customer.

3.3 A failure by either Party of its respective responsibilities in this section 3.2 shall constitute a material breach of the Agreement.

#### 4. DATA PROTECTION & SECURITY

4.1 Kainos shall maintain an information security program that complies with all applicable laws, is materially in accordance with applicable industry standards and the controls set forth in the Audit Reports and Security Exhibit, and is designed to protect the security, confidentiality and integrity of Customer Data. Kainos shall not materially diminish the protections provided by the controls set forth in the Security Exhibit 2 and Audit Reports. Upon Customer's request, Kainos will provide a copy of its most recent Audit Reports. Customer Data shall only be used to provide the Service, to prevent or address service or technical problems, in accordance with the Agreement and the Documentation, or Customer instructions. Personal Data will only be processed in accordance with the Data Processing Exhibit 4. Kainos designs its Service to allow Customers to configure user permissions to limit user access to test cases and results.

#### 5. CHARGES & PAYMENT

5.1 Charges. Save where the Customer terminates in accordance with the Agreement, the payment obligations are not cancellable and non-refundable. The Charges are payable for the Subscription Term, in the currency specified as set out in the Order Form. The Charging Band will not be varied downwards during the Subscription Term.

5.2 Invoicing & Payment. Charges for the Service will be invoiced annually in advance. If a Customer purchase order is required for invoicing and/or payment, the Customer will ensure it is raised and supplied to Kainos to facilitate the payment terms which are thirty (30) days net.

5.3 Suspension of Service. If Customer's account is sixty (60) days or more overdue (except with respect to Charges then under reasonable and good faith dispute), Kainos reserves the right to suspend the Service on reasonable prior notice to the Customer, without liability, until such overdue amounts are paid in full.

5.4 Taxes. Each Party shall be responsible for its own income taxes. Except as otherwise stated in an Order Form, Kainos' fees do not include any applicable direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, excise, sales/use or withholding taxes (collectively, **Taxes**). Customer is responsible for paying all Taxes associated with the Agreement. If Kainos has a legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Kainos with a valid tax exemption certificate authorised by the appropriate taxing authority. It is Kainos' intention to comply with all its collection responsibilities. Customer agrees to reimburse Kainos for any uncollected taxes which are the Customer's responsibility.

5.5 Insurance. Kainos will maintain, at its own expense, the types of insurance coverage specified below, on standard policy forms and with insurance companies with at least an A.M. Best Rating of A-VII authorised to do business in the jurisdictions where the Kainos services are to be performed. Upon Customer's written request, Kainos will provide a certificate of insurance evidencing the coverages specified below:

- (i) Workers' Compensation insurance prescribed by applicable local law and Employers Liability insurance with limits not less than \$1,000,000 per accident/per employee.
- (ii) Professional Indemnity insurance with an aggregate limit of no less than \$10,000,000 with an 'indemnity to principal' clause included in the policy.
- (iii) Cyber Liability insurance with a limit of no less than \$10,000,000 in the aggregate.

#### 6. PROPRIETARY RIGHTS

6.1 Reservation of Rights. Subject to the limited rights expressly granted under the Agreement, Kainos (and its licensors, where applicable) reserve all rights, title and interest in and to the Service, including all related Intellectual Property Rights. The Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, Kainos' technology or the Intellectual Property Rights owned by Kainos

or its licensors. The Kainos name, the Kainos logo and the product names associated with the Service are trademarks of Kainos or third parties and no right or license is granted to use them without prior written consent.

6.2 Customer Data. Customer and Authorised Persons (as applicable) exclusively own all rights, title and interest in and/or to all Customer Data. Customer Data is deemed Confidential Information under the Agreement. Customer consents to Kainos accessing the Customer's Smart Tenant and Customer Data to provide On boarding and comply with the Smart SLA. Nothing in the Agreement provides Kainos with any rights or license to use such Customer Data in any manner other than as specifically provided for in the Agreement.

6.3 Suggestions. Kainos may, free of charge and without restriction use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer, or Authorised Persons relating to the operation of the Service.

#### 7. CONFIDENTIALITY

7.1 Definition of Confidential Information. **Confidential Information** means all confidential information of a Party (**Disclosing Party**) disclosed to the other Party (**Receiving Party**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the pricing and contents of all Order Forms, the Customer's Personal Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) was independently developed by the Receiving Party; or (iv) is received from a third party, in each of (i) – (iii) above, without breach of any obligation owed to the Disclosing Party.

7.2 Confidentiality. The Receiving Party shall not use Confidential Information except within the scope of the Agreement and where necessary to provide or receive the Service and On boarding. Without limiting the foregoing, the Receiving Party shall limit access to such Confidential Information to its personnel only on a 'need-to-know' basis and shall not disclose, reveal or otherwise release any Confidential Information to any third party unless the Receiving Party has obtained the Disclosing Party's prior written consent. The Receiving Party shall not modify, destroy, or disclose any Confidential Information to any subcontractor or agent unless it has entered into a written agreement with the Receiving Party under which it is bound to the confidentiality provisions of the Agreement, to the same extent that the Receiving Party is bound. Upon termination of the Agreement, the Receiving Party shall either return, or provide written confirmation of the destruction of, all Confidential Information received or created pursuant to the Agreement.

7.3 Protection. Each Party agrees to protect the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own confidential information (but in no event using less than reasonable care). Kainos represents and warrants that it has implemented and will maintain during the Subscription Term appropriate technical, organisational and security measures and practices that are designed to: (i) ensure the security and confidentiality of the Customer Data; (ii) protect against anticipated threats or hazards to the security or integrity of the Customer Data; and (iii) protect against unauthorised access, use, modification, disclosure or destruction of the Customer Data.

7.4 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prompt prior notice (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. Neither Party shall make any negative publicity statements regarding the other Party.

7.5 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing

- Party in breach of the confidentiality protections in the Agreement, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief, it being specifically acknowledged by the Parties that any other available remedies may be inadequate.
- 7.6 IN ADDITION TO ANY OTHER EXCLUSIONS AND LIMITATIONS IN THE AGREEMENT, KAINOS SHALL NOT BE LIABLE FOR ANY CONFIDENTIAL INFORMATION OR PERSONAL DATA THAT IS PROVIDED TO KAINOS OR TO WHICH KAINOS IS GIVEN ACCESS THAT IS NOT CUSTOMER DATA OR OTHERWISE REQUIRED FOR KAINOS TO PROVIDE THE SERVICE UNDER THE AGREEMENT.
- 8. WARRANTIES & DISCLAIMERS**
- 8.1 Warranties. Each Party represents and warrants that: (i) it has the legal power to enter into the Agreement and it shall comply with all Laws applicable to it including, but not limited to, Laws related to data privacy, international communications and the transmission of technical or Personal Data. and that on entering into the Agreement and on an on-going basis for the duration of the Agreement: (ii) it (and its senior officers, directors, employees and sub-contractors) will not engage in any activity, practice or conduct which would constitute and offence under any applicable anti-corruption laws/anti-slavery laws; and (iii) it (and its senior officers, directors, employees and sub-contractors) has not been investigated, prosecuted or convicted of any offence under any applicable anti-corruption laws. Kainos represents and warrants that: (a) the functionality of the Service will not be materially decreased during a Subscription Term; (b) it shall perform the On boarding with reasonable skill and care.
- 8.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, KAINOS MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND DISCLAIMS ALL IMPLIED WARRANTIES, (INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 9. INDEMNIFICATION**
- 9.1 Intellectual Property Indemnification. Kainos shall defend Customer, at Kainos' expense, from claims, demands, suits, or proceedings made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes such third party's Intellectual Property Rights (IP Claims) and shall indemnify and hold Customer harmless against any loss, damage or costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, **IP Losses**); provided that Customer: (a) promptly gives written notice of the IP Claim to Kainos (a delay of notice will not relieve Kainos of its obligations under this section except to the extent that Kainos is prejudiced by such delay); (b) gives Kainos sole control of the defence and settlement of the IP Claim (Kainos may not settle any IP Claim unless it unconditionally releases Customer of all liability); and (c) provides to Kainos, at Kainos' cost, all reasonable assistance. Kainos shall have no liability for IP Claims or IP Losses to the extent arising from: (i) modification of the Service by anyone other than Kainos; (ii) use of the Service in a manner inconsistent with the Agreement or Documentation; or (iii) use of the Service in combination with any other product or service with the exception of Workday. If Customer is enjoined from using the Service or Kainos reasonably believes it will be enjoined, Kainos shall have the right, at its sole option, to obtain for Customer the right to continue use of the Service or to replace or modify the Service so that it is no longer infringing. If neither of the foregoing options is reasonably available to Kainos, then the Agreement may be terminated at either Party's option and Kainos' sole liability, in addition to these indemnification obligations, shall be to refund any prepaid fees for the Service that was to be provided after the effective date of termination.
- 9.2 Customer Data Indemnity. Subject to section 10.1 and the Enhanced Cap under 10.2, If Kainos materially breaches its obligation under the Agreement with respect to the protection and security of Customer Data that comprises Personal Data, as provided for in the Data Processing Exhibit, Kainos shall reimburse Customer for Customer's reasonable out-of-pocket costs and expenses actually paid to third parties (**Data Claims**) for: (i) Amounts paid to affected third parties as damages or settlements arising from such breach; (ii) fines and penalties imposed by governmental authority arising from such breach; and (iii) legal fees, including reasonable attorney's fees, to defend against third party claims arising from such breach (**Data Losses**); provided that Customer: (a) promptly gives written notice of the Data Claim to Kainos (a delay of notice will not relieve Kainos of its obligations under this section except to the extent that Kainos is prejudiced by such delay); (b) gives Kainos sole control of the defence and settlement of the Data Claim (Kainos may not settle any Data Claim unless it unconditionally releases Customer of all liability); and (c) provides to Kainos, at Kainos' cost, all reasonable assistance. Kainos shall have no liability for Data Claims or Data Losses to the extent arising from: (i) breach of Customer's Responsibilities in section 3.2; or (ii) use of the Service in a manner inconsistent with the Agreement or Documentation. Kainos shall not be liable for third party claims or damages except as expressly provided in this section 9.2.
- 10. LIMITATION OF LIABILITY**
- 10.1 EXCEPT WITH RESPECT TO DAMAGES CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KAINOS' IP INDEMNIFICATION OBLIGATIONS IN SECTION 9.1, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES' TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE FEES PAID AND/OR PAYABLE UNDER THE AGREEMENT DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD FOR THE SERVICE FROM WHICH THE CLAIM AROSE (**GENERAL CAP**), EXCEPT THAT FOR BREACH OF EITHER PARTY'S CONFIDENTIALITY, SECURITY, OR PRIVACY OBLIGATIONS, SUCH PARTY'S TOTAL AGGREGATE LIABILITY SHALL BE INCREASED TO TWENTY-FOUR (24) MONTHS FEES (**ENHANCED CAP**).
- 10.2 EXCLUSION OF DAMAGES. EXCEPT FOR KAINOS' IP INDEMNIFICATION OBLIGATIONS IN SECTION 9, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES HAVE LIABILITY FOR LOST PROFITS OR REVENUES, LOSS OF USE OR DATA, BUSINESS INTERRUPTION, REPUTATIONAL HARM, OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR COVER DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSIONS IN THIS SECTION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW, AND MAY BE MODIFIED TO THE EXTENT NECESSARY TO ENFORCE THE TERMS OF THIS SECTION. CUSTOMER'S PAYMENT OBLIGATIONS SHALL NOT BE CONSIDERED KAINOS' LOST PROFITS.
- 10.3 The terms of section 10 have been negotiated by the Parties at arm's length, and the Parties agree that section 10 provides for a reasonable allocation of their respective risk of loss.
- 11. TERM & TERMINATION**
- 11.1 Term of Agreement. The Agreement will become operational on the Effective Date and will endure for the Subscription Term set out in the Order Form unless otherwise validly terminated or renewed in accordance with the Agreement. The Customer's right to avail of the Service shall cease on termination of the Agreement.
- 11.2 Termination for Cause. A Party may terminate the Agreement for cause: (i) upon thirty (30) days written notice of a material breach to the other Party which remains uncured at the end of such period; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors or any event analogous to the foregoing occurs in relation to that other Party in any jurisdiction. On termination for cause by Customer, Kainos shall refund unused prepaid Subscription Service Charge(s) for the remainder of the Subscription Term.
- 11.3 Retrieval of Customer Data. Upon Customer's written request made prior to expiration or termination of the Agreement, Kainos

- will give Customer limited access to the Service for a period of up to sixty (60) days, at no additional cost, solely for purposes of retrieving Customer Data and will continue to protect the Customer Data during this period. The instructions for doing so are set out in the Documentation. Subject to such sixty (60) day period and Kainos' legal obligations, Kainos has no obligation to maintain or provide any Customer Data and shall, unless legally prohibited, delete Customer Data; provided, however, that Kainos will not be required to remove copies of the Customer Data from its backup media and servers until such time as the backup copies are scheduled to be deleted. For clarity, during the Term, Customer may extract Customer Data using Smart standard web service as described in the Documentation.
- 11.4 **Transition Period Before Final Termination.** If the Agreement is terminated and Customer submits a written request to Kainos for a onetime transition period within thirty (30) days of such termination, Kainos will continue to provide the Service for up to three (3) months after the End Date (the **Transition Period**). Monthly fees for the Transition Period will be 1/12 of the immediately preceding twelve-month period plus five percent (5%). If Customer requests transition assistance during the Transition Period, Kainos will provide consulting cooperation and assistance regarding the Service as set out in a consultancy services order form at Kainos' then current rates for consulting services unless a different rate is mutually agreed upon by the Parties. Notwithstanding the foregoing, if Kainos is enjoined from performing, or termination of the Agreement was due to Customer's breach, Kainos has no obligation to perform under this section unless it receives (i) payment of all charges not subject to reasonable and good faith dispute, (ii) prepayment of charges for further services, and (iii) certification of ongoing compliance with the terms of the Agreement during the Transition Period.
- 12. GENERAL PROVISIONS**
- 12.1 **Relationship of the Parties.** The Parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- 12.2 **No Third Party Beneficiaries.** Only Parties to the Agreement are intended to benefit by its terms.
- 12.3 **Force Majeure.** Neither Party shall be liable to the other for any delay or failure to perform arising from a force majeure event.
- 12.4 **Notices.** Where there is any requirement for either Party to serve notice, such notice shall be sent by either Party to their respective Contact at their principal place of business set out in the Order Form.
- 12.5 **Dispute Resolution.** Any dispute arising out of or in connection with the Service will in the first instance be referred to:
- (i) the Kainos Contact and the Customer Contact for discussion and resolution within seven (7) working days of the dispute being referred (or such other date as is mutually agreed). If the dispute is not resolved within the agreed timeframe, then the dispute will be referred to ii. below;
  - (ii) the Head of On boarding, who will schedule a meeting with the Customer representative within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute. If the dispute is not resolved within the agreed timeframe, then the dispute will be referred to iii. below;
  - (iii) the Head of Kainos WorkSmart who will schedule a meeting with the Customer representative within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute.
- 12.6 **Waiver & Cumulative Remedies.** No failure or delay by either Party in exercising any right under the Agreement shall constitute a waiver of that right. Other than as expressly stated in the Agreement, the remedies provided are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
- 12.7 **Severability.** If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in effect.
- 12.8 **Assignment.** Neither Party may assign any of its rights or obligations under the Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, either Party may assign the Agreement in its entirety (including all Order Forms), without consent of the other Party, in connection with a merger, acquisition, corporate reorganisation, or asset sale not involving a direct competitor of the other Party.
- 12.9 **Governing Law.** Where the Customer's Hosting Platform Location is in the USA the Agreement shall be governed exclusively by and construed exclusively in accordance with the laws of Maine without consideration as to its conflicts of laws rules and the state and federal courts of Maine shall have exclusive jurisdiction to adjudicate any disputes, actions, claims or causes of action arising out of or in connection with the Agreement. Where the Customer's Hosting Platform Location is in the EEA the Agreement shall be governed by and construed in accordance with the laws of England and the courts of England shall have exclusive jurisdiction to adjudicate any disputes, actions, claims or causes of action arising out of or in connection with the Agreement. Each Party hereby consents to the jurisdiction of the applicable court and waives any objection to venue.
- 12.10 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, variation, amendment or waiver of any provision of the Agreement shall be effective unless in writing and signed by both Parties. Terms or conditions stated in a Customer purchase order, invoices, Customer business forms or in any other Customer order documentation (excluding Smart Order Forms) shall not be incorporated into or form any part of the Agreement, and all such terms or conditions shall be null and void. Nothing in the Agreement will operate to vary or invalidate any other contracts in existence between the Parties which will operate independently of the Agreement under the terms and conditions agreed.
- 12.11 **Order of Precedence.** In the event of any conflict between the MSA and the terms of any such Order Form, the provisions of the relevant Order Form shall prevail.
- 12.12 **Further Assurance.** Each Party shall do and execute or arrange and procure for the doing and executing of any act and/or document reasonably requested of it by the other Party to implement and give full effect to the terms of the Agreement.
- 12.13 **Affiliates.** The Agreement makes reference throughout to Affiliates and Authorised Persons and such Affiliates/Authorised Persons are entitled to avail of the Service. It is acknowledged that Kainos is contractually bound to the Customer and that all limitations of liability set out in the Agreement constitute an aggregate cap for the Agreement (and for all parties in receipt of Service and/or On boarding or with access to the Service under it) and not a 'per Affiliate' or 'per Authorised Person' limitation.
- 12.14 **Surviving Provisions.** The following provisions shall survive any termination or expiration of the Agreement: Sections 4 to 11 inclusive and Exhibit 1 and 4.

## EXHIBIT 1 | DEFINITIONS

Affiliate	means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. <b>Control</b> , for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity or an equivalent ownership interest.
Agreement	means the Kainos Smart Master Subscription Agreement including exhibits 1, 2, 3, and 4 and any other exhibits or appendices and any executed Order Form(s).
Audit Reports	means the most recently completed SOC2 and ISO27001 certificate or comparable industry-standard successor report prepared by Kainos' independent third party auditor.
Authorised Person(s)	means Staff, Affiliates (and Staff of Affiliates) and third parties authorised by the Customer to access the Service.
Charges	means all charges payable by the Customer for the Service and On boarding under the Agreement to include without limitation, charges for On boarding, calculated at the Hourly Rate and the Subscription Service Charges payable for the Service.
Charging Bands	means the bands set out in the Order Form which are used to determine the applicable Service Charge associated with the Full Service Equivalent ( <b>FSE</b> ) Number.
Customer Data	means all electronic data or information submitted by Customer or Authorised Persons to the Service or retrieved from the Customer's Workday tenant by Smart.
Data Processing Exhibit or DPE	means that exhibit located at Exhibit 4 which is hereby incorporated by reference into the Agreement.
Data Protection Laws	means all applicable US state, US federal and international legislation on the protection of data subjects with regard to the processing of Personal Data and on the free movement of such data, including those implementing the EU Data Protection Directive 95/46/EC and the General Data Protection Regulation 2018 ( <b>GDPR</b> ) and/or other data protection or privacy legislation in force from time to time.
Documentation	means Kainos Smart's electronic user guide for the Service, which may be updated by Kainos from time to time and accessible via the following link <a href="http://help.kainossmart.com/m/userguide">http://help.kainossmart.com/m/userguide</a> .
Effective Date	means the date from which the Service or On boarding, or both, as the context requires, will be made available to the Customer as set out in the Order Form.
Hosting Platform Location	means the location of the hosting platform as set out in the Order Form which is EITHER the United States of America or the EEA.
Intellectual Property Rights or IP	means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honoured or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.
Law	means any local, state, national and/or foreign law, treaties, and/or regulations applicable to the respective Party.
Malicious Code	means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
On boarding	means the activities to implement the Service, as described in section 2.5.
Order Form	means the document by which the Customer contracts the Service.
Personal Data	has the definition set forth in the Data Processing Exhibit.
Service Hours	means the hours worked by Kainos in provision of On boarding Monday to Friday between 08:00 and 18:00 subject to the public holidays where the On boarding is performed.
Service	means the Subscription Services.
Smart	means the Kainos software as a service ( <b>SaaS</b> ) application known as Smart, a cloud-based, automated testing product for Workday implementations. The functionality provided in Smart is based on the Modules subscribed to under an Order Form, and the associated support provided under the Smart SLA.
Smart SLA	means the service level availability applicable to the Service at Exhibit 3.
Staff	means employees, consultants, workers, independent contractors, contingent workers, seasonal staff and retirees of the Customer and its Affiliates whose business records may be tested by the Service as more particularly described in section 2.3 and as detailed in the Order Form.

Subscription Service	means the Smart SaaS subscribed to by a Customer under an Order Form and provided by Kainos.
Subscription Service Charge	means the annual charge for the provision of the Service, invoiced annually in advance for each year of the Subscription Term, calculated by reference to the Charging Bands.
Subscription Term	means the period starting on the Effective Date and ending on the End Date, as set out in the relevant Order Form.
Support	means technical assistance with incidents logged in respect of Service as more particularly detailed in Exhibit 3 Smart SLA.
Tenant	means a unique instance of the Service with a separate set of data held by Kainos in a logically separated database (i.e. a database segregated through password-controlled access).
Workday	means the on-demand financial management and human capital management SaaS supplied by Workday Inc.

## EXHIBIT 2 | SECURITY

Kainos maintains a comprehensive, written information security program that contains administrative, technical, and physical safeguards that are appropriate to (a) the size, scope and type of Kainos' business; (b) the amount of resources available to Kainos; (c) the type of information that Kainos will store; and (d) the need for security and confidentiality of such information.

Kainos' security program is designed to:

- Protect the confidentiality, integrity, and availability of Customer Data in Kainos' possession or control or to which Kainos has access;
- Protect against any anticipated threats or hazards to the confidentiality, integrity, and availability of Customer Data;
- Protect against unauthorised or unlawful access, use, disclosure, alteration, or destruction of Customer Data;
- Protect against accidental loss or destruction of, or damage to, Customer Data; and
- Safeguard information as set forth in any local, state or federal regulations by which Kainos may be regulated.

Without limiting the generality of the foregoing, Kainos' security program includes:

1. Security Awareness & Training. A mandatory security awareness and training program for all members of Kainos' workforce (including management), which includes:
  - (a) Training on how to implement and comply with its information security program; and
  - (b) Promoting a culture of security awareness through periodic communications from senior management with employees.
2. Access Controls. Policies, procedures, and logical controls:
  - (a) To limit access to its information systems and the facility or facilities in which they are housed to properly authorised persons;
  - (b) To prevent those workforce members and others who should not have access from obtaining access; and
  - (c) To remove access in a timely basis in the event of a change in job responsibilities or job status.
3. Physical & Environmental Security. Kainos reviews the controls of hosting providers to ensure that they provide reasonable assurance that access to physical servers at the data centre hosting Smart is limited to properly authorised individuals and that environmental controls are established to detect, prevent and control destruction due to environmental extremes. These controls include:
  - (a) Logging and monitoring of unauthorised access attempts to the data centre by the data centre security personnel;
  - (b) Camera surveillance systems at critical internal and external entry points to the data centre;
  - (c) Systems that monitor and control the air temperature and humidity at appropriate levels for the computing equipment; and
  - (d) Uninterruptible Power Supply (UPS) modules and backup generators that provide back-up power in the event of an electrical failure.
4. Security Incident Procedures. A security incident response plan that includes procedures to be followed in the event of any security breach. Such procedures include:
  - (a) Roles and responsibilities: formation of an internal incident response team with a response leader;
  - (b) Investigation: assessing the risk the incident poses and determining who may be affected;
  - (c) Communication: internal reporting as well as a notification process in the event of unauthorised disclosure of Customer Data;
  - (d) Recordkeeping: keeping a record of what was done and by whom to help in later analysis and possible legal action; and
  - (e) Audit: conducting and documenting root cause analysis and remediation plan.
5. Contingency Planning. Policies and procedures for responding to an emergency or other occurrence (for example, fire, vandalism, system failure, pandemic flu, and natural disaster) that could damage Customer Data or production systems that contain Customer Data. Such procedures include:
  - (a) Data Backups: A policy for performing periodic backups of production file systems and databases, as applicable, according to a defined schedule;
  - (b) Disaster Recovery: A formal disaster recovery plan for the production data centre, including:
    - (i) Requirements for the disaster plan to be tested on a regular basis, currently twice a year; and
    - (ii) A documented executive summary of the disaster recovery testing, at least annually, which is available upon request to customers; and
  - (c) Business Continuity Plan: A formal process to address the framework by which an unplanned event might be managed in order to minimise the loss of vital resources.
6. Audit Controls. Hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic information.
7. Data Integrity. Policies and procedures to ensure the confidentiality, integrity, and availability of Customer Data and protect it from disclosure, improper alteration, or destruction.
8. Storage & Transmission Security. Security measures to guard against unauthorised access to Customer Data that is being transmitted over a public electronic communications network or stored electronically. Such measures include requiring encryption of any Customer Data stored on desktops, laptops or other removable storage devices.
9. Secure Disposal. Policies and procedures regarding the secure disposal of tangible property containing Customer Data, taking into account available technology so that Customer Data cannot be practicably read or reconstructed.
10. Assigned Security Responsibility. Assigning responsibility for the development, implementation, and maintenance of its Information Security Program, including:
  - (a) Designating a security official with overall responsibility;
  - (b) Defining security roles and responsibilities for individuals with security responsibilities; and
  - (c) Designating a Security Council consisting of cross-functional management representatives to meet on a regular basis.
11. Testing. Regularly testing the key controls, systems and procedures of its information security program to validate that they are properly implemented and effective in addressing the threats and risks identified. Where applicable, such testing includes:
  - (a) Internal risk assessments;
  - (b) ISO 27001; and

- (c) Service Organisation Control 2 (SOC2) audit reports (or industry-standard successor reports).
12. Monitoring. Network and systems monitoring, including error logs on servers, disks and security events for any potential problems. Such monitoring includes:
- (a) Reviewing changes affecting systems handling authentication, authorisation, and auditing;
  - (b) Reviewing privileged access to Kainos production systems; and
  - (c) Engaging third parties to perform network vulnerability assessments and penetration testing on a regular basis.
13. Change & Configuration Management. Maintaining policies and procedures for managing changes Kainos makes to production systems, applications, and databases. Such policies and procedures include:
- (a) A process for documenting, testing and approving the patching and maintenance of the Service;
  - (b) A security patching process that requires patching systems in a timely manner based on a risk analysis; and
  - (c) A process for Kainos to utilise a third party to conduct web application level security assessments. These assessments generally include testing, where applicable, for:
    - (i) Cross-site request forgery;
    - (ii) Service scanning;
    - (iii) Improper input handling (e.g. cross-site scripting, SQL injection, XML injection, cross-site flashing);
    - (iv) XML and SOAP attacks;
    - (v) Weak session management;
    - (vi) Data validation flaws and data model constraint inconsistencies;
    - (vii) Insufficient authentication; and
    - (viii) Insufficient authorisation.
14. Program Adjustments. Kainos monitors, evaluates, and adjusts, as appropriate, the security program in light of:
- (a) Any relevant changes in technology and any internal or external threats to Kainos or the Customer Data; security and data privacy regulations applicable to Kainos; and
  - (b) Kainos' own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to information systems.
15. Devices. All laptop and desktop computing devices utilised by Kainos and any subcontractors when accessing Customer Data:
- (a) Will be equipped with a minimum of AES 128-bit full hard disk drive encryption;
  - (b) Will have up to date virus and malware detection and prevention software installed with virus definitions updated on a regular basis; and
  - (c) Shall maintain virus and malware detection and prevention software so as to remain on a supported release. This shall include, but not be limited to, promptly implementing any applicable security-related enhancement or fix made available by supplier of such software.



## SMART SLA

**SUPPORT SERVICE HOURS**

Kainos shall provide the Customer with technical assistance with regard to incidents logged in respect of the Service from 08:00 GMT to 20:00 GMT, Monday to Friday, excluding UK public holidays (the **Support Service Hours**), in accordance with this SLA.

**AVAILABILITY**

Unplanned outage	uptime SLA 99.5%*	*based on 7 days' x 24 hours per calendar month (exclusive of planned outage) this equates to 3 hours, 36 minutes per calendar month or 1 day, 19 hours and 48 minutes per year of unplanned outage.
Planned outage	10 hours per month scheduled downtime (on 24 hours' notice, to Customer, via email, of planned outages)	<p>The Service:</p> <ul style="list-style-type: none"> <li>➤ may experience scheduled downtime of up to 10 hours per month for service updates;</li> <li>➤ shall be available no later than 24 hours after each Workday update;</li> <li>➤ updates will be aligned where possible with the Workday planned outage schedule.</li> </ul>

**DISASTER RECOVERY**

Kainos targets a recovery time objective (the timeframe within which Kainos aims to have the Service restored) (an **RTO**) of 12 hours following an agreed Severity level Critical incident occurring, measured from the time the Service becomes unavailable until it is available again. Kainos targets a recovery point objective (the maximum amount of transactional data that could be lost) (an **RPO**) of 24 hours.

**INCIDENT SUBMITTAL & REPORTING**

Customers may submit incidents to the Kainos Incident Management System (**KIM**) available from <https://support.kainos.com>.

Kainos will respond to each incident raised in accordance with this SLA and will use commercially reasonable efforts to promptly resolve each request. Response commitments will be suspended each day at the end of the Support Service Hours and resume on the next day at the start of the Support Service Hours.

**IDENTIFICATION OF INCIDENT SEVERITY LEVEL**

Customer shall perform self-diagnosis of each incident and make a recommendation to Kainos with regard to the severity level of that incident at the time of logging the incident. Kainos may, subject to the Customer's agreement, re-categorise any incident based on additional information and following agreement between the Parties any re-categorisation shall be communicated using KIM. Prior to logging an incident in KIM the Customer will have investigated and eliminated any internet or environment issues arising from its equipment, or for which it has responsibility (e.g. internet connectivity).

**INCIDENT SEVERITY LEVELS**

Severity Level	Description	Kainos Response Commitment	Customer Response Commitment
Critical	The Service is unavailable for all Authorised Persons.	Within two (2) hours of receipt of incident.	Customer shall remain accessible by phone for troubleshooting from the time a Critical issue is raised until it has been resolved.
Severe	The Service malfunction impacts a critical piece of functionality.	Within four (4) hours of receipt of incident.	Customer shall remain accessible by phone for troubleshooting from the time a Severe issue is raised until it has been resolved.
Serious	The Service malfunction impacts a non-critical piece of functionality.	Within one (1) day of receipt of incident.	Customer will respond to Kainos requests for additional information and implement recommended solutions in a timely manner.
Minor/Query	Routine advice, guidance request, documentation deficiency or usability suggestion.	Within five (5) days of receipt of incident.	Customer will respond to Kainos requests for additional information and implement recommended solutions in a timely manner.
Feature/Suggestion	Suggestion for future feature enhancements to the Service.	Within two hundred and forty (240) hours of receipt of incident.	Customer will respond to Kainos requests for additional information in a timely manner.

**REMEDY FOR SLA FAILURE**

In the event that during the Subscription Term, Kainos fails to meet the uptime SLA three (3) times or more in any rolling six (6) month period, as a result of Kainos' default, then on Validation (as defined below) such inability to use will confer on the Customer the ability to terminate the Order Form, with immediate effect on notice to Kainos. In such circumstances, Kainos will refund the Customer any un-used, pre-paid Subscription Service Charges. For the avoidance of doubt, unavailability as a result of scheduled updates and/or planned outages will not be counted. The Customer will contact Kainos as soon as it becomes aware that it is unable to access the Service and Kainos will undertake Validation.

**Validation** shall mean validation of the amount of time that the Service has been unavailable to the Customer and the reason behind such unavailability, determined by reference to the records produced by the Kainos 'checker' which monitors the Service uptime and in the event of dispute, by way of such records as may be reasonably adduced by the Customer to evidence the unavailability of the Service, for example and without limitation, firewall logs.

## EXHIBIT 4 | DATA PROCESSING EXHIBIT

This Data Processing Exhibit (**DPE**) forms part of the Agreement under which Kainos provides the Subscription Service to Customer. Designated Data Centre Location: means the Hosting Platform Location detailed in the Order Form.

## 1. DEFINITIONS

1.1 Unless otherwise defined below, all capitalised terms have the meaning given to them in the Agreement and/or this DPE.

**Additional Products** means products, services, and applications (whether made available by Kainos or a third party) that are not part of the Service.

**Data Controller** means the entity which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.

**Data Processor** means the entity which Processes Personal Data on behalf of the Data Controller.

**EU Data Protection Laws** means: (i) up to 25 May 2018, the Data Protection Directive 95/46/EC; and (ii) from 25 May 2018 onwards, the General Data Protection Regulation (EU) 2016/679.

**Data Protection Laws** means all data protection laws applicable to the Processing of Personal Data under this DPE, including local, state, national and/or foreign laws, treaties, and/or regulations, EU Data Protection Laws, and implementations of EU Data Protection Laws into national law.

**Data Subject** means the person to whom the Personal Data relates.

**Documentation** means Kainos Smart's electronic administrator guide for the Service, which may be updated by Kainos from time to time.

**EEA** means the European Economic Area.

**Personal Data** means any Customer Data that relates to (i) an identified or identifiable natural person, where such data is protected under applicable Data Protection Laws; or (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data under applicable Data Protection Laws).

**Processing** or **Process** means any operation or set of operations performed on Personal Data or sets of Personal Data, such as collecting, recording, organising, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying.

**Subprocessor** means a Kainos Affiliate or third party entity engaged by Kainos or a Kainos Affiliate as a Data Processor under this DPE.

**Valid Transfer Mechanism** means a data transfer mechanism permitted by EU Data Protection Laws as a lawful basis for transferring Personal Data to a recipient outside the EEA.

## 2. PROCESSING PERSONAL DATA

2.1 **Scope & Role of the Parties.** This DPE applies to the Processing of Personal Data by Kainos in the course of providing the Service. For the purposes of this DPE, Customer and its Affiliates are the Data Controller(s) and Kainos is the Data Processor, Processing Personal Data on Customer's behalf.

2.2 **Instructions for Processing.** Kainos shall Process Personal Data in accordance with Customer's instructions. Customer instructs Kainos to Process Personal Data to provide the Service in accordance with the Agreement (including this DPE). Customer may provide additional instructions to Kainos to Process Personal Data, however Kainos shall be obligated to perform such additional instructions only if they are consistent with the terms and scope of the Agreement and this DPE.

2.3 **Compliance with Laws.** Kainos shall comply with all Data Protection Laws applicable to Kainos in its role as a Data Processor Processing Personal Data. For the avoidance of doubt, Kainos is not responsible for complying with Data Protection Laws applicable to Customer or Customer's industry such as those not generally applicable to online service providers. Customer shall comply with all Data Protection Laws applicable to Customer as a Data Controller.

## 3. SUBPROCESSORS

3.1 **Use of Subprocessors.** Customer agrees that Kainos and Kainos Affiliates may engage Subprocessors to Process Personal Data. Kainos or the relevant Kainos Affiliate shall ensure that such Subprocessor has entered into a written agreement requiring the Subprocessor to abide by terms no less protective than those provided in this DPE. Upon Customer's request, Kainos will make available to Customer a summary of the data processing terms. For the avoidance of doubt, the data processing terms that apply to Kainos Affiliates when Processing Personal Data as a Subprocessor are those set out in this DPE. Kainos shall be liable for the acts and omissions of any Subprocessors to the same extent as if the acts or omissions were performed by Kainos.

3.2 **Notification of New Subprocessors.** Kainos shall make available to Customer through Kainos' customer website a list of Subprocessors authorised to Process Personal Data (**Subprocessor List**) and provide Customer with a mechanism to obtain notice of any updates to the Subprocessor List. At least thirty (30) days prior to authorising any new Subprocessor to Process Personal Data, Kainos shall provide notice to Customer by updating the Subprocessor List.

3.3 **Subprocessor Objection Right.** This section 3.3 shall apply only where and to the extent that Customer is established within the EEA or Switzerland or where otherwise required by Data Protection Laws applicable to Customer. In such event, if Customer objects on reasonable grounds relating to data protection to Kainos' use of a new Subprocessor then Customer shall promptly, and within fourteen (14) days following Kainos' notification pursuant to section 3.2 above, provide written notice of such objection to Kainos. Should Kainos choose to retain the objected -to Subprocessor, Kainos will notify the Customer at least fourteen (14) days before authorising the Subprocessor to Process Personal Data and the Customer may immediately discontinue using the relevant portion(s) of the Service and may terminate the relevant portion(s) of the Service within thirty (30) days. Upon any termination by Customer pursuant to this section, Kainos shall refund Customer any prepaid fees for the terminated portion(s) of the Service that were to be provided after the effective date of termination.

## 4. DATA CENTRE LOCATION & DATA TRANSFERS

4.1 **Storage of Personal Data.** Customer Data will be housed in data centres located in the Hosting Platform Location set forth in the Order Form unless the Parties otherwise expressly agree in writing.

4.2 **Access to Personal Data.** Notwithstanding section 4.1, in order to provide the Service Kainos and its Subprocessors will only access Personal Data from (i) countries in the EEA, (ii) countries formally recognised by the European Commission as providing an adequate level of data protection (**Adequate Countries**) and (iii) the United States provided, in this case, that Kainos makes available to Customer a Valid Transfer Mechanism. When Kainos or its Subprocessors access Personal Data from outside the Hosting Platform Location for the purposes set forth above, Customer agrees that Personal Data may be temporarily stored in that country.

## 5. RIGHTS OF DATA SUBJECTS

5.1 **Correction, Deletion or Restriction.** Kainos will, as necessary to enable Customer to meet its obligations under applicable Data Protection Laws, either (i) provide Customer the ability within the Service to correct or delete Personal Data or restrict its Processing; or (ii) make such corrections, deletions, or restrictions on Customer's behalf if such functionality is not available within the Service (with the choice between (i) and (ii) being at Kainos' discretion).

5.2 **Access to Personal Data.** To the extent a Data Subject's Personal Data is not accessible to Customer through the Service, Kainos will, as necessary to enable Customer to meet its obligations under applicable Data Protection Laws, provide reasonable assistance to make such Personal Data available to Customer.

- 5.3 **Handling of Data Subject Requests.** For the avoidance of doubt, Customer is responsible for responding to Data Subject requests for access, correction, deletion or restriction of that person's Personal Data (**Data Subject Request**). If Kainos receives a Data Subject Request, Kainos shall promptly redirect the Data Subject to Customer.
- 5.4 **Data Portability.** During the term of the Agreement, Customer may extract Personal Data from the Service in accordance with the Documentation and the relevant provisions of the Agreement, including so that Customer can provide the Personal Data to an individual who makes a data portability request under EU Data Protection Laws.
- 6. GOVERNMENT ACCESS REQUESTS**
- 6.1 Unless prohibited by applicable law or a legally-binding request of law enforcement, Kainos shall promptly notify Customer of any request by government agency or law enforcement authority for access to or seizure of Personal Data.
- 7. KAINOS PERSONNEL**
- 7.1 Kainos shall take reasonable steps to require screening of its personnel who may have access to Personal Data and shall require such personnel to receive appropriate training on their responsibilities regarding the handling and safeguarding of Personal Data and sign confidentiality agreements with Kainos. Such confidentiality obligations shall survive the termination of employment.
- 8. SECURITY**
- 8.1 **Breach Notification.** Kainos shall promptly upon discovery or as soon as reasonably practicable thereafter, notify Customer of any Security Breach in accordance with the relevant provisions of the Agreement. **Security Breach** as used herein means any act or omission that compromises (i) the confidentiality, integrity, or availability of Personal Data, or (ii) the administrative, physical, and technical safeguards put in place by Kainos or Kainos Affiliates that relate to the protection of the confidentiality, integrity, and availability of Personal Data.
- 8.2 **Information Security Program.** Kainos shall implement appropriate technical and organisational measures designed to protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data as set forth in the Security Exhibit.
- 9. AUDIT**
- 9.1 Customer agrees that, except as otherwise provided in this section, Kainos' then-current SOC 2 audit report (or comparable industry-standard successor reports) and/or Kainos' ISO 27001 Certifications will be used to satisfy any audit or inspection requests by or on behalf of Customer, and Kainos shall make such reports available to Customer upon request. In the event that Customer, a regulator, or data protection authority requires additional information, or an audit related to the Service, such information and/or audit shall be made available upon request.
- 10. RETURN & DELETION OF PERSONAL DATA**
- 10.1 Upon termination of the Service, Kainos shall return and delete Personal Data in accordance with the Agreement.
- 11. ADDITIONAL PRODUCTS**
- 11.1 Customer acknowledges that if it installs, uses, or enables Additional Products that interoperate with the Service but are not part of the Service itself, then by such actions Customer is instructing Kainos to cause the Service to allow such Additional Products to access Personal Data as required for the interoperation of those Additional Products with the Service. Such separate Additional Products are not required to use the Service and may be restricted for use as determined by Customer's system administrator. THIS DPE DOES NOT APPLY TO THE PROCESSING OF PERSONAL DATA BY ADDITIONAL PRODUCTS WHICH ARE NOT PART OF THE SERVICE, AND KAINOS SHALL NOT BE LIABLE FOR ANY SECURITY BREACH RELATED TO OR RESULTING FROM SUCH ADDITIONAL PRODUCTS.
- 12. ADDITIONAL EUROPEAN TERMS**
- 12.1 **Subject-Matter, Nature, Purpose & Duration of Data Processing.** Kainos will Process Personal Data to provide the Service (operation and maintenance of a software-as-a-service application). The duration of Processing Personal Data shall be for the term of the Agreement.
- 13. GENERAL PROVISIONS**
- 13.1 **Customer Affiliates.** Customer is responsible for coordinating all communication with Kainos on behalf of its Affiliates with regard to this DPE.
- 13.2 **Disclosure of DPE Terms.** Customer or its Affiliates may only disclose the terms of this DPE to a data protection regulatory authority to the extent required by law or regulatory authority, such as notifications or approvals. Furthermore, Customer shall take reasonable endeavours to ensure that data protection regulatory authorities do not make this DPE public, including: (i) marking copies of this DPE as "Confidential and Commercially Sensitive"; (ii) requesting return of this DPE once the regulatory notification has been completed or approval granted; and (iii) requesting prior notice and consultation before any disclosure of this DPE by the regulatory authority.
- 13.3 **Termination.** The term of this DPE will end simultaneously and automatically with the termination of the Agreement, but Kainos will continue to protect Personal Data in accordance with the terms of this DPE until all Personal Data is deleted from Kainos systems.
- 13.4 **Conflict.** This DPE is subject to the non-conflicting terms of the Agreement. With regard to the subject matter of this DPE, in the event of inconsistencies between the provisions of this DPE and the Agreement, the provisions of this DPE shall prevail with regard to the Parties' data protection obligations.
- 13.5 **Customer Affiliate Enforcement.** Customer's Affiliates may enforce the terms of this DPE directly against Kainos, subject to the following provisions:
- (i) the Customer will bring any legal action, suit, claim or proceeding which that Affiliate would otherwise have if it were a party to the Agreement (each an **Affiliate Claim**) directly against Kainos on behalf of such Affiliate, except where the Data Protection Laws to which the relevant Affiliate is subject require that the Affiliate itself bring or be party to such Affiliate Claim; and
- (ii) for the purpose of any Affiliate Claim brought directly against Kainos by Customer on behalf of such Affiliate in accordance with this section, any losses suffered by the relevant Affiliate may be deemed to be losses suffered by Customer.
- 13.6 **Remedies.** Customer's remedies (including those of its Affiliates) with respect to any breach by Kainos or its Affiliates of the terms of this DPE, and the overall aggregate liability of Kainos and its Affiliates arising out of, or in connection with the Agreement (including this DPE) will be subject to and in no event exceed the aggregate limitation of liability agreed between the Parties under the Agreement.
- 13.7 **Miscellaneous.** The section headings contained in this DPE are for reference purposes only and shall not in any way affect the meaning or interpretation of this DPE.
- 14. ON BOARDING**
- 14.1 The terms of this DPE apply to On boarding, and solely with respect to on boarding this section 14 amends specified terms of the DPE as set forth below.  
For purposes of interpreting the DPE terms for the On boarding, **Service** means On boarding.  
**On boarding Data** means electronic data or information that is provided to Kainos under the Agreement for the purpose of being input into the Service, or Customer Data accessed within or extracted from the Customer's Tenant to perform the On boarding.  
**Personal Data** means any On boarding Data that is related to an identified or identifiable person and subject to protection under applicable Data Protection Laws.  
**SFTP Server** means a secure file transfer protocol server provided and controlled by Kainos that may be used to transfer the On boarding Data between Customer and Kainos for implementation purposes.
- 14.2 **Notification of Third Party Subprocessors.** This section 14.2 replaces sections 3.2 and 3.3. For the avoidance of doubt,

sections 3.2 and 3.3 continue to apply to Kainos' use of Affiliates as Subprocessors for On boarding.

Notification of and Objection Right to Subprocessors: Kainos shall make available to Customer upon Customer request a list of third party Subprocessors authorised to Process Personal Data for the applicable On boarding engagement. Customer may object to such Subprocessors via a mutually agreed upon SOW.

#### 14.3 Data Centre Location & Data Transfers.

14.3.1 The following sentence is added at the end of section 4.1 "Storage of Personal Data":

The SFTP Server will be housed in data centres located in the Designated Data Centre Location unless the Parties otherwise expressly agree in writing.

14.3.2 This section 14.3.2 replaces section 4.2 "Access to Personal Data" in its entirety:

Processing On boarding Data. To provide On boarding, Kainos and its Subprocessors will only Process Personal Data in (i) countries in the EEA, (ii) countries formally recognised by the European Commission as providing an adequate level of data protection (**Adequate Countries**), and provided Kainos makes available to Customer a Valid Transfer Mechanism, (iii) the United States and (iv) countries where Customer and/or its Affiliates are located.

#### 14.4 Rights of Data Subjects.

14.4.1 This section 14.4.1 replaces section 5.1 "Correction, Deletion or Restriction" in its entirety:

Correction, Deletion or Restriction. Kainos will, as necessary to enable Customer to meet its obligations under applicable Data Protection Laws, either (i) provide Customer the ability on the SFTP Server to correct or delete Personal Data or restrict its Processing; or (ii) if such functionality is not available on the SFTP Server, make such corrections, deletions, or restrictions on Customer's behalf (with the choice between (i) and (ii) being at Kainos' discretion).

14.4.2 This section 14.4.2 replaces section 5.2 "Access to Personal Data" in its entirety:

Access to Personal Data. To the extent a Data Subject's Personal Data is not accessible to Customer through the SFTP Server, Kainos will, as necessary to enable Customer to meet its obligations under applicable Data Protection Laws, provide reasonable assistance to make such Personal Data available to Customer.

14.4.3 Section 5.4 "Data Portability" shall not apply.

#### 14.5 Audit. This section replaces section 9 "Audit" in its entirety:

Audit. In the event that Customer, a regulator, or data protection authority requires an inspection or audit relating to the On boarding that Customer cannot obtain through its own access to the SFTP Server or On boarding Data, such inspection and/or audit shall be made available upon request.

#### 14.6 Deletion of On boarding Data. This section 14.6 replaces section 10 "Return and Deletion of Personal Data" in its entirety:

Deletion of On boarding Data. Subject to the Customer's prior written request, Kainos will delete the On boarding Data by deletion of Customer's files on the SFTP Server; provided, however, that Kainos will not be required to remove copies of the On boarding Data from its backup media and servers until such time as the backup copies are scheduled to be deleted, provided further that in all cases Kainos will continue to protect the On boarding Data in accordance with this DPE.



## **RIDER B-IT**

### METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$677,404
2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

1. Onboarding Implementation services – Total \$157,654;

- 25% (\$39,413.50) - Planning and Discovery Complete
- 25% (\$39,413.50) - End to End Testing Complete
- 50% (\$78,827.00) - Go-Live
- Backstop for payments on January 31st 2020

2. Gold Subscription Services - \$173,250 per year for 3 years, invoiced annually in advanced based on the Effective Date (start date) of the Subscription Term set out in Rider A above.

Total Onboarding and 3-year Gold Subscription Service = \$677,404.

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: Tonia Ennis  
Title: Director, Enterprise Services  
Address: 145 SHS Augusta, ME 04333  
Telephone: 207-624-8825  
E-mail address: tonia.ennis@maine.gov

The following individual is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement. All project status reports, day to day operational issues and project program material and issues shall be directed to this individual.

Name: Tonia Ennis  
Title: Director, Enterprise Services  
Address: 145 SHS Augusta, ME 04333  
Telephone: 207-624-8825  
E-mail address: tonia.ennis@maine.gov

**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 \$5,000,000 in the aggregate, 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.

- 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, \$2,000,000 annual aggregate;
- 4. Automotive Liability of not less than \$400,000 per occurrence single limit, \$1,000,000 annual aggregate, if the Provider will use vehicles to fulfill the contract;
- 5. Crime, in an amount not less than \$0 (*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 Provider. Provider shall notify the Department of any such 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 the State Accessibility Policy and the Americans with Disabilities Act. All IT applications must comply with the Computer Application Program Accessibility Standard (Maine.gov/oit/accessiblesoftware). All IT

applications and contents delivered through web browsers must comply with the Website Standards (Maine.Gov/oit/webstandard) and the Website Accessibility Policy (Maine.Gov/oit/accessibleweb).

**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**

1. Section 2, INVOICES AND PAYMENTS, is amended by delete requirement for retainage.
2. Section 12, ACCOUNTING AND AUDIT, is amended as follows:

Subsection 7 is amended by adding a new sentence to read: The parties agree that authorized State and Federal representatives may not enter data centers or other premises owned by any cloud hosting and/or infrastructure services providers used in the Kainos Smart SaaS solution. However, the Provider shall use all commercially reasonable endeavors to obtain for any Authorized State and Federal representatives the information they so require pursuant to any such inspections, evaluations or similar.

Subsection 7 is further amended by adding a new sentence to read: The Department shall consult with the Provider in respect of any information which it is unsure of constitutes “proprietary information” of a commercial and/or financial nature before making same public. In the event any request is made to disclose the contents of this Agreement which are not strictly necessary under the freedom of access laws, the Department shall contact the Provider in the first instance to notify them of any such request and work with the Provider to ensure the correct information is disclosed

3. Section 13, TERMINATION, is deleted. See Kainos Master Agreement, section 11.
4. Section 16, STATE HELD HARMLESS, is amended by adding a new paragraph to read:

“The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all claims made against the Department by a third party alleging that the use of the Smart Services as contemplated under this Agreement infringes any third party intellectual property rights of that third party and Provider shall indemnify and hold harmless Customer against any and all liabilities, loss, damages and costs, including reasonable attorney fees, awarded or entered into settlement; however provided that Customer: (a) promptly gives written notice of the claim to Provider (a delay of notice will not relieve Provider of its obligations under this section except to the extent that Provider is prejudiced by such delay); (b) gives Provider sole control of the defence and settlement of the claim (Provider may not settle any claim unless it unconditionally releases Customer of all liability); and (c) provides to Provider, at Provider’s cost, all reasonable assistance. Provider shall have no liability for claims or losses to the extent arising from: (i) modification of the Smart Service by anyone other than Provider; (ii) use of the Smart Service in a manner inconsistent with the Agreement or Provider documentation; or (iii) use of the Smart Service in combination with any other product or service with the exception of Workday. If Customer is enjoined from using the Service or Provider reasonably believes it will be enjoined, Provider shall have the right, at its sole option, to obtain for Customer the right to continue use of the Service or to replace or modify the Service so that it is no longer infringing. If neither of the foregoing options is reasonably available to Provider, then the Agreement may be terminated at either Party’s option and Provider’ sole liability, in addition to these indemnification obligations, shall be to refund any prepaid fees for the Service that was to be provided after the effective date of termination.”

5. Section 17, LIMITATION OF LIABILITY, shall be deleted and replaced with the following;

“The Provider’s aggregate 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 not exceed three (3) times the annual fees paid/payable under this Agreement.

Notwithstanding the above, Provider shall not be liable to the Department for any indirect or consequential damages, other than for those under Provider’s intellectual property indemnity at Section 16.”

6. Section 25, SET-OFF RIGHTS, is deleted.

7. Section 35, PRODUCT WARRANTY, is amended by adding a new sentence at the end to read:

The parties agree that the remedies to the warranty provided under this Section 35 are limited to that under the SLA within the Kainos Smart MSA set out in Rider A.

8. Section 37, COVER, is deleted.

9. Section 40, CONFIDENTIALITY, is deleted and replaced with the following:

1. All materials and information given by one party to the other party, 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 by either party, such party shall promptly notify the other party.

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

10. Section 41, OWNERSHIP, is amended by adding a new subsection 3 to read:

“Notwithstanding anything to the contrary and subject to the limited rights expressly granted under the Kainos Smart MSA within Rider A, Provider (and its licensors, where applicable) reserve all rights, title and interest in and to the Service, including all related intellectual property rights. This Agreement is not a sale and does not convey to the Department any rights of ownership in or related to the Service, Provider’s technology or the intellectual property rights owned by Provider or its licensors. The Kainos name, the Kainos logo and the product names associated with the Service are trademarks of Provider or third parties and no right or license is granted to use them without prior written consent.”

11. Section 42, CUSTOM SOFTWARE, is deleted.

12. Section 43, OFF-THE SHELF SOFTWARE, is deleted.
13. Section 44, SOFTWARE AS A SEVICE, is deleted.
14. Section 45, PRICE PROTECTION, is deleted.
15. Section 46, IRREVOCABLE LETTER OF CREDIT, is deleted.

RIDER D

Not Required: For use at Department's Discretion



RIDER E

Not Required: For use at Department's Discretion

RIDER F

Not Required: For use at Department's Discretion

**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: \_\_\_\_\_**

**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.