

MODIFICATION

State of Maine**Master Agreement****Effective Date:** 04/01/16**Expiration Date:** 11/14/20**Master Agreement Description:** Combined FairPoint Contracts, CES Service, Master Agreement**Buyer Information**

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

Issuer Information

EDWARD ARSENAULT 207-624-9459 ext. Edward.Arsenault@maine.gov

Requestor Information

Thomas Howker 207-624-8878 ext. Thomas.n.howker@maine.gov

Authorized Departments

ALL

Vendor Information**Vendor Line #:** 1**Vendor ID**

VC0000232688

Vendor Name

CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES INC

Alias/DBA

CONSOLIDATED COMMUNICATIONS

Vendor Address Information

11 BLACKSTRAP RD

FALMOUTH, ME 04105

US

Vendor Contact Information

SANDI PASALIC

207-797-9123 ext. 4006

Sandi.Pasalic@consolidated.com

Commodity Information

Vendor Line #: 1

Vendor Name: CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES INC

Commodity Line #: 1

Commodity Code: 91577

Commodity Description: Combined FairPoint Contract, CES, Master Agreement

Commodity Specifications:

Commodity Extended Description: FairPoint Contract for Carrier Ethernet Service as per the attached Contract Agreement.

Quantity 0.00000	UOM	Unit Price \$0.00
Delivery Days	Free on Board	
Contract Amount \$0.00	Service Start Date 04/01/16	Service End Date 11/14/20
Catalog Name	Discount 0.0000 %	
	Discount Start Date	Discount End Date

Commodity Terms and Conditions

Vendor Line #: 1

Commodity Line #: 1

T&C #: 165

T&C Name: Payment Terms

T&C Details: Net 30

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

THIS AGREEMENT, made this 1st day of April, 2016 ("Effective Date"), is by and between the State of Maine, Department of Administrative and Financial Services, Office of Information Technology, hereinafter called "Department" or "Customer," and Enhanced Communications of Northern New England Inc., with offices located at 1 Davis Farm Road, Portland, Maine 04103, hereinafter called "Provider" or "FairPoint," for the period commencing on the Effective Date through November 14, 2020.

The AdvantageME Vendor/Customer number of the Provider is VS000008228

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.

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

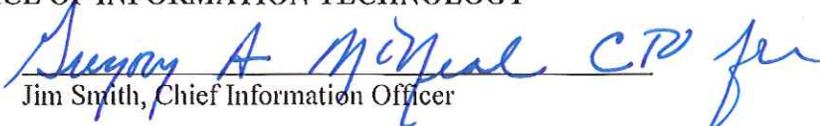
The following riders are hereby incorporated into this Agreement and made part of it by reference.

- Rider A - Specifications of Work to be Performed
- Rider B-IT - Payment and Other Provisions
- Rider C - Exceptions to Rider B-IT
- Rider D - Service Agreement
- Rider E/F - Deleted - Unused
- 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 three (3) original copies.

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY

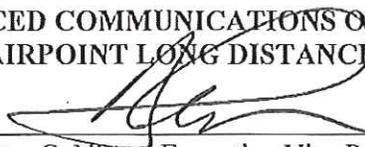
By:


Jim Smith, Chief Information Officer

and

ENHANCED COMMUNICATIONS OF NORTHERN NEW ENGLAND INC.
D/B/A FAIRPOINT LONG DISTANCE - NNE AND FAIRPOINT INTERNET

By:


Peter G. Nixon, Executive Vice President, Revenue and External Affairs

Total Agreement Amount: \$ 5.8 Million Estimated (Unencumbered)

Approved: _____
Chair, State Purchases Review Committee

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

CARRIER ETHERNET SERVICES

1. Services.

- 1.1 This Carrier Ethernet Schedule that includes Appendices A (Pricing and Locations), B (Special Terms) and C (Service Level Agreement) (this “CES Schedule”) is for the provision of Carrier Ethernet Services (“CES”). We will provide you with FairPoint CES ordered under this CES Schedule (the “Service(s)” herein).
- 1.2 While each of these Services will provide Ethernet connectivity to the Customer’s site, the delivery technology for each Service varies to match the intended purpose of the connection.

2. Definitions

- 2.1 Carrier Ethernet Service (“CES”) is a network connection service, which provides Ethernet transport to FairPoint customers in FairPoint’s operating territory in the northern New England region of Maine, New Hampshire and Vermont. CES is available in three (3) main service types: Ethernet Line Connection (E-LINE), Ethernet Local Area Network (E-LAN) and Ethernet Dedicated Internet Access (E-DIA).
- 2.2 E-LINE shall mean a direct logical connection between two (2) remote sites. The purpose of this connection is to link the two (2) sites in as simple a fashion as possible, providing them with connection between switches/routers at each site. E-Line is offered in the following two (2) specific types depending on the port speed and tagging options required by the customer: Ethernet Private Line (EPL) and Ethernet Virtual Private Line (EVPL).
- 2.3 E-LAN shall mean a logical connection between multiple remote sites. The purpose of this connection is to link multiple, separate sites, providing them a connection between switches/routers at each site. An E-LAN “extends” a customer’s internal LAN, through a FairPoint network. E-LAN is offered in the following two (2) specific types depending on the port speed and tagging options required by the customer: Ethernet Private Local Area Network (EPLAN) and Ethernet Virtual Private Local Area Network (EVPLAN).
- 2.4 E-DIA shall mean an Ethernet service that provides customers with a direct connection to the Internet. The purpose of this connection is to provide multipurpose Internet access to autonomous sites. E-DIA connections connect one customer site to the Internet.
- 2.5 Ethernet. A data communications protocol defined by standards 802.3, 802.3u, 802.3z and related standards of the Institute of Electrical and Electronics Engineers.
- 2.6 Point of Termination. Denotes the point of demarcation within a Customer location at which FairPoint’s responsibility for the provision of the Service ends.
- 2.7 Ethernet Virtual Connection (EVC) is the association of two or more user-network interfaces (“UNIs”) where the UNI is a standard Ethernet interface that is the point of demarcation between the Customer Equipment and FairPoint’s Metro Ethernet Network (“MEN”). The two (2) types of EVCs are “Point-to-

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

Point” and “Multipoint-to-Multipoint”. Further, an EVC performs the following two (2) functions: (1) connects two or more subscriber sites (UNIs) to enable the transfer of Ethernet service frames between them, and (2) prevents data transfer between subscriber sites that are not part of the same EVC.

3. Additional Services Details and Initial Quantity Commitments.

- 3.1 Customer agrees to purchase the Services from FairPoint at the rates and quantities set forth in Appendix A to this Rider A. Any other work, services or facilities required will be provided subject to prevailing tariff rates and charges, or if no tariff is applicable, as mutually agreed to by the parties.
- 3.2 Customer may upgrade the bandwidth speed in accordance with the CES rate elements set forth in Appendix A at the same locations for each applicable Service via an order form using FairPoint’s then-current process. For any new Services and/or changes to a location, a written amendment will be required. Such additions and changes are contingent upon availability of sufficient capacity and facilities. Such additions shall be subject to the rates, terms and conditions of this Schedule and the parties’ Agreement. The Service Period for upgraded or additional Services will be coterminous with the Service Period of this CES Schedule, unless otherwise agreed to by the parties.
- 3.3 Please note that shall furnish a dedicated connection between our and your premises, as specified hereunder, which is perceived by your software and the network to be of a dedicated nature and available without the need to dial into an Internet access point. In addition, we shall provide routing services based on the Transmission Control Protocol/Internet Protocol (“TCP/IP”), enabling you to connect to the Internet as well as certain FairPoint information services indicated in this CES Schedule.
- 3.2 Except as provided above or in Appendix A, additional rate elements may be added by an amendment to this CES Schedule.
- 3.4 Offer good only in areas where Service is commercially available. You understand that the Service selected may not be commercially available at the rates, speeds or bandwidth set forth herein in your area (unless otherwise indicated in Appendix A or any other duly executed attachment hereto), and that this CES Schedule and any new locations are subject to FairPoint’s final acceptance.
- 3.5 Unless otherwise stated in this CES Schedule, and to the extent applicable, in addition to charges set forth herein and Appendix A and any related taxes, surcharges and fees if applicable, you are responsible for the following:
- i) Renewal of Registration fees associated with Domain Names (Registrar will contact customer directly for renewal)
 - ii) Equipment, hardware and software charges
 - iii) Installation support and related charges
- 3.6 This CES Schedule does not entitle you to any future versions or releases of any Service which we may make available during the initial term unless separately agreed to in writing by the parties.
- 3.7 Unless otherwise waived in Appendix A, the one-time circuit installation fee is the estimated cost to build the circuit to the Customer’s premises demarcation point. Extension beyond this point is not covered in this installation fee. Upon request, FairPoint will extend the circuit to a Customer-defined location within the structure for additional Time and Materials charges.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- 3.8 In the event that we are unable to complete Service activation due to delays that you cause, you will be responsible for all charges and cancellation fees accrued by us in connection with our performance or attempted performance of our obligations hereunder.
- 3.9 FairPoint provided equipment and hardware may be either new or refurbished.
- 3.10 Domain Name service is not available in all areas. Domain name availability is limited and not guaranteed. Domain name registration is limited to the following extensions: .net, .com and .org. Acceptance of VeriSign Terms of Service required. Additional domain name registration and transfer fees apply.

4. Service Period and Billing.

The Customer shall purchase the Services for the period commencing on the Effective Date and continuing through November 14, 2020 ("Service Period").

The Service Period and billing for the monthly recurring charges ("MRC") shall begin on the In-Service Date, which is the date FairPoint informs the Customer that the circuits are functioning properly (unless previously installed) and the Service is available for the Customer's use.

5. Cancellation and Termination Charges.

- 5.1 If the Customer cancels the Service subsequent to execution of this CES Schedule by both parties and prior to the In-Service Date of the Service, Customer shall pay FairPoint its actual incurred costs of provisioning the Service up to the point of such cancellation. Cancellation must be in writing to FairPoint.
- 5.2 Following the In-Service Date, termination charges shall apply in accordance with Rider B-IT, Section 13. Termination. If any or all of the circuits covered by this CES Schedule are terminated before the end of the Service Period, FairPoint will be entitled to an equitable adjustment to compensate for such early termination and modified accordingly, including actual incurred costs of provisioning the Service. Moves or consolidations shall be equitably adjusted to compensate for any additional charges required if suitable Facilities are not available at the new location or change in total contract value due to consolidation.
- 5.3 Termination charges will not apply under the following circumstances:
- 5.3.1 The Customer and FairPoint agree at any time prior to the end of the Service Period to extend the Service Period to a longer term commitment.
 - 5.3.2 The Customer (1) upgrades an existing Service to a new, higher bit rate Ethernet Service, and (2) the Service Period for the upgraded Service is coterminous with or longer than the Service Period of the existing Service.

6. Equipment, Hardware and Software.

- 6.1 Unless covered under separate agreements with us, you shall be responsible to provide for the proper selection, installation, operation, and maintenance of your equipment, hardware, and software used in

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

connection with the Services, and you shall ensure that such equipment, hardware, and software are technically and operationally compatible with the Services and in compliance with applicable Federal Communications Commission rules and regulations. If you have chosen to purchase equipment or hardware, including any software that may be installed thereon (the "Equipment"), and then title to the Equipment (other than any software that may be installed thereon) shall vest with you upon payment in full to us for the Equipment. In the event the Equipment is installed at your premises prior to payment in full, you shall: (a) safeguard the Equipment from loss and damage; (b) obtain general liability insurance with property loss coverage equal to or greater than the purchase price of the Equipment, and naming us as additional insured; and (c) maintain full responsibility for the Equipment if any damage or injury occurs and pay for all repairs, or for the replacement of the Equipment, if it is irreparable, lost or stolen.

6.2 In the event FairPoint provides any software to you in connection with the Services, we grant you a personal, non-exclusive, non-transferable license, for the duration of the Service Period and any subsequent renewals, to use such software in object code form only on the hardware on which it is installed for the sole purpose of enabling you to use the Service. You acknowledge that such software is protected by the copyright laws of the United States and foreign jurisdictions, and may be protected under the patent laws of the United States and foreign jurisdictions, that title to such software, including any tangible media by which the software was transferred to you, remains with us or our suppliers and/or our or their licensors, and that the source code, content and design of such software are valuable trade secrets. You are authorized to make one copy of the software for backup purposes only. You agree not to (a) disclose or make available to third parties any portion of such software without our advance written permission; (b) further copy or duplicate such software; (c) reverse engineer, decompile or disassemble such software; (d) make derivative works from such software; (e) modify such software; (f) or use the software in a credit bureau capacity.

6.3 Upon termination or expiration of the Service Period or any renewal or extension term, you agree to return to us all hardware, Equipment and software provided to you by us or a third party on our behalf in connection with the Service (other than hardware, Equipment and software which you have purchased from us). In the event such hardware, Equipment and software is not returned to us within thirty (30) calendar days following such termination or expiration, we will charge you the undepreciated list price of the unreturned hardware and software, in addition to all applicable late return fees.

7. FairPoint Internet Responsibilities.

In addition to the responsibilities set forth in the Agreement and herein, we shall (a) provide a TCP/IP routing service to connect your network to our regional Internet, (b) coordinate the installation and order on your behalf, transportation facilities from your premises to our network; (c) maintain ownership of all IP addresses, which are provided to you, and (d) supply you with IP address space based on Internet policies for assigning address space.

8. Customer Responsibilities.

In addition to the responsibilities set forth in the Service Agreement and herein, you agree that on your behalf we may select a Global Service Provider (GSP) from a list of qualified carriers who have agreed to interconnect with our network. The use of the Services by you and your users is completely at your own risk. We shall in no way be responsible or liable to you or your customers (if permitted by a Schedule or separate reseller agreement) or any other end user for any loss or damage as a result of the use of the Services. You acknowledge and agree that although we shall make reasonable efforts to

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

provide continuous, uninterrupted, and expedient Service to you and your customers (if permitted by a Schedule or separate reseller agreement) or other end users, interruptions in Service may occur as normal events in the provision of Service. You also agree and acknowledge that through the use of the Services, you and your customers (if permitted by a Schedule or separate reseller agreement) or other end users may have access to information which may be sexually explicit, obscene or offensive, or otherwise unsuitable for minors under the age of eighteen (18) years old. You acknowledge that we have no control over such information. If we provide IP address space to you, you shall supply a network engineering plan consisting of: (a) the current number of hosts (addressable devices) on your network; (b) expected number of hosts within next six (6) months; (c) current number of your subnets; (d) expected number of subnets in six (6) months; (e) subnet masks; (f) number of hosts on each network segment; and (g) graphical topology of your network that diagrams your network down to the host level. Customer also agrees to be bound by and abide by FairPoint's Acceptable Use Policy located at http://www.fairpoint.com/global/fp_acceptable-use-bdia/iaup.jsp.

9. Entry to Customer's Business.

Customer agrees to allow FairPoint to enter Customer's premises from which you use the Service during normal business hours by appointment to perform necessary activities related to the installation, inspection, repair, replacement or disconnection of our equipment and Services. Customer will allow FairPoint to make attachment and connections that are necessary to provide Services to Customer. If Customer does not own the premises to be entered, Customer must supply proof that you are authorized to allow work to be done on such premises.

10. Additional Provisions.

- 10.1 FairPoint Facilities. Additional charges (including taxes, fees and surcharges, unless otherwise exempt) may be required if suitable FairPoint facilities are not available to provide Service at any location or Services are requested out of FairPoint territory, or if any additional work services, or quantities of Service are provided. In the event installation of additional FairPoint facilities are required to provide Service or the Service are out of territory, FairPoint will inform Customer of such applicable charges and FairPoint will install such FairPoint Facilities only upon mutual written agreement of the parties to such additional charges. If Customer does not agree to pay such additional charges, then this Agreement will be subject to termination by FairPoint without application of the termination charges described herein.
- 10.2 Customer Purchase Orders. Customer may not vary the Service Agreement or this CES Schedule with use of a Customer-issued purchase order. The terms and conditions contained on a Customer purchase order (whether signed by one or both parties) shall not serve to modify the terms and conditions of the Agreement or this CES Schedule and to the extent such terms and conditions conflict with the terms and conditions of the Agreement or this CES Schedule, they shall be void and of no effect.

11. IP Address and Domain Name Registration.

You are eligible to use the initial FairPoint-provided IP addresses on the Internet for no additional charge per the following FairPoint IP Assignment Guidelines:

1. You complete an IP address form provided by FairPoint. A host count and sub-netting breakdown is required for current and requested (future) address space.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

2. If applying for a /25 (128 IPs) or larger network block Customer must also submit a network topology diagram detailing all subnets.
3. If you have existing IP address space (FairPoint or non-FairPoint), Customer must demonstrate the following before receiving additional address space:
 - All Customer-assigned address space must be registered with the American Registry for Internet Numbers (ARIN).
 - Eighty percent (80%) of all assigned address space must be utilized.
 - Current address space and requested address space must be documented in accordance with guidelines 1 and 2 above.
 - Assigned address space must be reachable by FairPoint via Internet Control Message Protocol (ICMP) (ping, etc.) or equivalent documentation demonstrating reachability and must be provided at FairPoint's request.
4. If you are a multi-homed Border Gateway Protocol (BGP) Customer (2 or more Internet Service providers (ISPs)) may apply for address space under the ARIN 2001/2 policy. Customers meeting the requirements of this policy who have already obtained address space from FairPoint or another ISP and who are requesting additional address space from FairPoint must meet guideline 3, above, in order to receive an additional class C block of IP addresses.
5. IP space from FairPoint is non-portable. Customers who discontinue service with FairPoint must relinquish their assigned IP addresses from FairPoint.
6. You may obtain IP addresses directly from ARIN through their website, <http://www.arin.net/> and will be responsible for all associated fees, including ARIN's registration fee and annual renewal fee.
7. Upon expiration, cancellation or termination of the Service Agreement or an applicable schedule, you shall relinquish any IP addresses or address blocks assigned to you by us. If we deem it necessary for technical reasons, you may be required to renumber the IP addresses assigned to you by us. All fees associated with domain name registration and periodic maintenance of domain names are your responsibility. The registrar or we, on registrar's behalf, will bill such fees directly to you. Such fees are not included in the prices for the Service. You must accept the Registrar's terms of service prior to receiving such service from us.

12. Changes or Updates to the Service.

FairPoint reserves the right, in its sole discretion, to make changes to the Service and the software, hardware and equipment provided in connection therewith. If such a change adversely affects your use of the Service, and we cannot reasonably mitigate such adverse effect, then you may terminate the affected Service without further obligation.

13. Locations.

The Service shall be provided to Customer under the terms hereof at the location(s) indicated in Appendix A. Other locations may be added to this CES Schedule only upon mutual assent of the parties in a duly signed writing.

APPENDIX A -1 TO RIDER A
(PRICING AND LOCATIONS)

State of Maine FairPoint Territory Pricing					
			MRC Pricing During Period 1 – per each quantity (Effective Date through November 14, 2017)	MRC Pricing During Period 2 - per each quantity (November 15, 2017 through November 14, 2018)	MRC Pricing During Period 3 - per each quantity (November 15, 2018 through November 14, 2020)
<u>Bandwidth</u>	<u>Quantity</u>				
1.5 Mb P&A	205		\$ 120.00	\$ 120.00	\$ 120.00
3.0 Mb P&A	47		\$ 169.65	\$ 131.95	\$ 131.95
5 Mb P&A	32		\$ 231.58	\$ 166.19	\$ 149.85
10 Mb P&A--incl BBE	65		\$ 301.92	\$ 222.67	\$ 188.70
20 Mb P&A --incl BBE	53		\$ 442.65	\$ 336.98	\$ 271.30
30 Mb P&A			\$ 477.62	\$ 382.09	\$ 350.25
40 Mb P&A			\$ 526.85	\$ 421.48	\$ 386.36
50 Mb P&A	11		\$ 636.92	\$ 467.07	\$ 467.07
60 Mb P&A			\$ 727.68	\$ 541.99	\$ 521.92
70 Mb P&A			\$ 783.67	\$ 572.89	\$ 540.46
80 Mb P&A			\$ 834.07	\$ 598.23	\$ 552.21
90 Mb P&A			\$ 852.46	\$ 612.33	\$ 564.31
100 Mb P&A	19		\$ 864.78	\$ 617.70	\$ 568.28
200 Mb P&A			\$ 971.28	\$ 638.27	\$ 596.64
500 Mb P&A			\$ 984.20	\$ 643.51	\$ 643.51
600 Mb P&A			\$ 1,032.96	\$ 675.40	\$ 675.40
1G	3		\$ 1,068.84	\$ 748.19	\$ 712.56
5G EVC			\$ 1,532.92	\$ 1,405.18	\$ 1,277.44
10G EVC			\$ 1,999.43	\$ 1,832.81	\$ 1,666.19
5G P&A			\$ 1,947.09	\$ 1,784.83	\$ 1,622.58
10G P&A			\$ 2,667.24	\$ 2,444.97	\$ 2,222.70
40M EVC	1		\$ 239.26	\$ 237.49	\$ 194.95
100M EVC	1		\$ 436.37	\$ 417.66	\$ 342.86
150 Mb EVC	1		\$ 480.16	\$ 445.86	\$ 445.86
1GEVC	1		\$ 627.83	\$ 523.19	\$ 470.87

Note: FairPoint’s charges above are exclusive of the following charges: (a) all applicable federal, state, local, and foreign sales, use, excise, utility, gross receipts, value added or other taxes (“Taxes”); and (b) all applicable surcharges, including, but not limited to, charges to recover amounts FairPoint is required or permitted by a governmental or quasi-governmental authority to collect from others or pay to others in support of statutory or regulatory funds or programs (“Surcharges”).

APPENDIX A – 2 TO RIDER A

State of Maine - Independent Telephone Company Territory Pricing				
Locations	Address	City	Speed	MRC
Mercer DOT	121 Valley Rd	Mercer	1.5	\$465.00
West Paris MFS	131 Bethel Rd	West Paris	1.5	\$240.00
Gray Hatchery	158 Weymouth Rd	Gray	1.5	\$240.00
Solon DOT	1719 River Rd	Solon	1.5	\$465.00
Mt Blue Cons	187 Webb Beach Rd.	Weid	1.5	\$465.00
Old Town Scales	198 Route 95 S	Old Town	1.5	\$690.00
New Gloucester Hatchery	312 Fish Hatchery Rd	New Gloucester	1.5	\$240.00
Gray MFS	356 Shaker Rd	Gray	1.5	\$240.00
Avon DOT	39 Avon Valley Rd	Avon	1.5	\$240.00
Knox DOT	516 Belfast Rd	Knox	1.5	\$900.00
Kingfield DOT	558 Main St	Kingfield	1.5	\$240.00
Enfield IFW	73 Cobb Rd	Enfield	1.5	\$690.00
Enfield IFW2	73 Cobb Rd	Enfield	1.5	\$690.00
Turner DOT	73 Fern St	Turner	1.5	\$240.00
Embden Fisheries	809 Cross Town Rd	Embden	1.5	\$240.00
Bethel DOT	821 Mayville Rd	Bethel	1.5	\$690.00
Lincolntonville DOT	Ferry Rd Rt 173 terminal	Lincolntonville	1.5	\$240.00
Swans Island	118 Ferry Rd.	Swan's Island	3	\$840.00
Athens DOT	177 Harmony Rd	Athens	3	\$464.00
Gray DOT	28 Portland Rd	Gray	3	\$840.00
Aurora DOT	433 Airline Rd	Aurora	3	\$464.00
Plymouth DOT	2510 Moosehead Trl	Plymouth	5	\$750.00
Dept of Education	466 Main Street Center	Damariscotta	5	\$336.00
WestEnfield DOT	869 Main St rt 2	West Enfield	5	\$750.00
Damariscotta Dept of Correction	529 Main St.	Damariscotta	5	\$336.00
Jonesboro IFW	307 Whitneyville Rd	Jonesboro	10	\$1,290.00
Gray IFW	358 Shaker Rd	Gray	10	\$600.00
Jonesboro DOT	615 Route 1	Jonesboro	10	\$1,290.00
Gray DPS	1 Game Farm Rd	Gray	20	\$925.00
Bolduc	516 Cushing Rd	Warren	20	\$925.00
MSP Super Max	807 Cushing Rd	Warren	100	\$855.00

Note: FairPoint’s charges above are exclusive of the following charges: (a) all applicable federal, state, local, and foreign sales, use, excise, utility, gross receipts, value added or other taxes (“Taxes”); and (b) all applicable surcharges, including, but not limited to, charges to recover amounts FairPoint is required or permitted by a governmental or quasi-governmental authority to collect from others or pay to others in support of statutory or regulatory funds or programs (“Surcharges”). Any orders for Independent Telephone Company (ITC) territory that are placed after the Effective Date of the Agreement require approval by both parties. FairPoint reserves the right to charge an additional MRC or NRC for ITC locations. The parties will agree upon any such additional charges prior to placement of any order for such services.

Special Terms Bureau of Motor Vehicle Mobile Van Network: The BMV Mobile Van Network is a unique EPLAN with a 3.0 Mbps host at 45 Commerce Drive, Augusta, Maine, and 1.5 Mbps remote locations throughout the State, of which, only two remote sites will be active at one time depending upon the location of the two mobile vans. The Service Level Agreement set forth in the Agreement does not apply to the BMV Mobile Van Network. The rates below only apply and are available to BMV Mobile Van Network Services.

Bureau of Motor Vehicles Pricing			
Bandwidth		Quantity	Years 1 - 5
BMV 1.5M remote		25	\$ 68.00
BMV 3M host		1	\$ 199.98
10M BBE		1	\$ 149.95
20M BBE		1	\$ 225.99

Note: FairPoint’s charges above are exclusive of the following charges: (a) all applicable federal, state, local, and foreign sales, use, excise, utility, gross receipts, value added or other taxes (“Taxes”); and (b) all applicable surcharges, including, but not limited to, charges to recover amounts FairPoint is required or permitted by a governmental or quasi-governmental authority to collect from others or pay to others in support of statutory or regulatory funds or programs (“Surcharges”).

APPENDIX B TO RIDER A
(SPECIAL TERMS)

Special Terms for all Services Described herein:

Upgrades – FairPoint agrees to spend, upon written request from the Department, up to Four Hundred Thousand (\$400,000) Dollars in capital (the “Total Capital Expenditures Amount”) for network equipment and facilities upgrades to increase bandwidth speeds to Department locations. As a result of the Department’s written request, FairPoint will provide, in writing, the total estimated price for the upgrade(s), and once the projected is completed, provide the Department with the actual costs (if different) (the “Total Site Upgrade Cost”). FairPoint will apply the Total Site Upgrade Cost to the Total Network Capital Expenditures Amount. Under no circumstance is FairPoint required to exceed the Total Capital Expenditures Amount or spend more than One Hundred and Fifty Thousand (\$150,000) Dollars annually for the aforementioned upgrades. For any Total Capital Expenditures Amount that FairPoint does not use for a specific upgrade by August 31, 2019, FairPoint is under no obligation to provide any further upgrades for the Department.

For the avoidance of doubt, the Total Capital Expenditures Amount is not Department monies, credits, escrowed funds, or refundable at any time and will be fully retained by FairPoint, and the Department waives any and all rights to make claims to the contrary. Any upgrades requested beyond the Total Capital Expenditures Amount would be in FairPoint’s sole and exclusive discretion and at the Department’s sole and exclusive expense and the parties will memorialize the same in a duly signed writing.

Once an upgrade is completed, the Department will enter into a duly executed amendment for the newly upgraded speed at the rate set forth in Appendix A-1 to Rider A or FairPoint’s then-current monthly rates if not contained in Appendix A-1 Rider A and such amendment will be in effect through the end of the then-current term of this Agreement. All improvements to the FairPoint’s network are for the sole and exclusive benefit of FairPoint and no right, title or interest is conveyed, transferred or assigned to the Department as a result of any upgrades under this Agreement or Section.

Invoices - Timely invoicing is important to the Department. Late service invoices create budget and payment problems for the State of Maine. Invoices must be issued to the Department within 90 days of service activation. Invoices for services not issued within this time period will not be paid.

Invoices – Accurate invoicing is important to the Department. An accurate invoice contains the correct services (billing telephone numbers, etc.) and is rated at the correct cost. The invoice also contains sufficient information, such as the contract number or other key data, to allow accurate bill payment by the State of Maine and correspondingly accurate account crediting by FairPoint. FairPoint shall assign an account manager and support staff to resolve bill accuracy issues. FairPoint shall issue updated invoices or implement adjustments to current invoices to resolve problems. Late fees shall not be assessed to the State of Maine and late fees, if assigned, will be adjusted accordingly. All invoice/billing records shall be accessible through an electronic billing/accounting portal when FairPoint makes such capability available.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

Outage Notification (Planned or Unplanned) – During normal business hours (M-F 7:00 am – 5:00 pm), FairPoint’s assigned Account Manager shall notify the Department Telecommunications Manager (207-624-8828) of significant State of Maine account service affecting outages. If the Telecommunications Manager is unavailable, the outage report shall be escalated to the Enterprise Operations and Monitoring team. During non-business hours FairPoint shall notify the Office of Information Technology Telecommunications Manager by calling the Department’s Enterprise Operations and Monitoring unit (207-624-7700) of significant State of Maine account service affecting outages. If the outage was unplanned, notification shall occur within sixty (60) minutes.

Network Monitoring and Service Order Status – The State of Maine pro-actively monitors and manages its telecommunication network to identify issues before they occur, to react more quickly and to troubleshoot issues. The State desires to have access to a trouble ticket and service order portal when FairPoint makes such capability available to track the progress of an installation, problem resolution and potentially submit service requests. It is preferable that the portal be accessible by an individual or via an electronic interface.

APPENDIX C TO RIDER A
(SERVICE LEVEL AGREEMENT)

POLICY

Enhanced Communications of Northern New England Inc. ("FairPoint") is committed to providing a reliable, high-quality network to support its Carrier Ethernet Service ("Service"). The key component of the Service is Service Availability. If an Eligible Customer (as defined below, also referred to herein as a "Customer") experiences a failure of this Service parameter, FairPoint will provide Customer with an SLA Credit as described herein.

DEFINITIONS

"FairPoint Network" refers to our Service network from the Customer's site to the FairPoint network provider edge. The FairPoint Network includes the FairPoint side from the point of demarcation at the Customer's site or premises (as specified in the corresponding Schedule), FairPoint Provided Local Access Circuits purchased directly through FairPoint, FairPoint customer premises equipment and networks and network equipment and Ethernet circuits owned or controlled by FairPoint. The FairPoint Network does not include the FairPoint service network at locations utilizing underlying network service providers or services utilizing network service providers outside of the operating territory of the FairPoint affiliate local exchange company (each referred to hereinafter as "Type II arrangements").

"Eligible Customer" means any Customer who has purchased Service from FairPoint, excluding any Customer (i) whose connection terminates at a Customer edge router which is inactive, (ii) who is blocking, or who during the period in question, has blocked FairPoint from sending Internet control message protocol ("ICMP") and simple network management protocol ("SNMP") traffic to their Customer-premises router, (iii) who does not provide, or who during the period in question, has not provided the necessary access to personnel and facilities at the customer premises to enable FairPoint to perform comprehensive service troubleshooting, (iv) whose current contract term is not at least one (1) year in length (v) whose account is, or during the period in question, was not in good financial standing with FairPoint, or (iv) whose Service is provided using Type II arrangements.

"FairPoint Provided Local Access Circuit" means any leased circuit connecting a Customer's router to a FairPoint edge network that was ordered and is managed by FairPoint.

"Outage" means a time period during which the demarcation point UNI port (Ethernet hand-off) is unable to send or receive ICMP traffic.

"Service Availability" is determined by metrics associated with the availability of the network elements under FairPoint's control.

"SLA Credits" are defined as the credits to be provided to Customer by FairPoint for an outage under this Service Level Agreement.

Service Availability Agreement: The FairPoint Network will support up to 99.9% availability for a FairPoint provided local access circuit.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

Committed Information Rate "CIR": FairPoint provides 100% Committed Information Rates (CIR) on its Service. Each Service will be configured and provisioned to operate to the full CIR specified for the product. The FairPoint Next Generation Network is engineered to ensure that even during peak network load, the Service will be capable of transmitting or receiving network traffic (IP packets including data and packet overhead) within a 10% maximum variance of the CIR as averaged over a calendar month. Committed Information Rate does not apply to performance outside of the FairPoint Network. If the subscribed bandwidth throughput is not met, FairPoint will have 5 days to restore the throughput to specification. If FairPoint is unable to restore bandwidth throughput to the subscribed level, the Customer may downgrade without penalty to the service bandwidth rate that is being received.

Service interruptions caused by FairPoint's planned network maintenance activities, maintenance at the Customer premises, failure or misconfiguration of Customer premises hardware, equipment or software, failures of Customer-managed or Independent Telephone Company-managed local access circuits, breach of the Agreement, and Force Majeure events will be ineligible for SLA Credits hereunder and shall not be included in the definition of "Outage". In addition to the foregoing, Customer understands and agrees that no SLA Credits will be available for Bureau of Motor Vehicles (BMV) Mobile Van Network Services.

In order to be eligible for SLA Credits, Customer must report an Outage by opening a trouble ticket with FairPoint. The length of an outage is calculated based on outage information contained in trouble tickets (close date/time minus open date/time less any stop clock time).

SLA Credits: Customer is eligible for SLA Credit if FairPoint fails to meet its Service Availability goal. The credit the Customer is entitled to is determined by multiplying the applicable percentage shown in the below table by the monthly recurring charge ("MRC") for the particular affected/non-performing Service.

Per Service Outage	Percentage Credit
Less than 43 minutes	No Credit
43 minutes up to 4 hours	10% of the MRC
4 hours up to 8 hours	25% of the MRC
8 hours up to 12 hours	40% of the MRC
Greater than 12 hours	100% of the MRC

A maximum SLA Credit of one hundred percent (100%) of the monthly recurring charges for port and FairPoint Provided Local Access Circuits may be provided during any single month for non-redundant access circuit configurations.

Chronic Outage. Should Customer's Service experience an outage on three (3) or more separate occasions totaling more than twelve (12) hours or of more than fifteen (15) hours on one (1) occasion during any single standard billing period (a "chronic outage"), Customer may terminate the subject Services prior to the end of the Service Term without incurring early termination charges.

Customer must notify FairPoint of any election to terminate pursuant to this SLA in writing within thirty (30) days of any chronic outage giving rise to a right of such election. Customer may only terminate Service that experiences a chronic outage as described above.

This SLA sets forth Customer's sole and exclusive remedy for chronic outages or any outages of Service.

SLA Credits

SERVICE CREDIT PROCESS

Filing Period: Claims for SLA Credits must be submitted to FairPoint within one (1) week of the outages occurrence.

Required Information

The claim for SLA Credit must include the following information:

- Customer name
- Customer's Contact's name, telephone number and e-mail address
- Customer Billing Account Number
- Circuit Identification Number
- Date and beginning/end time of outage
- Trouble Ticket Number
- Brief description of the characteristics of the outage

Claim Process

Customer must submit the required information above in writing to esgorder@fairpoint.com. FairPoint will acknowledge all claims within two (2) business days and will review all claims within five (5) business days of receipt. Customer will be informed by email or telephone whether the claim for SLA Credit will be granted or rejected. If rejected, the notification will specify the basis for rejection.

Credit Process

Approved SLA Credits will be applied to the Customer's billing during the billing cycle following the approval of the claim for SLA Credits.

RIDER B-IT
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ 5.8 Million Estimated (Unencumbered)
2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

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

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

Payments are subject to the Provider's compliance with all items set forth in this Agreement. The Department will pay the Provider within thirty (30) days following the receipt of an approved invoice. The Department may withhold a Retainage for project-based services in the following manner:

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

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

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

4. **AGREEMENT ADMINISTRATOR** The Agreement Administrator is the Department's representative for this Agreement. S/he is the single authority to act on behalf of the Department for this

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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: E. Lee
Title: Director – Vendor Management Team
Address: Off. Of Info. Technology, 51 Commerce Dr, Augusta ME 04330
Telephone: 207.624.8866
E-mail address: vmo.oit@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: Jon Richard
Title: Director Enterprise Operations
Address: Off. Of Info. Technology, 51 Commerce Dr, Augusta ME 04330
Telephone: 207.624.9861
E-mail address: jon.richard@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:

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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,

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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

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

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

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

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

1. **Minimum Coverage**

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

A) All acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret) in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;

B) Network security and privacy risks, including, but not limited to, unauthorized access, failure of security, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of confidential information, related regulatory defense, and penalties in an amount not less than \$1,000,000 per occurrence, and as an annual aggregate;

C) Data breach expenses, in an amount not less than (*see NOTE below and insert the appropriate limit based upon the number of Personally Identifiable Information records*) \$_____, and payable, whether incurred by the Department or the Provider; for and on behalf of the Department, including, but not limited to:

C.1) Consumer notification, whether or not required by law;

C.2) Forensic investigations;

C.3) Public relations and crisis management fees; and

C.4) Credit or identity monitoring, or similar remediation services.

The policy shall affirm coverage for contingent bodily injury and property damage arising from the failure of the Provider's technology services, or an error, or omission, in

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

the content of, and information from, the Provider. If a sub-limit applies to any element of the coverage, the certificate of insurance must specify the coverage section and the amount of the sub-limit.

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

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

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

2. Workers' Compensation and employer's liability, as required by law;
 3. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
 4. Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
 5. Crime, in an amount not less than \$_____ (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and
 6. Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.
3. **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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.

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

5. The Department will not grant the Provider, or any sub-contractor of the Provider, "Additional Insured" status and the Department will not grant any Provider a "Waiver of Subrogation".

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

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

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

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

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

26. **INTERPRETATION OF THE AGREEMENT**

1. **Reliance on Policy Determinations** The Department shall determine all program policy. The Provider may, from time to time, request the Department to make policy determinations, or to issue operating guidelines required for the proper performance of this Agreement, and the Agreement Administrator shall respond in writing in a timely manner. The Provider shall be entitled to rely upon,

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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).

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- 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

Exception to Rider B-IT Section 2: FairPoint's Charges are exclusive of the following charges: (a) all applicable federal, state, local, and foreign sales, use, excise, utility, gross receipts, value added or other taxes ("Taxes"); and (b) all applicable surcharges, including, but not limited to, charges to recover amounts FairPoint is required or permitted by a governmental or quasi-governmental authority to collect from others or pay to others in support of statutory or regulatory funds or programs ("Surcharges").

Exception to Rider B-IT Sections 2 A - D.: FairPoint systems are not currently capable of meeting the requirements stated in Section 2 A though D. FairPoint will provide invoice information when FairPoint systems obtain the capability.

Exception to Rider B-IT Section 6 (Subcontractors) – This Section and any others referencing subcontractors and subcontractor requirements will not include individuals FairPoint hired or hires as contractors or consultants or current or future Independent Telephone Companies.

Exception to Rider B-IT Section 8 (Equal Employment Opportunity) – Subsection 4 of this Section 8 is eliminated.

Exception to Rider B-IT Section 12 (Accounting, Records, and Audits), Subsection 7 – The parties' agree to revise the first sentence of this subsection by including the bold and italicized language and removing the underlined word as follows: "As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information *and those that are exempt under applicable law*, 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.

Exception to Rider B-IT 13.6 Termination – The State of Maine is purchasing services through this contract and not goods. Therefore, Rider B-IT paragraph 13. 6 Subsections 4 and 6 do not apply to the agreement and are hereby eliminated.

Exception to Rider B-IT Section 16 (State Held Harmless) – This Section will be revised by adding the following sentence at the end of this provision: "For the avoidance of doubt, FairPoint will not only be free from indemnity obligations for the acts or omissions of the Department but also its agents, representatives, or contractors."

Exception to Rider B-IT Section 17 (Limitation of Liability) – This Section will be revised by adding the following sentence at the end of this provision: "For the avoidance of doubt, the limitations of liability herein apply to all of FairPoint's liability under this Agreement, including any indemnification obligations."

Exception to Rider B-IT Section 20 (Insurance Requirements) –

Subsection 1. The insurance requirements of B) and C) shall not apply under this Agreement and are eliminated. FairPoint is not storing, maintaining, hosting, processing or otherwise accessing any confidential data or personally indefinable information on a routine or even random basis in the delivery

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

of the services. Protection of this information over FairPoint's network is the Department's sole and exclusive obligations and FairPoint recommends encryption of any such data in transit over its network.

Subsection 3. Number (4). The requirement to revise FairPoint's policies to include a cancellation notice to be sent to the Department is eliminated; however, FairPoint agrees to notify the Department within thirty (30) days of any cancellation of its insurance policies applicable to this Agreement. For the avoidance of doubt, the term cancellation under this subsection will not include FairPoint replacing its policy with equal to or greater coverage than the requirements listed above from another carrier without a gap in coverage, but the term will include cancellation without replacement meeting the conditions herein.

Exception to Rider B-IT Section 25 Set-off rights – Section 25 is eliminated and will not apply.

Exception to Rider B-IT Section 34, Subsection 2 – This Section will be revised by changing the phrase “any data” to “any data owned by the state” and “such data” to “such data owned by the state.” For the avoidance of doubt, this Section 34 applies no restrictions or limitations on FairPoint's use of its data, proprietary information, copyrights, publishing, marketing or any other intellectual property.

Exception to Rider B-IT Section 39 (State IT Policies) – This Section shall include the following sentence at the end of this Section: “Notwithstanding the foregoing, no policies apply that do not apply to the Services being delivered (e.g., data center and cloud policies) or those that apply only to the Department or the State (e.g. FOAA), and to the extent any policy conflicts with FairPoint's policies, the CES Service Schedule or FairPoint operations, FairPoint's policies, the CES Schedule or business operations shall control. Furthermore, no Department or State policies shall change or increase FairPoint's limitations of liability herein, and if any policy enforcement requires that FairPoint incur additional costs for implementation, those costs shall be fully borne by the Department and any such implementation will only be required by FairPoint when memorialized in a duly signed writing.”

Exception to Rider B-IT Section 41 (Ownership) – As a contract for services only, this Section is eliminated. For the avoidance of doubt, the parties do not transfer any right, title or interest in any of their property (tangible or intangible and real or personal) to the other party as a result of either party's performance under this Agreement or as a result of entering into this Agreement.

Exception to Rider B-IT Sections 42 (Custom Software), 43 (Off-The-Shelf (OTS) Software) and 44 (Software as Service) – The State of Maine is purchasing Carrier Ethernet Services and not software and these Sections therefore do not apply and are eliminated.

**RIDER D
SERVICE AGREEMENT**

<p>FairPoint</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>	<p style="text-align: center;">("Customer"):</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>
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This Agreement between the FairPoint Company identified in the applicable Service Schedule ("FairPoint"), and the Customer identified above ("Customer"), includes the attached Service Schedules and Service Quotations (collectively, "Schedules") together with any additional Schedules mutually agreed to in writing in the future and any license terms provided to Customer in connection with any software, hardware or equipment provided to Customer by, on behalf of or at the instruction of FairPoint (collectively, "License Terms").

1. **Services.** Customer hereby requests and agrees to purchase from FairPoint the services identified in the attached Schedules ("Service") pursuant to the terms and conditions of this Agreement. The Service will be provided to Customer locations specified in the Schedule(s). Other Customer locations may be added to this Agreement only via an amendment to the Agreement. This Agreement and any Schedule hereto become binding when signed by an authorized FairPoint representative. Service will be provided to Customer and any Customer affiliates expressly listed herein. Under no circumstances may the Customer resell the Service being provided hereunder.

2. **Customer Responsibilities.**
 - 2.1 With respect to each Customer-designated location, Customer is responsible for taking all steps necessary to interconnect the Service at such location, including the payment of associated interconnection costs and those associated with Customer personnel, the securing of rights-of-way, and the furnishing of electrical power, heating, ventilating and cooling. The selection of AC or DC power must be mutually agreed to by Customer and FairPoint.

 - 2.2 Customer also undertakes responsibility (without limitation) to obtain, install and maintain all equipment, hardware, software, materials and supplies necessary to interconnect terminal equipment or communications system of the Customer, or any third party acting as Customer's agent ("Customer Equipment"), to the Service, as well as fulfillment of the following: (a) secure all licenses, permits, and other arrangements necessary for interconnection; (b) make necessary arrangements in order that FairPoint will have access to such locations at reasonable times for installing, testing, repairing, maintaining or removing the Service; (c) protect the privacy of any communications carried over the network, network equipment, associated hardware and software and facilities of FairPoint, its affiliate(s) and its network service provider(s) and other supplier(s) (collectively, "FairPoint Facilities"); (d) ensure that Customer Equipment is properly interfaced with the Service and that emit signals that: (i) are of the proper mode, bandwidth, power, data speed and signal level for the intended use of the Customer; (ii) are fully compliant with the generally accepted minimum protective standards of the telecommunications industry as endorsed by the Federal Communications Commission (FCC); and (iii) do not damage, harm, degrade or interfere with the proper operation of the services of FairPoint, its affiliate(s) and its network service provider(s) and other supplier(s), or the FairPoint Facilities or injure their personnel.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- 2.3 If Customer or its agents, contractors, or users fail to maintain and operate the Customer Equipment properly, with resulting or imminent interference, degradation or harm to or with the proper operation of the services of FairPoint its affiliate(s) and its network service provider(s) and other supplier(s) or the FairPoint Facilities, or injury or imminent injury to their personnel, FairPoint may, in its sole discretion, immediately upon written notice, suspend the Service without liability or require the use of protective interface equipment at Customer's expense. During any period of suspension, any service level agreement credits for Service interruptions or outages set forth herein or in a separate Service Level Agreement do not apply. Customer shall also reimburse FairPoint for damages to the FairPoint Facilities caused by the negligence or willful act or omission of Customer, its agents, contractors, or users or resulting from their improper use of the Customer Equipment or the Service.
 - 2.4 The Service may be connected with the services or facilities of other network service providers. FairPoint may, when authorized by Customer and agreed to by FairPoint, act as Customer's agent for ordering facilities provided by other network service providers to allow such connection of Customer's locations to FairPoint's network or to the network of an underlying network service provider or service. Customer is responsible for all charges billed by other network service providers in connection with the use of Service. Any special equipment, hardware, software or facilities necessary to achieve compatibility between network service providers are the sole responsibility of Customer.
 - 2.5 Customer must notify FairPoint of any interruption of Service. Before giving such notice, Customer shall ascertain that the trouble is not being caused by any action or omission of Customer and is not a result of or being caused by a defect, malfunction or misconfiguration in the Customer Equipment.
 - 2.6 Customer is solely responsible for the selection, implementation and maintenance of security features for protection against unauthorized or fraudulent use of Service.
 - 2.7 Neither Customer nor its agents, contractors, third parties or users may rearrange, disconnect, move, remove, modify, or attempt to repair any FairPoint Facilities or Service provided by FairPoint, other than by connection or disconnection to any interface means used, without the prior written consent of FairPoint.
 - 2.8 Customer is responsible to perform any error detection and error correction of data generated by and any defect, malfunction or misconfiguration in the Customer Equipment. FairPoint assumes no responsibility for the quality of the signal generated by the Customer or any Customer Equipment and will use commercially reasonable efforts to deliver the signal to the receiving location in the same format and condition as generated by Customer.
3. **Service Limitations.**
- 3.1 The Service may not be used for any unlawful purpose.
 - 3.2 The FairPoint Facilities used to provide the Service will be exclusively of FairPoint's choosing. FairPoint may at any time substitute network, network equipment, associated hardware and software and facilities used by FairPoint to provide the Service, or it may substitute comparable service for the Service being provided to Customer. FairPoint Facilities placed on Customer premises that are utilized by FairPoint to provide Service remain the property of FairPoint or its suppliers. Such FairPoint Facilities must be returned to FairPoint by the Customer, whenever requested, within a reasonable period following the request in as good condition as when provided, reasonable wear and tear being excluded.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

- 3.3 FairPoint's provision of Service is subject to authorization to operate in the jurisdiction(s) where the Service is provided. The obligation of FairPoint to provide Service is dependent upon its ability to provide, procure, construct, and/or maintain the FairPoint Facilities that are required to meet Customer's order for Service. FairPoint will make all commercially reasonable efforts to secure the necessary FairPoint Facilities, providing the foregoing are reasonably available and the provision of the Service will not adversely affect FairPoint's other services or the offering of the Service to other customers.
- 3.4 FairPoint reserves the right to perform network upgrades, maintenance, updates and modifications at such times as are determined by FairPoint as required to maintain the Service performance. FairPoint will make commercially reasonable efforts to perform these upgrades, maintenance, updates and modifications during the hours of 11 PM and 7 AM local time and to provide notice to Customer. FairPoint reserves the right to perform upgrades, maintenance, updates and modifications at any time, in its discretion, when it believes such unscheduled maintenance is necessary to maintain Service or performance of the FairPoint Facilities.
- 3.5 Except as set forth in a Schedule and/or separate Service Level Agreement, FairPoint is not subject to any performance intervals, performance measurements, performance credits, penalty payments or the like associated with the performance of this Agreement.
- 3.6 Common carrier interstate services that may be used with the Service will be provided pursuant to tariff rates, terms, and conditions of applicable tariffs or separate agreement. In the event a regulatory agency or the courts re-impose common carrier regulation for the Service as provided herein, the rates, terms and conditions for this Service will automatically revert to tariff rates, terms and conditions without an amendment.
- 3.7 The use and restoration of Service during emergency conditions will be performed consistent with applicable federal, state, local, or foreign law, statute, rule, regulation, ordinance, code, judicial decision or other governmental order, decree, or requirement ("Laws").
4. **Service Period.** Customer shall purchase the Service identified in the applicable Schedule(s) for the period of time stated in the Schedule(s) ("Service Period"). Unless otherwise stated in the Schedule(s), the Service Period will begin when any work or installation of FairPoint Facilities needed to provide the Service is completed and the Service is available to the Customer for use. At the end of the Service Period, unless otherwise stated in a Schedule, the terms and conditions set forth herein will continue on a month-to-month basis in full force and effect until a new agreement is entered into or the Service is terminated or cancelled in accordance with this Agreement ("Extended Service Period"). Although the terms and conditions set forth herein will continue to apply, FairPoint may charge its then-current month-to-month rates for the Service during the Extended Service Period. Following the expiration of the Service Period, either party may thereafter cancel this Agreement without further liability by either party upon thirty (30) days prior written notice to the other party.
5. **Charges.** Customer is responsible for payment to FairPoint, or to any entity designated by FairPoint as its collection agent, for all rates and charges set forth in the corresponding Schedule(s) and associated with the Service, including any applicable early termination or cancellation charges ("Charges"). This responsibility for payment of the Charges is not changed by virtue of any use, misuse, abuse or fraudulent use of the Service by Customer, its agents, contractors, or users or third parties including, without limitation, the Customer's employees or other members of the public. The Charges may include: (a) non-recurring or one-time Charges that are payable when the Service with which they are associated has been performed; (b) recurring Charges which are not dependent on usage (which may be billed in advance); or (c) usage Charges billed after each usage cycle associated with the Service. If an entity other than FairPoint (e.g., another carrier or a supplier) imposes charges on FairPoint in connection with the Service, those charges, along with any applicable Charges, will be imposed on Customer, including,

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

without limitation, any early termination charges, all of which shall be included in the definition of "Charges" hereunder.

6. **Taxes and Surcharges.**

6.1 FairPoint's Charges are exclusive of the following charges: (a) all applicable federal, state, local, and foreign sales, use, excise, utility, gross receipts, value added or other taxes ("Taxes"); and (b) all applicable surcharges, including, but not limited to, charges to recover amounts FairPoint is required or permitted by a governmental or quasi-governmental authority to collect from others or pay to others in support of statutory or regulatory funds or programs ("Surcharges"). Examples of Surcharges include, but, are not limited to, Universal Service funding, license tax, permit fees, or franchise fees.

6.2 FairPoint may elect to impose and collect such Taxes and/or Surcharges, unless otherwise constrained by court order or applicable Laws. Customer agrees to pay all Taxes and Surcharges imposed. If Customer provides FairPoint with a duly authorized exemption certificate, FairPoint will exempt Customer in accordance with applicable Laws, effective on the date FairPoint receives the certificate.

6.3 Any adjustment to, or imposition of, Taxes and Surcharges under this Section 6 may be made without prior notice to Customer.

7. **Billing and Payment.** FairPoint will invoice Customer monthly for Charges, Taxes and Surcharges. Payments will be due thirty (30) days from the invoice date unless a different due date appears on the invoice. Payments received after the due date may be subject to a late payment charge of 1.5% per month or the maximum rate permitted by applicable Laws, whichever is lower, on all overdue amounts until Customer's account is current. Should Customer have a billing dispute, Customer must provide notice to FairPoint in writing within thirty (30) days of the invoice date with an explanation of the disputed invoiced amount or else Customer will waive the right to dispute the amount set forth on the invoice. In the event Customer timely disputes an invoiced amount, Customer shall pay the undisputed portion of the invoice in accordance with this Section 7. If FairPoint determines that a disputed charge was billed correctly, payment is due from Customer within five (5) days after FairPoint advises Customer that the dispute is denied. Customer shall pay the disputed amount by such date or commence Dispute Resolution procedures under Section 16. Late payment charges on previously disputed amounts will begin, as set forth above, following the expiration of the five (5) day period. FairPoint may assign unpaid delinquent charges to a collection agency for action. If FairPoint resorts to legal action to recover invoiced amounts due, Customer agrees to reimburse FairPoint for all expenses incurred to recover such monies (including attorneys' fees, court costs, and, if permitted under applicable Laws, amounts paid to third party collection agencies). Customer authorizes FairPoint to conduct a credit search which FairPoint will use to determine the credit worthiness of Customer, in its sole discretion. FairPoint may terminate this Agreement if, in the sole opinion of FairPoint, the results of such search are deemed unacceptable.

8. **Service Termination by Customer.** If Customer terminates the Service subsequent to the execution of this Agreement by both parties, Customer shall pay all applicable Charges, Taxes and Surcharges for early termination of the Service as specified herein and in the corresponding Schedule(s). Termination of the Service must be in writing to FairPoint and FairPoint has up to thirty (30) days to complete the disconnection of the Service. Customer is responsible for all Charges, Taxes and Surcharges for the Service during such thirty (30) days. This 30-day period begins on the day FairPoint receives Customer's written termination notice from Customer.

9. **Suspension of Services by FairPoint.** In addition to its rights to suspend Service as set forth above, FairPoint may suspend, or limit use of the Services provided under this Agreement without liability, but

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

with any notice required by applicable Laws, to Customer, for the following reasons: (a) The Service is being used in violation of any applicable Laws; (b) The Service is being used in an unauthorized or fraudulent manner or otherwise in violation or breach of this Agreement; (c) The use of the Service adversely affects FairPoint's Facilities or its service to others; (d) A court or other governmental authority having jurisdiction issues an order prohibiting FairPoint from furnishing the Service to Customer; or (e) violation of FairPoint's Acceptable Use Policy ("AUP"), which is published on FairPoint's web site (and incorporated herein by reference); or (f) Customer fails to timely pay undisputed Charges, Taxes and Surcharges for Service provided.

10. Limited Warranty.

10.1 FAIRPOINT WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE THE SERVICE SUBSTANTIALLY IN ACCORDANCE WITH ANY SERVICE DESCRIPTIONS SET FORTH IN THIS AGREEMENT OR A SCHEDULE. IF THE SERVICE DOES NOT FUNCTION SUBSTANTIALLY IN ACCORDANCE WITH SUCH SERVICE DESCRIPTIONS, THROUGH NO FAULT OF CUSTOMER OR ITS AGENTS, CONTRACTORS, OR USERS AND NOT DUE TO SCHEDULED MAINTENANCE, FAIRPOINT'S SOLE OBLIGATION IS TO REPAIR AND RESTORE THE SERVICES AT FAIRPOINT'S EXPENSE AND TO PROVIDE TO CUSTOMER ANY CREDITS FOR THE AFFECTED SERVICES EXPRESSLY PROVIDED FOR IN ACCORDANCE WITH THIS AGREEMENT OR THE APPLICABLE SCHEDULE OR SEPARATE SERVICE LEVEL AGREEMENT. THE FOREGOING WARRANTY AND REMEDY IS FAIRPOINT'S EXCLUSIVE WARRANTY AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY, UNLESS OTHERWISE EXPRESSLY STATED HEREIN OR IN AN APPLICABLE SCHEDULE HERETO.

10.2 EXCEPT AS SET FORTH IN SECTION 10.1, THE FAIRPOINT AND ITS NETWORK SERVICES SUPPLIER(S), AND THIRD-PARTY SOFTWARE, HARDWARE AND EQUIPMENT PROVIDERS DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR ARISING BY COURSE OF PERFORMANCE, DEALING, CUSTOM OR TRADE USAGE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF WE KNEW OR SHOULD HAVE KNOWN SUCH PURPOSE), AND NON-INFRINGEMENT FOR THE SERVICE AND FAIRPOINT FACILITIES. FAIRPOINT, ITS NETWORK SERVICES SUPPLIER(S), AND THIRD-PARTY SOFTWARE, HARDWARE AND EQUIPMENT PROVIDERS WILL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO THE FAIRPOINT FACILITIES OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF YOUR DATA FILES, PROGRAMS, CUSTOMER EQUIPMENT, PROCEDURES OR INFORMATION THROUGH ACCIDENT, NEGLIGENCE, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF THE CAUSE OF SUCH DAMAGE. CUSTOMER AGREES THAT THE SERVICE AND FAIRPOINT FACILITIES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, THAT THE SPEED AND UNINTERRUPTED USE OF THE SERVICE ARE NOT GUARANTEED, AND THAT THE SPECIFICATIONS AND PERFORMANCE OF THE FAIRPOINT FACILITIES ARE NOT GUARANTEED OR WARRANTED TO BE ERROR FREE. FAIRPOINT DOES NOT WARRANT THAT THE SERVICE OR FAIRPOINT FACILITIES WILL MEET YOUR NEEDS, PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. IF AT ANY TIME DURING THE TERM OF THIS AGREEMENT FAIRPOINT OR A THIRD PARTY ACTING ON OUR BEHALF OR INSTRUCTION PROVIDES YOU WITH FREE OR FOR-FEE SOFTWARE, HARDWARE OR EQUIPMENT, YOU AGREE THAT YOUR SOLE RIGHT TO RECOURSE, IF ANY, INCLUDING BUT NOT LIMITED TO DAMAGES FOR FAILURE OF SUCH SOFTWARE, HARDWARE OR EQUIPMENT TO PERFORM, IS AGAINST THE MANUFACTURER OF SUCH SOFTWARE, HARDWARE OR EQUIPMENT. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES. IN THESE JURISDICTIONS OUR LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS.

11. Disclaimer of Consequential Damages and Limitation on Liability.

11.1 EXCEPT FOR (A) PAYMENT BY CUSTOMER OF AMOUNTS OWED TO FAIRPOINT FOR SERVICE PROVIDED UNDER THIS AGREEMENT (INCLUDING CHARGES, TAXES AND

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

SURCHARGES) AND (B) CUSTOMER INDEMNIFICATION OBLIGATIONS HEREUNDER (C) BREACH BY YOU OF LICENSE TERMS APPLICABLE TO HARDWARE, EQUIPMENT OR SOFTWARE PROVIDED BY, ON BEHALF OF OR AT THE INSTRUCTION OF FAIRPOINT, (D) UNAUTHORIZED ACCESS, ALTERATION, THEFT, DAMAGE OR DESTRUCTION BY CUSTOMER OR ITS AGENTS, CONTRACTORS, OR USERS OF THE FAIRPOINT FACILITIES OR ANY OF FAIRPOINT'S DATA FILES, SERVICE, OR OTHER SOFTWARE, HARDWARE, EQUIPMENT, OR INFORMATION, WHETHER THROUGH ACCIDENT, FRAUDULENT OR MALICIOUS MEANS OR DEVICES, OR ANY OTHER METHOD, AND REGARDLESS OF WHETHER ANY OF THE FOREGOING OCCURS AS A RESULT OF NEGLIGENCE OF FAIRPOINT OR ITS NETWORK SERVICE SUPPLIER(S) OR OTHER SUPPLIERS, NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL OR LOSS OR DAMAGE TO DATA, ARISING IN CONNECTION WITH THIS AGREEMENT, OUT OF THE USE OR INABILITY TO USE THE SERVICE OR ANY FAIRPOINT FACILITIES, UNDER ANY THEORY OF TORT, CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 FAIRPOINT'S LIABILITY TO CUSTOMER FOR ANY OTHER DAMAGES DUE TO USE OF OR INABILITY TO USE THE SERVICE OR FAIRPOINT FACILITIES OR OTHERWISE ARISING UNDER THIS AGREEMENT, WHETHER CAUSED BY FAIRPOINT'S NEGLIGENCE OR BREACH OF THIS AGREEMENT, ARE LIMITED TO THE AMOUNT OF THE CHARGES ACTUALLY PAID BY CUSTOMER TO FAIRPOINT FOR THE SERVICE ADVERSELY AFFECTED BY SUCH NEGLIGENCE OR BREACH OF THE AGREEMENT FOR THE PERIOD SUCH SERVICES WERE ADVERSELY AFFECTED, UNLESS OTHERWISE SPECIFIED AS PART OF A SEPARATE SERVICE LEVEL AGREEMENT OR IN AN APPLICABLE SCHEDULE. FAIRPOINT MAY FROM TIME TO TIME PROVIDE ADVICE, MAKE RECOMMENDATIONS OR SUPPLY OTHER ANALYSIS RELATED TO THE SERVICE IN THIS AGREEMENT AND WHILE FAIRPOINT SHALL USE REASONABLE EFFORTS IN THIS REGARD, CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS LIMITATION OF LIABILITY APPLIES TO THE PROVISION OF SUCH ADVICE, RECOMMENDATIONS AND ANALYSIS.

12. **Force Majeure.** Other than payment for amounts due hereunder, neither party is liable for any delay or failure in performance under this Agreement arising out of acts or events beyond its reasonable control, including but not limited to acts of God, war, terrorist acts, fire, flood, severe weather, cut cable, power surges or failures, explosion, riot, embargo, acts of the Government, the act or omission of any third party, labor disputes or strikes and other labor disturbances, or unavailability of necessary facilities, software, hardware or equipment.
13. **Default.** If FairPoint fails to substantially perform its obligation to provide the Service in accordance with this Agreement, or if Customer fails to substantially perform its obligations hereunder, and such failure is not cured within thirty (30) calendar days following receipt of a default notice in writing from the other party, then the non-defaulting party has the right to terminate this Agreement. FairPoint may also terminate this Agreement if Customer fails to pay any invoice (excluding any reasonably disputed claim amounts, but only while such dispute is pending) within thirty (30) calendar days after the invoice date, which failure has not been cured within ten (10) calendar days of receiving notice of the failure to pay. Upon termination of the Agreement, Customer is liable for any unpaid Charges, Taxes and Surcharges for the terminated Service incurred up to the time of termination of the Agreement and associated with termination of the Agreement. If such termination is due to the default of Customer, then

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

Customer is required to pay the applicable early termination/cancellation charges as set forth in the corresponding Schedule(s). Termination of the Service for any cause does not release either party from any liability which at the time of termination had already accrued or which thereafter accrues for any act or omission occurring prior to the termination or from an obligation which is expressly stated in the Agreement to survive termination.

14. Intellectual Property.

14.1 Except as expressly stated in this Agreement, this Agreement may not be construed (nor may any be implied or arise by estoppel) as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property ("Intellectual Property Rights"), now or hereafter owned, controlled or licensable by either party, including in the case of Customer no license (other than the limited license to use the Service) is granted by FairPoint with respect to the Service or any FairPoint Facilities. Except as expressly stated in this Agreement or in accordance with the terms of a separate license agreement between the parties granting such rights, neither party may use any Intellectual Property Rights of the other party.

14.2 Customer agrees that the Service provided by FairPoint hereunder are subject to the terms, conditions and restrictions contained in any applicable agreements (including software or other license agreements, acceptable use policies, etc.) between FairPoint and FairPoint's network service providers and suppliers. FairPoint agrees to use commercially reasonable efforts to advise Customer, directly or through a third party, of any such terms, conditions or restrictions that may limit any Customer use of the Service.

15. Indemnification.

15.1 Each party and its affiliates ("Indemnifying Party") shall indemnify, defend and hold harmless the other party, its affiliates, directors, officers, employees, agents, and, in the case of FairPoint, its network service providers and suppliers ("Indemnitees"), each from and against any and all Third-Party Claims (as defined below) that arise out of bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, to the extent such injury, death, damage, destruction or loss, was proximately caused by the negligence or intentionally wrongful acts or omissions of the Indemnifying Party in connection with this Agreement. For purposes of this Agreement, "Third-Party Claims" means a claim where there is (a) a claim, demand, suit or action by any third party who is not a party to this Agreement, (b) a settlement with, judgment by, or liability to, any third party who is not a party to this Agreement, or (c) a fine or penalty imposed by any third party who is not a party to this Agreement.

15.2 Customer (the "Indemnifying Party" under this Section 15.2) shall indemnify, defend and hold harmless FairPoint, its affiliates, directors, officers, employees, agents, network service providers and suppliers (the "Indemnitees" under this Section 15.2) from any Third-Party Claim resulting or arising from (a) Customer's use of the Service, including, without limitation, infringement, violation, or misappropriation of any Intellectual Property Rights, right of privacy, right of publicity, libel, slander, and invasion of privacy; (b) Customer's breach of this Agreement; (c) the violation of applicable Laws or our AUP by Customer or its agents, contractors, or users; (d) any combination of the Service with other products, equipment, hardware, software or services not provided by FairPoint; (e) any modification of the Service or any FairPoint Facilities; or (f) any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to any content transmitted by Customer or its agents, contractors or users using the Service or any third party gaining access to the FairPoint Facilities or the Service through Customer's or its agent's, contractor's or user's use of the Service.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

15.3 The defense and indemnification obligations set forth in this Section 15 are contingent upon (1) the Indemnitee providing the Indemnifying Party prompt, written, and reasonable notice of any Third-Party Claim subject to indemnification (but in any event within such period of time so as not to materially prejudice the Indemnifying Party, (2) the Indemnitee granting the Indemnifying Party the right to control the defense of the same, and (3) the Indemnitee's full cooperation with the Indemnifying Party in defense of the Third-Party Claim, including providing information and assistance in defending such claim. Nothing herein, however, restricts the Indemnitee from participating, on a non-interfering basis, in the defense of the Third-Party Claim at its own cost and expense with counsel of its own choosing. The Indemnifying Party may not settle any claims giving rise to an indemnification obligation hereunder where such settlement imposes a monetary obligation that is not covered by the indemnification, imposes any material, non-monetary obligation, or that admits any liability on the part of an Indemnitee which does not include an unconditional release of all Indemnitees without the prior written consent of the Indemnitees, which consent shall not be unreasonably withheld.

15.4 Each party's obligations under this Section 15 will survive expiration, cancellation or termination of this Agreement.

16. Dispute Resolution.

16.1 The parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for an action seeking a temporary restraining order or injunction related to the purposes of this Agreement or an action to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

16.2 At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production and shall not be admissible in any lawsuit, proceeding or action without the concurrence of all parties. Documents identified in or provided with such communications that are not prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in the lawsuit, proceeding or action.

16.3 If the negotiations do not resolve the dispute within sixty (60) calendar days of the initial written request, each Party retains and reserves all its rights under law.

17. Confidential Information. Except as required by law or regulation, each party promises that during the Service Period stated in each Schedule, as applicable, and for three (3) years after, it will use the other party's Confidential Information only for purposes of this Agreement, not disclose it to third parties except as provided below, and protect it from disclosure using the same degree of care it uses for its own Confidential Information (but no less than a reasonable degree of care). "Confidential Information" means information (in whatever form) designated as confidential by the disclosing party by conspicuous markings (if tangible Confidential Information) or by announcement at the time of initial disclosure (if oral Confidential Information) or if not so marked or announced should reasonably have been understood as confidential to the disclosing party (or one of its affiliates or subcontractors), either

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

because of legends or other markings, the circumstances of disclosure or the nature of the information itself and that (i) relates to this Agreement or changes to this Agreement; (ii) relates to the disclosing party's customers, products, services, developments, trade secrets, know-how or personnel; and (iii) is received by the receiving party from the disclosing party during the Service Period. Confidential Information does not include information that: (a) is in the possession of the receiving party free of any obligation of confidentiality at the time of its disclosure; (b) is or becomes publicly known other than by a breach of this provision; (c) is received without restriction from a non-party free to disclose it; or (d) is developed independently by the receiving party without reference to the Confidential Information. In addition, information, whether or not Confidential Information, may be disclosed by a receiving party as may be required by applicable Laws or lawful process.

18. Law Enforcement.

18.1 Each party may cooperate with law enforcement authorities and national security authorities to the full extent required or permitted by applicable Laws in matters related to the Service provided by it under this Agreement, including the production of records, the establishment of new lines or the installation of new services on an existing line in order to support law enforcement and/or national security operations, the installation of wiretaps, trap-and-trace facilities and equipment, and dialed number recording facilities and equipment.

18.2 A party does not have the obligation to inform the other party or the customers of the other party of actions taken in cooperating with law enforcement or national security authorities, except to the extent required by applicable law.

19. Entire Agreement; Severability. This Agreement, including Schedules and any separate service level agreement made a part hereof, constitutes the entire agreement of the parties pertaining to the subject matter herein and supersedes all prior agreements, negotiations, and representations, whether written or oral, concerning such subject matter. No representations or warranties express or implied, have been made or relied upon in the making of this Agreement other than those specifically contained in this Agreement. Unless specified otherwise, this Agreement may be modified or amended only if done in writing and signed by both parties. All provisions of this Agreement are severable, and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be interpreted in such a manner as to carry out the full intention of the parties.

20. Waiver. Either party's failure to enforce any of the provisions of this Agreement or to exercise any right or option is not a waiver of any such provision, right, or option, and does not affect the validity of this Agreement. Any waiver must be written and signed by the parties. If any provision of this Agreement or the provision of any Service under the terms hereof is held to be illegal, invalid, or otherwise prohibited under applicable Laws in any State or jurisdiction, then this Agreement shall be construed as if not containing such provision or not requiring the provision of such invalid, illegal, or prohibited Service in such State or jurisdiction.

21. Independent Contractor Relationship; No Agency. The personnel of Customer and of FairPoint are not agents or employees of the other and Customer and FairPoint are each an independent contractor for all purposes and at all times in connection with provision of Service under this Agreement. Except as otherwise provided herein, neither Customer nor FairPoint has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other or bind the other in any respect whatsoever. Customer and FairPoint each shall indemnify, hold harmless and defend the other against any liabilities, claims, losses and damages (including costs, expenses and reasonable attorneys' fees) arising out of its failure to comply with this provision and any applicable Laws.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

22. **Assignment.** Either party may assign this Agreement or any of its rights hereunder to an affiliate or successor upon notice to the other party. If Customer assigns this Agreement to an affiliate or successor, then that affiliate or successor must meet FairPoint’s creditworthiness standards for the assignment to become effective.
23. **Notices.** All notices, requests, or other communications (excluding invoices) hereunder must be in writing and transmitted via overnight courier, electronic mail, hand delivery, or certified or registered mail, postage prepaid and return receipt requested to the Customer and to FairPoint at the addresses below, unless otherwise stated in the Agreement.

To Customer	With a copy to:

To FairPoint	With a copy to:
FairPoint Communications-NNE Contracts Management One Davis Farm Road Portland, ME, 04103	FairPoint Communications Office of the General Counsel 521 East Morehead Street, Ste. 500, Charlotte, N.C. 28202

24. **Compliance With Laws.** Each party shall comply with the provisions of all applicable Laws in its performance under this Agreement. The Service are subject to such orders, rulings, and tariffs now or hereafter issued or filed with the Federal Communications Commission (FCC) and/or the applicable state regulatory commission if and to the extent required by applicable Laws. In the event of a conflict between the terms of any such tariffs and this Agreement, the terms of such tariffs will apply to the extent required under applicable Laws.
25. **Applicable Law.** In the event of any claim or dispute, the laws of the jurisdiction in which FairPoint provides to Customer the particular Service that is the subject of such claim or dispute will apply, without regard to its choice of law provisions. If Service provided is multi-jurisdictional, then the laws of the State of New York will apply, without regard to its choice of law provisions.
26. **Interpretation.** Nothing in this Agreement may be construed or interpreted for or against either Customer or FairPoint because that party drafted or caused that party’s legal representative to draft any of its provisions.
27. **Limitation of Actions.** A party may bring no action, claim or demand arising out of this Agreement more than one (1) year after the cause of action has accrued. The parties waive the right to invoke any different limitation on the bringing of actions under state or federal law.
28. **Good Faith Performance.** The Parties shall act in good faith in their performance of this Agreement. Except as otherwise expressly stated in this Agreement (including where consent, approval, agreement or a similar action is stated to be within a party’s sole discretion), where consent, approval, mutual agreement or a similar action is required by any provision of this Agreement, such action will not be unreasonably withheld, conditioned or delayed.

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

29. **Publicity.** Notwithstanding any contrary term in this Agreement, a party may not issue or permit issuance of a press release or other public statement concerning this Agreement without the consent of the other party and then only after the contents of such release or statement is agreed upon by the parties.
30. **Order of Precedence.** The contractual relationship between FairPoint and Customer is governed by the following order of precedence with the item following (i) given the highest order of precedence in resolving conflicts in terms: (i) Schedules, and (ii) these terms and conditions.
31. **Authority.** Each signatory to this Agreement represents and warrants that he or she has authority to bind the entity on whose behalf he or she is executing this Agreement.

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: Maine

Other. Please identify country: _____

Notification of Changes to the Information

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

State of Maine Waiver of Competitive Bidding Request Form (Formerly Sole Source Authorization Form)

MM
1-27-16

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.

Requesting Department's Contract Administrator:	DAFS	Office/Division/Program of Contract Administrator:	OIT/Network Services Jon Richard
Est. Contract Amount:	\$5.8 M (>\$3M SAVINGS)	Contract or RQS Number:	
Proposed Start Date:	December 1, 2015	Proposed End Date:	November 30, 2020
Vendor/Provider Name, City, State	Fairpoint Communications		
Short Description of Good or Service:	Carrier Ethernet Services		
Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Purchases' website for a period of seven consecutive calendar days.		To be completed by the Division of Purchases Posting dates on Division of Purchases' website: From: 2/5/15 To: 2/11/16	
Notice of Intent to Waive Competitive Bidding Number:		NOI# 0220160134	
1. Statutory Justification 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> Signature: Printed Name: _____ Date: _____	
<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 Purchases "GOVCOOP" form, found here: http://www.maine.gov/purchases/info/forms/govcoop.doc.</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.		
If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:			

6

State of Maine Waiver of Competitive Bidding Request Form (Formerly Sole Source Authorization 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.

Carrier Ethernet Services (CES) provide approximately 450 locations across the State of Maine access to the wide area network based on specific bandwidth requirements with opportunities to increase bandwidth when necessary. Without these network services, the SOM has no way of communicating electronically with remote sites.

SINGLE VENDOR SUPPORTING CES SERVICES: FairPoint has the ability to service/support all 450 SOM locations for ordering, billing and troubleshooting. A single point of contact approach for trouble resolution for all 450+ state sites regardless of territory or whether the site is in Independent Telephone Company territory significantly simplifies the effort of managing the state's wide area network (WAN). With very limited resources supporting the State of Maine WAN, one CES vendor will reduce staffing cost to the State to manage a multiple vendor environment for the same services. In a multiple vendor scenario, coordinating orders, reconciling bills, and coordinating trouble reporting and resolution would be very time consuming.

STABLE CES ENVIRONMENT WHILE ADDRESSING OTHER CRITICAL STATE OF MAINE NETWORK SERVICES REQUIREMENTS:

The State of Maine and Fairpoint just recently completed a more than 4 year project to convert the state's wide area network to CES with the last circuit deployed in November 2015.

Currently, OIT Network Services has major plans that include upgrading the core networking infrastructure (routers and switches), upgrading the local area network and wireless local area network infrastructure, implementing SIP trunking and continuing with deployment of Voice over IP services across the state's network. Diverting resources away from these key initiatives to converting current CES sites supported by Fairpoint to a different carrier for some sites and increasing the complexity of the overall management of the network does not seem in the best interest of the state.

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.

Not offered by government entities

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.

Fairpoint is currently providing these services to the State of Maine – over the 5 year agreement proposed, Fairpoint is offering significant savings on existing services and lowered total cost of ownership as increased bandwidth is required. Fairpoint's pricing presented to the State for CES services was also compared to the recent contracts by UMS based on their RFP for same services.

- Fairpoint's initial proposed rates are lower than UMS competitive rates for 10 Mb and greater sites for years 3-5 (See Table 1).
- Fairpoint's rates reduce the cost of the CES services by \$3m+ over the 5 year period (based on current service offerings) (See Table 2).

**State of Maine Waiver of Competitive Bidding Request Form
(Formerly Sole Source Authorization Form)**

FAIRPOINT PRICING - 5 year monthly cost					UMS Pricing		
Table 1: 2015-2020 Rate Comparison	QTY	CURRENT	Year 1-2 Rate	Year 3-5 Rate	Oxford	TWC	FairPoint
1.5 Mb P&A	205	\$120.00	\$120.00	\$120.00			
3.0 Mb P&A	47	\$195.00	\$179.08	\$179.08			
5 Mb P&A	32	\$272.00	\$245.21	\$204.34			\$154.00
10 Mb P&A--Incl BBE	66	\$379.00	\$330.23	\$188.70			\$213.00
20 Mb P&A --Incl BBE	53	\$599.00	\$485.49	\$285.58			\$321.00
50 Mb P&A	11	\$899.00	\$658.15	\$339.69	\$420.00	\$777.00	\$478.00
100 Mb P&A	19	\$1,299.00	\$957.44	\$494.16	\$525.00	\$814.00	\$695.00
1G	3	\$3,699.00	\$1,113.38	\$712.56	\$1,470.00	\$1,129.00	\$2,003.00

Table 2 2015-2020 Savings	QTY	60 Months - Current Rates	24 Months - New Rates	36 Months - New Rates	SAVINGS
1.5 Mb P&A	205	\$1,476,000.00	\$590,400	\$885,600.00	\$0.00
3.0 Mb P&A	47	\$549,900.00	\$202,002	\$303,003.36	(\$44,894.40)
5 Mb P&A	32	\$522,240.00	\$188,321	\$235,399.68	(\$98,519.04)
10 Mb P&A--Incl BBE	66	\$1,478,100.00	\$515,159	\$441,558.00	(\$521,383.20)
20 Mb P&A --Incl BBE	53	\$1,904,820.00	\$617,543	\$544,886.64	(\$742,390.08)
50 Mb P&A	11	\$593,340.00	\$173,752	\$134,517.24	(\$285,071.16)
100 Mb P&A	19	\$1,480,860.00	\$436,593	\$338,005.44	(\$706,261.92)
1G	3	\$665,820.00	\$80,163	\$76,956.48	(\$508,700.16)
		\$8,671,080.00	\$2,803,933.20	\$2,959,926.84	(\$2,907,219.96)

5. Future Competition

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

With very limited qualified network service staff, the State of Maine is considering moving to a managed service offering in the future, where network management, monitoring, support, upgrades, etc. would be bid.

**State of Maine Walver of Competitive Bidding Request Form
(Formerly Sole Source Authorization Form)**

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.

Fairpoint is the major telecommunications provider for the State of Maine's wide area network. The State of Maine just recently completed a major migration planned jointly with Fairpoint to Carrier Ethernet Services (CES). The Fairpoint CES network is a complex, private secure network.

Fairpoint can provide CES services to state facilities throughout the State of Maine including those locations within the more than 20+ independent telco providers/carriers in the state. No other carrier has the footprint or relationships to address the State of Maine's requirement for a single vendor to provide CES services.

As mentioned in section 2, OIT Network Services has major plans that include upgrading the core networking infrastructure (routers and switches), upgrading the local area network and wireless local area network infrastructure, implementing SIP trunking and continuing with deployment of Voice over IP services across the state's network.

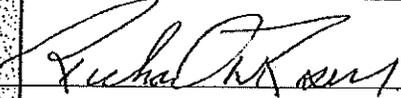
OIT cannot re-convert a portion of CES sites supported by Fairpoint to a different carrier. This would require undoing the work that was completed at these sites to accommodate the hardware for another carrier's network. This would also increase the complexity of the overall management of the network.

Fairpoint offers a single point of contact for trouble resolution for the more than 450 state sites regardless of territory and whether the site is in Independent Telephone Company territory. Fairpoint also provides a single bill to the State of Maine for all CES services. These offerings simplify the effort and reduce staffing cost to the state to manage multiple vendors providing the same service.

Additionally, savings offered are an immediate benefit to the state of Maine.

7. Timeframe

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.

Signature of requesting Department's Commissioner or Chief Executive (or designee within the Commissioner's Office):	<i>By signing below, I signify that my Department requests, and I approve of, this Walver of Competitive Bidding.</i>
Printed Name:	 Richard W. Rosen
Date:	02/03/16

STATE OF MAINE
Department of Administrative and Financial Services
Office of Information Technology
CONTRACT FOR SPECIAL SERVICES - AMENDMENT

BY AGREEMENT of both parties this 31st day of, January 2019, the Contract for Special Services between the State of Maine, Department of Administrative and Financial Services, Office of Information Technology, hereinafter called "Department," and Enhanced Communications of Northern New England Inc., hereinafter called "Provider," is hereby amended as follows:

1. The Vendor name is changed from Enhanced Communications of Northern New England Inc. to Consolidated Communications Enterprise Services, Inc.

Reason: Corporate merger via State of Delaware, Division of Corporations Certificate of Merger, SR #20188385263, Authentication # 204191089, dated 12-28-2018, entered herein as Attachment A and State of Delaware Certificate of Amendment-Formation, entered herein as Attachment B.

2. The State of Maine AdvantageME Vendor Code is changed from VS0000008228 (*Enhanced Communications of Northern New England*) to VC0000232688 (*Consolidated Communications Enterprise Services, Inc.*)

Reason: Above-referenced merger required new EIN/TIN number assignment for the newly formed company. This requires a unique Vendor Code number for the Department's Accounting System in order to process payments to the new entity.

3. The Scope of Services in Rider A is unchanged. The surviving corporation of the merger, Consolidated Communications Enterprise Services, Inc. hereby assumes and shall be responsible for all the rights of obligations of Enhanced Communications of Northern New England, Inc. under this Agreement

All other terms and conditions of the original contract dated April 1st, 2016 remain in full force and effect.

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

Provider: Consolidated Communications Enterprise Services, Inc.

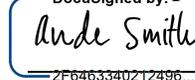
By: Steven L. Childers, Chief Financial Officer
(Name & Title, Provider Representative)

Signature:  _____ Date: 2/6/2019
E1C2631A5870481...

and

Department of Administrative and Financial Services
Office of Information Technology

By: Ande A. Smith, CIO
(Name & Title, Department Representative)

Signature:  _____ Date: 2/7/2019
ZF6463340212496...

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.

(note: this section must be completed by using agency)

Department number and Contract number (CT #):MA-18P-1604190000000000158

Vendor Code: (NEW) VC0000232688

New Service Date: N/A

Old Contract Amount: \$ 0.00 Based on Usage

Account Codes: _____

Amount of Adjustment: \$ 0.00

New Contract Amount: \$0.00 Based on Usage

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"ENHANCED COMMUNICATIONS OF NORTHERN NEW ENGLAND INC.", A DELAWARE CORPORATION,

WITH AND INTO "CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC." UNDER THE NAME OF "CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF DECEMBER, A.D. 2018, AT 2:51 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2018 AT 5 O`CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.




Jeffrey W. Bullock, Secretary of State

3550868 8100M
SR# 20188385263

Authentication: 204191089
Date: 12-28-18

**CERTIFICATE OF MERGER
OF
ENHANCED COMMUNICATIONS
OF NORTHERN NEW ENGLAND INC.
WITH AND INTO
CONSOLIDATED COMMUNICATIONS
ENTERPRISE SERVICES, INC.**

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Consolidated Communications Enterprise Services, Inc., and the name of the corporation being merged into this surviving corporation is Enhanced Communications of Northern New England Inc.

SECOND: The Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

THIRD: The name of the surviving corporation is Consolidated Communications Enterprise Services, Inc., a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

FIFTH: The merger is to become effective on December 31, 2018 at 5:00 p.m. EST.

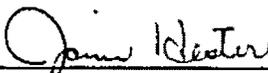
SIXTH: The Agreement and Plan of Merger is on file at 121 S. 17th Street, Mattoon, IL 61938, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

[Remainder of this Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed
by an authorized officer, this 26th day of December, 2018.

**CONSOLIDATED COMMUNICATIONS
ENTERPRISE SERVICES, INC.**

By: 
Janice Hester
Authorized Officer

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC", CHANGING ITS NAME FROM "NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC" TO "CONSOLIDATED COMMUNICATIONS OF NORTHERN NEW ENGLAND COMPANY, LLC", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF DECEMBER, A.D. 2018, AT 3:27 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2018 AT 11:59 O'CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

4271550 8100
SR# 20188387051

Authentication: 204190364
Date: 12-28-18

**CERTIFICATE OF AMENDMENT
TO
CERTIFICATE OF FORMATION
OF
NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC**

1. Name of Limited Liability Company: Northern New England Telephone Operations LLC.
2. The Certificate of Formation of the limited liability company is hereby amended as follows:

The name of the limited liability company is changed to Consolidated Communications of Northern New England Company, LLC.

3. The amendment is to become effective on December 31, 2018 at 11:59 p.m. EST.

[Remainder of this Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on
the 26th day of December, 2018.

By: Janice Hester
Janice Hester
Authorized Person

Division of Procurement Services Amendment Authorization Form

Form Instructions: This form must accompany amendments being proposed for approval to existing contracts.

Program Administrator:	Louise Robertson/Ellen Lee	Office/Division/Program:	DAFS/OIT
Phone:		CT Number:	MA 18P 160419*0158
Amendment Amount \$:	\$0.00 Master Agreement	Revised Agreement Amount: \$	N/A
Amendment Date:	01/31/2019	Revised Agreement End Date:	
Provider/Vendor's Business Name and Address:	Enhanced Communications of Northern New England Inc. 1 Davis Farm Rd. Portland, ME 04103		
VC Number:	VS0000008228		
Type of Service:	CES Services		
1. Specific Problem or Need for Amendment:			
Provide a full description of the amendment (what changes are being made to the contract) AND explain the necessity of the amendment (why the amendment needs to be done). Amendments are performed to make small changes to the scope of work, extend the termination date and/or change the cost of the agreement.			
<p>Corporate merger via State of Delaware, Division of Corporations Certificate of Merger, SR #20188385263, Authentication # 204191089, dated 12-28-2018 and State of Delaware Certificate of Amendment-Formation.</p>			
2. Adjustment in Agreement Amount:			
If the amendment includes the addition or reduction of funds, describe how the amendment amount was determined. If the amendment did not include a change to the agreement amount, state "N/A – this amendment does not modify the agreement amount".			
<p>There is no adjustment in the amount of the MA, as it is \$0.00 based on usage. However, the State of Maine AdvantageME Vendor Code must be changed from VS0000008228 (Enhanced Communications of Northern New England) to VC0000232688 (Consolidated Communications Enterprise Services, Inc.)</p>			
Approved by			
Date:	2-12-19		