

MODIFICATION

**State of Maine****Master Agreement****Effective Date:** 11/01/17**Expiration Date:** 10/31/20**Master Agreement Description:** Basic Exchange, Centrex, ISDN, DDSII, Toll Free etc.**Buyer Information**

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

**Issuer Information**

JEFF COTNOIR 207-624-9449 ext. Jeff.Cotnoir@maine.gov

**Requestor Information**

Ellen Lee 207-624-8866 ext. Ellen.Lee@maine.gov

**Authorized Departments**

18B BUREAU OF INFORMATION SERVICES

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

VS0000010644

**Vendor Name**

Consolidated Communications of Northern New England Comp LLC

**Alias/DBA**

Consolidated Communications NNE

**Vendor Address Information**

1 Davis Farm Road

Portland, ME 04103

US

**Vendor Contact Information**

Karen Romano

207-648-3200 ext.

kromano@fairpoint.com

## Commodity Information

**Vendor Line #:** 1

**Vendor Name:** Consolidated Communications of Northern New England Comp LLC

**Commodity Line #:** 1

**Commodity Code:** 91577

**Commodity Description:** Basic Exchange, Centrex, ISDN, DDSII, Toll Free etc.

**Commodity Specifications:** AS PER THE SPECIFICATIONS ATTACHED AND MADE PART OF THIS MA.

<b>Quantity</b>	<b>UOM</b>	<b>Unit Price</b>
0.00000		\$0.00
<b>Delivery Days</b>	<b>Free on Board</b>	
<b>Contract Amount</b>	<b>Service Start Date</b>	<b>Service End Date</b>
\$0.00	11/01/17	10/31/20
<b>Catalog Name</b>	<b>Discount</b>	
	0.0000 %	
	<b>Discount Start Date</b>	<b>Discount End Date</b>

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

THIS AGREEMENT, made this 30th day of October, 2017, is by and between the State of Maine, Department of Administrative & Financial Services/OIT, hereinafter called "Department," and Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE and Enhanced Communications of Northern New England Inc. d/b/a FairPoint Long Distance-NNE, located at 5 Davis Farm, Portland, Maine, 04103, telephone number 207-535-xxxx, hereinafter called "Provider", for the period of November 1, 2017 to October 31, 2020.

The AdvantageME Vendor/Customer number of the Provider is VS0000010644.

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

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

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in multiple counterparts and exchanged signatures and this Agreement by electronic transmission, with such electronic version or original counterpart(s) having the full force and effect of an original signature and original Agreement.

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
OFFICE OF INFORMATION TECHNOLOGY

By: *Ellen Lee for* Oct 31, 2017  
Ellen Lee (Oct 31, 2017)  
Victor Chakravarty, Associate Chief Information Officer

and Northern New England Telephone Operations LLC  
Enhanced Communications of Northern New England Inc.

By: *Darren D Peterson* Oct 31, 2017  
Darren D Peterson (Oct 31, 2017)  
Name and Title, Provider Representative  
Darren D Peterson  
VP - Commercial Sales

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

Total Agreement Amount: \$ \_\_\_\_\_

Approved: \_\_\_\_\_

Chair, State Purchases Review Committee

**AdvantageME ACCOUNT CODING**

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

**Approval Signatures:**

Program Administrator: \_\_\_\_\_ Date: \_\_\_\_\_

Finance Approver: \_\_\_\_\_ Date: \_\_\_\_\_

Department Approver: \_\_\_\_\_ Date: \_\_\_\_\_

RIDER A  
SPECIFICATIONS OF WORK TO BE PERFORMED

**FAIRPOINT ENTITY:** Enhanced Communications of Northern New England Inc. d/b/a FairPoint Long Distance-NNE (sometimes referred to as FairPoint Communications-NNE in this Rider A)

**STATE:** Maine

**CUSTOMER NAME:** State of Maine (sometimes referred to herein as Customer in this Rider A)

**1. Service.** Customer agrees to purchase interstate and intrastate long distance service (the “Service”) from FairPoint Communications-NNE at the rates set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing FairPoint Long Distance Tariffs, Rates, Terms and Conditions (RTC No. 1).

**2. Rates and Billing Increments.** Customer agrees to purchase the Service from FairPoint Long Distance-NNE at the rates set forth below for the Service Period identified below.

a) Customer will receive a usage rate of \$.012 (1.02 cents) per minute for switched access outbound and switched access inbound intrastate and interstate long distance calls.

b) The billing increment is 6 seconds for the initial increment and additional increments. Partial increments are rounded to the next increment.

c) Customer will subscribe to FairPoint’s International Long Distance Calling Plan. FairPoint Long Distance-NNE will waive the \$6.95 per line MRC charge for the International Long Distance Calling Plan, and Customer shall receive a 15% discount on its total international long distance charges.

**3. Service Period.** Customer shall purchase the Service for the period November 1, 2017 through October 31, 2020. The parties acknowledge and agree that this is a continuation of the Service provided to Customer. As such, all necessary regulatory and other governmental approvals that were be required prior to the provision of such Services under the terms hereof (“Service Period”) have been acquired.

**4. Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Service prior to the expiration of the Service Period, early termination charge will be in accordance with Section 13 of Rider B-IT.

**5. Charges.** The State of Maine will pay the rates and charges and satisfy all other requirements set forth in Rider B-IT. Customer shall pay all applicable taxes and charges that may be required under applicable law, regulations, or tariffs in connection with the Services.

**6. Additional Provisions.**

**a. Conditions.** The parties acknowledge that the rates and other terms of this Agreement are premised on Customer’s commitments, unique network design requirements, and Customer’s service mix, usage patterns and concentration, and other characteristics.

**b. Service Continuation.** If, at the time of the expiration of the Service Period, a new agreement with FairPoint Long Distance-NNE for the Services is not effective, and Customer does not request discontinuance of the Services in writing, then the Services will be continued on a month-to-month basis at the rates set forth above. In any month-to-month service period, Services shall be subject to termination by either party upon thirty (30) days prior written notice to the other party.



AGREEMENT TO PURCHASE SERVICES (BP54-IT)

**FAIRPOINT ENTITY:** Northern New England Telephone Operations LLC d/b/a  
FairPoint Communications-NNE

**STATE:** Maine

**CUSTOMER NAME:** State of Maine

- 1. Service, Rates and Quantity Commitment.** Customer agrees to purchase Basic Exchange Access lines (POTS) (the "Service") from FairPoint Communications-NNE at the rates and in quantities set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing tariffs rates and charges, or if no tariff is applicable, at FairPoint Communications-NNE's then-current retail rate. Customer shall provide to FairPoint Communications-NNE at each Customer location suitable and secure space, with suitable environmental conditions, building entrance facilities and conduit, for placement of the facilities and equipment to be used by FairPoint Communications-NNE to provide such Service.
- 2. Rates and Quantity Commitments.** Customer agrees to purchase the Service from FairPoint Communications-NNE at the rates set forth below for the Service Period identified below.

Service Item	Non-Recurring Charge (Each)	Monthly Unit Rate (Each)
Basic Exchange Access Lines (1FB)	\$0.00	\$14.02

The rate set forth above does **not** include EUCL, ARC and other fees. Current EUCL rate is \$6.22 subject to change by the FCC; current ARC rate is \$2.41. (911, MTEAF and other fees per standard)

- 3. Service Period.** Customer shall purchase the Service for the period November 1, 2017 through October 31, 2020. The parties acknowledge and agree that this is a continuation of the Service provided to Customer. As such, all necessary regulatory and other governmental approvals that were required prior to the provision of such Services under the terms hereof ("Service Period") have been acquired. Customer may order additional service at the rates set forth above during the Service Period. The Service Period for all Services ordered hereunder shall be coterminous.
- 4. Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Service prior to the expiration of the Service Period, early termination charge will be in accordance with Section 13 of Rider B-IT.
- 5. Charges.** The State of Maine will pay the rates and charges and satisfy all other requirements set forth in Rider B-IT. Customer shall pay all applicable taxes and charges that may be required under applicable law, regulations, or tariffs in connection with the Services.
- 6. Additional Provisions.**

**a. Conditions.** The parties acknowledge that the rates and other terms of this Agreement are premised on Customer's commitments, unique network design requirements, and Customer's service mix, usage patterns and concentration, and other characteristics.

**b. Service Continuation.** If, at the time of the expiration of the Service Period, a new agreement with FairPoint Communications-NNE for the Services is not effective, and Customer does not request discontinuance of the Services in writing, then the Services will be continued on a month-to-month basis at the previous in-place contract rates. In any month-to-month service period, Services shall be subject to termination by party upon thirty (30) days prior written notice to the other party.

**c. Facilities.** Additional charges may be required if suitable facilities are not available to provide Service at any locations, or if any additional work, services, or quantities of Services are provided. In the event installation of additional network facilities

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is required to provide Service, FairPoint Communications-NNE will inform Customer of such applicable charges, and FairPoint Communications-NNE will install such 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 Communications-NNE without application of the termination charges described above.

**d. Locations.** The Services shall be provided to Customer under the terms hereof to any Customer locations in the State of Maine in any service territory of FairPoint Communications-NNE, provided facilities are available.

**FAIRPOINT ENTITY:** Northern New England Telephone Operations LLC d/b/a  
FairPoint Communications-NNE

**STATE:** Maine

**CUSTOMER NAME:** State of Maine

**1. Service Description, Rates and Quantity Commitment.** Customer agrees to purchase Centrex lines for locations in Augusta, Maine (the “Service”) from FairPoint Communications-NNE at the rates and in quantities set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing tariffs rates and charges, or if no tariff is applicable, at FairPoint Communications-NNE’s then-current retail rate. Customer shall provide to FairPoint Communications-NNE at each Customer location suitable and secure space, with suitable environmental conditions, building entrance facilities and conduit, for placement of the facilities and equipment to be used by FairPoint Communications-NNE to provide such Service.

**2. Rates.** Customer agrees to purchase the Service from FairPoint Communications-NNE at the rates set forth below for the Service Period identified below.

Service Item	*Non-Recurring Charge (Each)	Monthly Unit Rate (Each)
Centrex Analog lines	\$0.00	\$3.69
ISDN lines	\$0.00	\$10.65

The rate set forth above does **not** include EUCL, ARC and other fees. Current EUCL rate is \$6.22 subject to change by the FCC; current ARC rate is \$2.41. (911, MTEAF and other fees per standard)

**3. Service Period.** Customer shall purchase the Service for the period November 1, 2017 through October 31, 2020. The parties acknowledge and agree that this is a continuation of the Service provided to Customer. As such, all necessary regulatory and other governmental approvals that were required prior to the provision of such Services under the terms hereof (“Service Period”) have been acquired. Customer may order additional service at the rates set forth above during the Service Period. .

**4. Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Service prior to the expiration of the Service Period, early termination charge will be in accordance with Section 13 of Rider B-IT.

**5. Charges.** The State of Maine will pay the rates and charges and satisfy all other requirements set forth in Rider B-IT. Customer shall pay all applicable taxes and charges that may be required under applicable law, regulations, or tariffs in connection with the Services.

**6. Additional Provisions.**

**a. Conditions.** The parties acknowledge that the rates and other terms of this Agreement are premised on Customer’s commitments, unique network design requirements, and Customer’s service mix, usage patterns and concentration, and other characteristics.

**b. Service Continuation.** If, at the time of the expiration of the Service Period, a new agreement with FairPoint Communications-NNE for the Services is not effective, and Customer does not request discontinuance of the Services in writing, then the Services will be continued on a month-to-month basis at the previous in-place contract rates. In any month-to-month service period, Services shall be subject to termination by party upon thirty (30) days prior written notice to the other party.

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**c. Facilities.** Additional charges may be required if suitable facilities are not available to provide Service at any locations, or if any additional work, services, or quantities of Services are provided. In the event installation of additional network facilities is required to provide Service, FairPoint Communications-NNE will inform Customer of such applicable charges, and FairPoint Communications-NNE will install such 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 Communications-NNE without application of the termination charges described above.

**d. Locations.** The Services shall be provided to Customer under the terms hereof to any Customer locations in Augusta, Maine, provided FairPoint Communications-NNE facilities are available.

**FAIRPOINT ENTITY:** Northern New England Telephone Operations LLC d/b/a  
FairPoint Communications-NNE

**STATE:** Maine

**CUSTOMER NAME:** State of Maine

**1. Service, Rates and Quantity Commitment.** Customer agrees to purchase Centrex Service at any Maine location served by the No. 5 ESS Central Offices, excluding Augusta, where facilities exist (the “Service”) from FairPoint Communications-NNE at the rates and in quantities set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing tariffs rates and charges, or if no tariff is applicable, at FairPoint Communications-NNE’s then-current retail rate. Customer shall provide to FairPoint Communications-NNE at each Customer location suitable and secure space, with suitable environmental conditions, building entrance facilities and conduit, for placement of the facilities and equipment to be used by FairPoint Communications-NNE to provide such Service.

**2. Rates and Quantity Commitments.** Customer agrees to purchase the Service from FairPoint Communications-NNE at the rates set forth below and in quantities set forth below for the Service Period identified below.

Line Type	Monthly Charge
Centrex Analog Voice 5 CCS+	\$ 8.35
ISDN 1B + D 6 CCS	\$10.65
ISDN 2B + D 6 CCS	\$10.65

The rate set forth above does **not** include EUCL, ARC and other fees. Current EUCL rate is \$6.22 subject to change by the FCC; current ARC rate is \$2.41. (911, MTEAF and other fees per standard)

**3. Service Period.** Customer shall purchase the Service for the period November 1, 2017 through October 31, 2020. The parties acknowledge and agree that this is a continuation of the Service provided to Customer. As such, all necessary regulatory and other governmental approvals that were required prior to the provision of such Services under the terms hereof (“Service Period”) have been acquired. Customer may order additional service at the rates set forth above during the Service Period.

**4. Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Service prior to the expiration of the Service Period, early termination charge will be in accordance with Section 13 of Rider B-IT.

**5. Charges.** The State of Maine will pay the rates and charges and satisfy all other requirements set forth in Rider B-IT. Customer shall pay all applicable taxes and charges that may be required under applicable law, regulations, or tariffs in connection with the Services.

**6. Standard Features.** The following standard system features are available and included on the monthly line rate on all lines in the Centrex System

- Access to ETS Trunks
- Attendant Call Transfer
- Attendant Camp on (Non-data Link Console)
- Attendant Conference
- Attendant Control of Facilities
- Attendant Direct Station Selection

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- Attendant Identification of Incoming Calls
- Automatic Callback – Calling
- Automatic Route Selection (both basic and deluxe)
- Call Forwarding: Busy Line – Don't Answer to a Busy Line; Don't Answer – All Calls; Variable; Over Private Facilities; Variable for BRCs
- Call Hold
- Call Pickup (CPU)
- Call Transfer Attendant
- Call Transfer Individual – All Calls
- Call Waiting for BRCs
- Call Waiting Incoming Only
- Call Waiting Origination
- Call Waiting Terminating
- Dial Call Waiting
- Dial through Attendant
- Direct Inward/Outward Dialing (DID/DOD)
- Directed Call Pickup with Barge-in
- Dual Tone Multi-frequency (DTMF) Dialing
- EPSCS Access
- Hunting Features
- Intercom Dialing
- Multi-line Hunt Service
- Radio Paging Access
- Selective Control of Facilities
- Series Completion Service
- Speed Calling
- Three-way Calling
- Toll Diversion
- Toll Diversion to Attendant
- Toll Restricted Line Service
- Trunk Answer Any Station
- Uniform Call Distribution

**7. System Engineering Specifications.** The Centrex System provides for traffic levels as detailed in the following table (CCS = one hundred calling seconds, PPS = packets per second). Traffic levels exceeding the scope of the specifications will result in a degraded level of service and blocking. If the Customer's traffic levels consistently exceed the specified design levels, the Customer will be given the option by FairPoint Communications-NNE to reduce the demand or pay FairPoint Communications-NNE's rates and charges for the additional central office capacity that is required to meet the increased traffic levels.

Line Type	CCS	PPS
Analog	5	N/A
1B + D	6	.17
ISDN 2B + D	6	.34

## 8. Additional Provisions.

**a. Conditions.** The parties acknowledge that the rates and other terms of this Agreement are premised on Customer's commitments, unique network design requirements, and Customer's service mix, usage patterns and concentration, and other characteristics.

**b. Service Continuation.** If, at the time of the expiration of the Service Period, a new agreement with FairPoint Communications-NNE for the Services is not effective, and Customer does not request discontinuance of the Services in writing, then the Services will be continued on a month-to-month basis at the previous in-place contract rates. In any month-to-month service period, Services shall be subject to termination by party upon thirty (30) days prior written notice to the other party.

**c. Facilities.** Additional charges may be required if suitable facilities are not available to provide Service at any locations, or if any additional work, services, or quantities of Services are provided. In the event installation of additional network facilities is required to provide Service, FairPoint Communications-NNE will inform Customer of such applicable charges, and FairPoint Communications-NNE will install such 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 Communications-NNE without application of the termination charges described above.

**d. Locations.** The Services shall be provided to Customer under the terms hereof to any Customer locations in Portland, Rockland, Lewiston, Presque Isle, and Bangor, Maine, provided FairPoint Communications-NNE facilities are available.

**FAIRPOINT ENTITY:** Northern New England Telephone Operations LLC d/b/a  
FairPoint Communications-NNE

**STATE:** Maine

**CUSTOMER NAME:** State of Maine

- 1. Service, Rates and Quantity Commitment.** Customer agrees to purchase Integrated Services Digital Network (“ISDN”) Primary Rate Interface (“PRI”) Service and FlexPath Service (the “Services”) from FairPoint Communications-NNE at the rates and in quantities set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing tariffs rates and charges, or if no tariff is applicable, at FairPoint Communications-NNE’s then-current retail rate. Customer shall provide to FairPoint Communications-NNE at each Customer location suitable and secure space, with suitable environmental conditions, building entrance facilities and conduit, for placement of the facilities and equipment to be used by FairPoint Communications-NNE to provide such Service.
- 2. Rates and Quantity Commitments.** Customer agrees to purchase the Service from FairPoint Communications-NNE at the rates set forth below and in quantities set forth below for the Service Period identified below.

Service Item	*Non-Recurring Charge (Each)	Monthly Unit Rate (Each)
*ISDN Port	\$0.00	\$0.00
Local Distribution Channel	\$0.00	\$199.00
*Caller ID with Name	\$0.00	\$0.00
*DID (block of 100 or fraction thereof)	\$0.00	\$0.00
*Local Usage (23 “B” Channels)*	\$0.00	\$0.00

Note: \* included in Local Distribution Channel. One DID block is included, all others waived.

- 3. Service Period.** Customer shall purchase the Service for the period November 1, 2017 through October 31, 2020. The parties acknowledge and agree that this is a continuation of the Service provided to Customer. As such, all necessary regulatory and other governmental approvals that were required prior to the provision of such Services under the terms hereof (“Service Period”) have been acquired. Customer may order additional service at the rates set forth above during the Service Period.
- 4. Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Service prior to the expiration of the Service Period, early termination charge will be in accordance with Section 13 of Rider B-IT.
- 5. Charges.** The State of Maine will pay the rates and charges and satisfy all other requirements set forth in Rider B-IT. Customer shall pay all applicable taxes and charges that may be required under applicable law, regulations, or tariffs in connection with the Services.
- 6. Additional Provisions.**

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**a. Conditions.** The parties acknowledge that the rates and other terms of this Agreement are premised on Customer's commitments, unique network design requirements, and Customer's service mix, usage patterns and concentration, and other characteristics.

**b. Service Continuation.** If, at the time of the expiration of the Service Period, a new agreement with FairPoint Communications-NNE for the Services is not effective, and Customer does not request discontinuance of the Services in writing, then the Services will be continued on a month-to-month basis at the previous in-place contract rates. In any month-to-month service period, Services shall be subject to termination by party upon thirty (30) days prior written notice to the other party.

**c. Facilities.** Additional charges may be required if suitable facilities are not available to provide Service at any locations, or if any additional work, services, or quantities of Services are provided. In the event installation of additional network facilities is required to provide Service, FairPoint Communications-NNE will inform Customer of such applicable charges, and FairPoint Communications-NNE will install such 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 Communications-NNE without application of the termination charges described above.

**d. Locations.** The Services shall be provided to Customer under the terms hereof to any Customer locations in the State of Maine in any service territory of FairPoint Communications-NNE, provided facilities are available.

**FAIRPOINT ENTITY:** Northern New England Telephone Operations LLC d/b/a  
FairPoint Communications-NNE

**STATE:** Maine

**CUSTOMER NAME:** State of Maine

**1. Service Description, Rates and Quantity Commitment.** Customer agrees to purchase DDS Interexchange Private Line Point to Point (“DDS II”) (the “Service”) from FairPoint Communications-NNE at the rates and in quantities set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing tariffs rates and charges, or if no tariff is applicable, at FairPoint Communications-NNE’s then-current retail rate. Customer shall provide to FairPoint Communications-NNE at each Customer location suitable and secure space, with suitable environmental conditions, building entrance facilities and conduit, for placement of the facilities and equipment to be used by FairPoint Communications-NNE to provide such Service. DDS II is a private line digital service which provides for simultaneous transmission of digital signals at various speeds between customer specified termination points within the State of Maine.

**2. Rates and Quantity Commitments.** Customer agrees to purchase the Service from FairPoint Communications-NNE at the rates set forth below and in quantities set forth below for the Service Period identified below.

Service Item	*Non-Recurring Charge (Each)	Monthly Unit Rate (Each)
DDS II Local Distribution Channel	\$275.00	\$50.00
Interoffice Channel mileage - fixed	\$0.00	\$0.00
Interoffice Channel mileage – per mile	\$0.00	\$0.00

\* Non-recurring charges are applicable for new services ordered after October 31, 2014.

**3. Service Period.** Customer shall purchase the Service for the period November 1, 2017 through October 31, 2020. The parties acknowledge and agree that this is a continuation of the Service provided to Customer. As such, all necessary regulatory and other governmental approvals that were required prior to the provision of such Services under the terms hereof (“Service Period”) have been acquired. Customer may order additional service at the rates set forth above during the Service Period. Non-recurring charges may apply for services ordered after October 31, 2017. The Service Period for all Services ordered hereunder shall be coterminous.

**4. Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Service prior to the expiration of the Service Period, early termination charge will be in accordance with Section 13 of Rider B-IT.

**5. Charges.** The State of Maine will pay the rates and charges and satisfy all other requirements set forth in Rider B-IT. Customer shall pay all applicable taxes and charges that may be required under applicable law, regulations, or tariffs in connection with the Services.

**6. Additional Provisions.**

**a. Conditions.** The parties acknowledge that the rates and other terms of this Agreement are premised on Customer’s commitments, unique network design requirements, and Customer’s service mix, usage patterns and concentration, and other characteristics.

**b. Service Continuation.** If, at the time of the expiration of the Service Period, a new agreement with FairPoint Communications-NNE for the Services is not effective, and Customer does not request discontinuance of the Services in writing, then the Services will be continued on a month-to-month basis at the previous in-place contract rates. In any month-to-month service period, Services shall be subject to termination by party upon thirty (30) days prior written notice to the other party.

**c. Facilities.** Additional charges may be required if suitable facilities are not available to provide Service at any locations, or if any additional work, services, or quantities of Services are provided. In the event installation of additional network facilities is required to provide Service, FairPoint Communications-NNE will inform Customer of such applicable charges, and FairPoint Communications-NNE will install such 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 Communications-NNE without application of the termination charges described above.

**d. Locations.** The Services shall be provided to Customer under the terms hereof to any Customer locations in the State of Maine in any service territory of FairPoint Communications-NNE, provided facilities are available.

**FAIRPOINT ENTITY:** Northern New England Telephone Operations LLC d/b/a  
FairPoint Communications-NNE

**STATE:** Maine

**CUSTOMER NAME:** State of Maine

**1. Service, Rates and Quantity Commitment.** Customer agrees to purchase Voicemail Service (the “Service”) from FairPoint Communications-NNE at the rates and in quantities set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing tariffs rates and charges, or if no tariff is applicable, at FairPoint Communications-NNE’s then-current retail rate. Customer shall provide to FairPoint Communications-NNE at each Customer location suitable and secure space, with suitable environmental conditions, building entrance facilities and conduit, for placement of the facilities and equipment to be used by FairPoint Communications-NNE to provide such Service.

**2. Rates and Quantity Commitments.** Customer agrees to purchase the Service from FairPoint Communications-NNE at the rates set forth below and in quantities set forth below for the Service Period identified below.

Service Item	*Non-Recurring Charge (Each)	Monthly Unit Rate (Each)
Call Answering Basic	\$0.00	\$5.00
Paging	\$0.00	\$1.00
Port Terminations	\$0.00	\$75.00
Alternate ID	\$0.00	\$3.00
Activation Fee	\$5.00	N/A

**3. Project Task and Deliverables**

**Specifications of Work to be Performed**

This contract provides the State with FairPoint Communications’ Voice Messaging Service (Service, VMS). VMS is comprised of four applications: Voice Mail, Call Answering, Call Processing and Information Mailboxes. The Service is available 24 hours a day, seven days a week and utilizes the keys of a touch-tone telephone for feature activation and message manipulation. FairPoint Communications will provide a P.02 grade of service based upon service parameters of a fourteen percent (14%) busy hour, six (6) minutes of access per user per day, and three (3) minutes of storage per user. The Service is fully integrated with Centrex Service and Intellipath II Digital Centrex Service.

**a. Basic Service Offering**

FairPoint Communications offers two basic personal mailboxes: they are Voice Mail and Call Answering. Both types of mailboxes feature prompting and permit interaction with the Service via any touch-tone telephone. The basic service offering of Voice Mail and Call Answering includes: a maximum of 30 messages in a mailbox at any one time; the message length is a maximum of two minutes in duration; and the number of days an active message will be kept in the mailbox and the number of days a message will be kept in the archives (“save message”) is 30 days. All features and functions in both mailboxes are identical (as described on the feature list, Section 3(a) iii). Optional features are add-on features available with these basic services.

**i. Voice Mail**

Voice Mail is a full featured mailbox which allows subscribers (users) to receive and send messages via the telephone. It is used for non-simultaneous, yet interactive, communication between two or more people who require exchange of information, but are unavailable at the same time. The user can access his or her personal mailbox for message retrieval and message delivery. Voice Mail can interact with all other types of mailboxes on the system.

**ii. Call Answering**

Call Answering augments the Voice Mail features by providing an answering service when the subscriber is on the telephone or is unable to answer incoming calls. Calls are forwarded to the Voice Messaging system integrated with the central office serving the Customer's business location. The forwarding is transparent to the caller and is a function of the Intellipath/Centrex Service. Once the caller is forwarded to the Voice Messaging Service, he or she will receive a personal greeting in the subscriber's own voice (or system providing greeting if the subscriber chooses) and simple instructions on how to leave a message. The user will be alerted that a message is waiting in his or her mailbox. The notification will be in the form of stutter dial tone or a visual indication (for applicable telephone sets).

**iii. Feature List**

The features associated with the Voice Mail and Call Answer mailboxes are listed below.

1. Caller Features

- Record a message
- Replay a recorded message
- Re-record a message
- Cancel recorded message
- Mark recorded message or "urgent" delivery
- Escape to attendant (on local central office)

2. Sender Features

- All above caller features
- Mark recorded message for "private" delivery (the recipient cannot forward this message to anyone else)
- Mark recorded message for future delivery
- Request confirmation that recorded message is received
- Forward to multiple mailboxes individually or by using a Group List

3. Recipient (Mailbox Owner) Features

- Play or reply message
- Jump ahead or back within message
- Pause
- Hear "envelope" information (i.e., time, date, sender stamp)
- Save a message
- Erase a message
- Forward a message to another subscriber or group or subscribers
- Reply to a message received from another subscriber automatically
- Skip to next message

**b. Call Processing**

Call Processing performs the function of an automated attendant to greet callers, to inform callers of selection options, and to transfer callers to the destination of their choice. A Call Processing mailbox can be used as a directory to present callers with a menu of choices, and it may be used in concert with other types of mailboxes (i.e., Information Mailboxes). The Call Processing mailbox has a three minute greeting per node.

**c. Information Mailboxes – Listen Only**

These may be used as stand-alone mailboxes, or they may be set up behind a Call Processing mailbox. “Listen” mailboxes have a two-minute message length. The information contained in the Information mailbox can be changed for updating, password protected from general access, and stored indefinitely.

**d. Broadcast**

Broadcast is a system wide message notification to all FairPoint Communications mailbox subscribers within the Customer’s location. This feature is available at no charge.

**e. Alternate ID**

Alternate ID service allows up to five additional lines to be associated with a mailbox on another line. For example, a person might have two lines, one private and one public. For convenience, they may choose to only have one mailbox. To achieve proper integration, the user would have a mailbox on one line and an Alternate ID on the other so that calls to either line go into the same mailbox.

**4. Definitions of Terms of Mailbox Activity**

**a. Activated**

This phase is when the mailbox has been created at the central office. It has been identified as one of the four (4) types of services (Voice Mail, Call Answering, Call Processing or Information Mailbox). It has been assigned with a specific mailbox number, and it becomes a billable mailbox based on its type (Voice Mail, Call answering, Call Processing or Information Mailbox) plus optional charges.

**b. Unassigned**

This phase is when the mailbox has not been defined as yet by the Customer, but it has been ordered along with a block of mailboxes. Until this unassigned mailbox has been given an identity, it will be defined as a Voice Mail Mailbox and will be processed accordingly. The purpose for this type of mailbox may be for one or all of the following reasons: a) secure ample space for growth requirements; b) anticipate growth and allow for quick turn-on (activation); c) a place to store inactive mailboxes until they are reassigned; and d) facilitate an additional quantity discount.

**c. Initialized**

This phase is when the subscriber/end-user goes into his or her activated mailbox and sets it up for normal use. Voice Messaging Service does not become fully operational until a mailbox is initialized.

**5. Other Mailboxes and Options**

The Customer may order the following features for a minimum of thirty (30) days at any time during the Service Period at the prices indicated in the Pricing Section.

a. Expanded Mailbox

Expanded Mailboxes provide the Customer with increased mailbox capacity to accommodate heavier call volume and longer message type. Expanded Mailboxes include all of the functionality of the basic service offering while providing increased mailbox capacity to a maximum of 45 messages stored, 30 days in duration, and four minute message length.

b. Pager Notification

This capacity provides for active message notification to a predetermined pager number.

c. Access Line (Port) Terminations

Access Line (port) terminations provide additional access to the system and may be required to maintain a P.02 grade of service as described above.

**6. Service Period.** Customer shall purchase the Service for the period November 1, 2017 through October 31, 2020. The parties acknowledge and agree that this is a continuation of the Service provided to Customer. As such, all necessary regulatory and other governmental approvals that were required prior to the provision of such Services under the terms hereof (“Service Period”) have been acquired. Customer may order additional service at the rates set forth above during the Service Period. Non-recurring charges may apply for services ordered after October 31, 2017. The Service Period for all Services ordered hereunder shall be coterminous.

**7. Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Service prior to the expiration of the Service Period, early termination charge will be in accordance with Section 13 of Rider B-IT.

**8. Charges.** The State of Maine will pay the rates and charges and satisfy all other requirements set forth in Rider B-IT. Customer shall pay all applicable taxes and charges that may be required under applicable law, regulations, or tariffs in connection with the Services.

**9. Additional Provisions.**

**a. Conditions.** The parties acknowledge that the rates and other terms of this Agreement are premised on Customer’s commitments, unique network design requirements, and Customer’s service mix, usage patterns and concentration, and other characteristics.

**b. Service Continuation.** If, at the time of the expiration of the Service Period, a new agreement with FairPoint Communications-NNE for the Services is not effective, and Customer does not request discontinuance of the Services in writing, then the Services will be continued on a month-to-month basis at the previous in-place contract rates. In any month-to-month service period, Services shall be subject to termination by party upon thirty (30) days prior written notice to the other party.

**c. Facilities.** Additional charges may be required if suitable facilities are not available to provide Service at any locations, or if any additional work, services, or quantities of Services are provided. In the event installation of additional network facilities is required to provide Service, FairPoint Communications-NNE will inform Customer of such applicable charges, and FairPoint Communications-NNE will install such 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 Communications-NNE without application of the termination charges described above.

**d. Locations.** The Services shall be provided to Customer under the terms hereof to the following location: 435 Broadway Street, Bangor, Maine 04401.



**FAIRPOINT ENTITY:** Northern New England Telephone Operations LLC d/b/a  
FairPoint Communications-NNE

**STATE:** Maine

**CUSTOMER NAME:** State of Maine

**1. Service, Rates and Quantity Commitment.** Customer agrees to purchase Circuit Switched Data (CSD) over an Integrated Services Digital Network (“ISDN”) to connect 2 locations of video conferencing equipment together and to carry the video calls for Telehealth and other State of Maine Applications (the “Service”) from FairPoint Communications-NNE at the rates and in quantities set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing tariffs rates and charges, or if no tariff is applicable, at FairPoint Communications-NNE’s then-current retail rate. Customer shall provide to FairPoint Communications-NNE at each Customer location suitable and secure space, with suitable environmental conditions, building entrance facilities and conduit, for placement of the facilities and equipment to be used by FairPoint Communications-NNE to provide such Service.

**2. Rates and Quantity Commitments.** Customer agrees to purchase the Service from FairPoint Communications-NNE at the rates set forth below and in quantities set forth below for the Service Period identified below.

The rate is \$.05 per minute for usage only, with no cap.

**3. Service Period.** Customer shall purchase the Service for the period November 1, 2017 through October 31, 2020. The parties acknowledge and agree that this is a continuation of the Service provided to Customer. As such, all necessary regulatory and other governmental approvals that may be required prior to the provision of such Services under the terms hereof (“Service Period”) have been acquired.

**4. Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Service prior to the expiration of the Service Period, early termination charge will be in accordance with Section 13 of Rider B-IT.

**Charges.** The State of Maine will pay the rates and charges and satisfy all other requirements set forth in Rider B-IT. Customer shall pay all applicable taxes and charges that may be required under applicable law, regulations, or tariffs in connection with the Services.

#### **6. Additional Provisions.**

**a. Conditions.** The parties acknowledge that the rates and other terms of this Agreement are premised on Customer’s commitments, unique network design requirements, and Customer’s service mix, usage patterns and concentration, and other characteristics.

**b. Service Continuation.** If, at the time of the expiration of the Service Period, a new agreement with FairPoint Communications-NNE for the Services is not effective, and Customer does not request discontinuance of the Services in writing, then the Services will be continued on a month-to-month basis at the previous in-place contract rates. In any month-to-month service period Services shall be subject to termination by party upon thirty (30) days prior written notice to the other party

**c. Locations.** The Services shall be provided to Customer under the terms hereof to any Customer locations in the State of Maine in any service territory of FairPoint Communications-NNE, provided facilities are available.

**FAIRPOINT ENTITY:** Northern New England Telephone Operations LLC d/b/a  
FairPoint Communications-NNE

**STATE:** Maine

**CUSTOMER NAME:** State of Maine

**1. Service, Rates and Quantity Commitment.** Customer agrees to purchase Toll Free Numbers, Trunks and Remote Call Forwarding at the rates and in quantities set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing tariffs rates and charges, or if no tariff is applicable, at FairPoint Communications-NNE’s then-current retail rate. Customer shall provide to FairPoint Communications-NNE at each Customer location suitable and secure space, with suitable environmental conditions, building entrance facilities and conduit, for placement of the facilities and equipment to be used by FairPoint Communications-NNE to provide such Service.

**2. Rates and Quantity Commitments.** Customer agrees to purchase the Service from FairPoint Communications-NNE at the rates set forth below and in quantities set forth below for the Service Period identified below.

Service Item	*Non-Recurring Charge (Each)	Monthly Unit Rate (Each)
Toll Free Numbers	\$0.00	\$3.00
Trunks	\$0.00	\$46.00
Remote Call Forwarding	\$0.00	\$5.00

**3. Service Period.** Customer shall purchase the Service for the period November 1, 2017 through October 31, 2020. The parties acknowledge and agree that this is a continuation of the Service provided to Customer. As such, all necessary regulatory and other governmental approvals that may be required prior to the provision of such Services under the terms hereof (“Service Period”) have been acquired.

**4 Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Service prior to the expiration of the Service Period, early termination charge will be in accordance with Section 13 of Rider B-IT.

**5. Charges.** The State of Maine will pay the rates and charges and satisfy all other requirements set forth in Rider B-IT. Customer shall pay all applicable taxes and charges that may be required under applicable law, regulations, or tariffs in connection with the Services.

**6. Additional Provisions.**

**a. Conditions.** The parties acknowledge that the rates and other terms of this Agreement are premised on Customer’s commitments, unique network design requirements, and Customer’s service mix, usage patterns and concentration, and other characteristics.

**b. Service Continuation.** If, at the time of the expiration of the Service Period, a new agreement with FairPoint Communications-NNE for the Services is not effective, and Customer does not request discontinuance of the Services in writing, then the Services will be continued on a month-to-month basis at the previous in-place contract rates. In any month-to-month service period Services shall be subject to termination by party upon thirty (30) days prior written notice to the other party

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

c. **Locations.** The Services shall be provided to Customer under the terms hereof to any Customer locations in the State of Maine in any service territory of FairPoint Communications-NNE, provided facilities are available.

**For all Services Described herein:**

**Upgrades** - If FairPoint Communications-NNE offers to the public a modification, enhancement or improvement to this Service that increases the speed, bandwidth or capacity of this Service (“Upgrade”) and such Upgrade is available in the areas of your locations, you may request such Upgrade in replacement of all or a portion of this Service at your locations without termination liability for the replaced Service, provided that (i) You subscribe to the Upgrade for a service period at least as long as the Service Period remaining for the replaced Service under this Agreement; (ii) You subscribe to the Upgrade at the same locations as the replaced Service at the rates determined by FairPoint Communications-NNE and agreed upon by the parties for such Upgrade or at generally available tariffed rates for such Upgrade including any applicable NRCs; and (iii) total charges for such Upgrade for the revised Service Period are equal to or exceed the total charges remaining for the replaced Service. The Upgrade shall be provided, and the applicable rates terms and conditions will take effect only after mutual agreement of the parties on all such rates, terms and conditions and only after all necessary filings are made with governmental entities and approvals from such entities are obtained. Rates for the Upgrade will apply prospectively only.

Not included above are any federally mandated end user common line or port charges; any applicable local, state, or federal fees, taxes, or surcharges; or any other applicable tariff charges which are additional fees.

**Invoices** - Timely invoicing is important to the Office of Information Technology. Late service invoices create budget and payment problems for the State of Maine. Invoices must be issued to the Office of Information Technology 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 OIT. 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 Communications-NNE. Fairpoint Communications-NNE shall assign an account manager and support staff to resolve bill accuracy issues. Fairpoint Communications-NNE 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.

**Outage Notification (Planned or Unplanned)** – During normal business hours (M-F 7:00 am – 5:00 pm), Fairpoint Communications-NNE’s assigned Account Manager shall notify the Office of Information Technology 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 Communications-NNE shall notify the Office of Information Technology Telecommunications Manager by calling the OIT 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.

**RIDER B-IT**

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$0.00 (Master Pricing Agreement)
2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

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For purposes of this Rider B-IT, Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE and Enhanced Communications of Northern New England Inc. d/b/a FairPoint Long Distance-NNE are referred to as the “Provider”. Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Agreement Administrator. All invoices require the following:

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

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

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

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

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

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

Name: Ellen Lee  
Title: Director, Vendor Management Office  
Address: Office of OIT, 51 Commerce Drive 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: Andrew Bonner  
Title: Voice Services Manager  
Address: Office of OIT, 51 Commerce Drive, Augusta, ME 04330  
Telephone: 207-624-8866  
E-mail address: andrew.bonner@maine.gov

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

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

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

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

**7. SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign, or otherwise dispose of this Agreement, or any portion thereof, or of its right, title, or interest therein,

without the written approval of the Department. Such approval shall not in any case relieve the Provider of its responsibility for performance of work under this Agreement.

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

1. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a *bona fide* occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

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

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

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

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

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

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

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

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

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

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

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

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.

2. Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.

3. Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.

4. Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.

5. The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.

6. Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under this Agreement are being performed, to inspect, monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

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

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

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

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;

2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval of the Agreement Administrator, settle all outstanding liabilities and claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement;
6. Transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Agreement Administrator, equipment and products purchased pursuant to this Agreement, and all files, source code, data manuals, or other documentation, in any form, that relate to all the work completed, or in progress, prior to the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

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

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

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

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

**17. LIMITATION OF LIABILITY**

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

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

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

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

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

**20. INSURANCE REQUIREMENTS**

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

**1. Minimum Coverage**

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

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

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

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

- C.1) Consumer notification, whether or not required by law;
- C.2) Forensic investigations;
- C.3) Public relations and crisis management fees; and
- C.4) Credit or identity monitoring, or similar remediation services.

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

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

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

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

- 2. Workers’ Compensation and employer’s liability, as required by law;
- 3. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
- 4. Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
- 5. Crime, in an amount not less than \$\_\_\_0\_\_\_ (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and
- 6. Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.

2. **Other Provisions** Unless explicitly waived by the Department, the insurance policies shall contain, or be endorsed to contain, the following provisions:

1. The Provider's insurance coverage shall be the primary and contributory. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.
2. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. The Provider shall furnish the Department with certificates of insurance, and with those endorsements, if any, affecting coverage, required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.
4. All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason, including nonpayment.
5. The Department will not grant the Provider, or any sub-contractor of the Provider, "Additional Insured" status and the Department will not grant any Provider a "Waiver of Subrogation".

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

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

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

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

**25. SET-OFF RIGHTS** The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement, up to any amounts due and owing to the State with regard

to this Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

**26. INTERPRETATION OF THE AGREEMENT**

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

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

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

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

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

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

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

**31. LOBBYING**

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

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

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

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

**32. PROVIDER PERSONNEL**

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

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

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

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

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

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

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

1. The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider, at its expense, shall defend, indemnify, and hold harmless the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees.

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

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

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

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

**38. ACCESSIBILITY** All IT products must be accessible to persons with disabilities, and must comply with the State Accessibility Policy and the Americans with Disabilities Act. All IT applications must comply with the Computer Application Program Accessibility Standard (Maine.gov/oit/accessiblesoftware). All IT applications and contents delivered through web browsers must comply with the Website Standards (Maine.Gov/oit/webstandard) and the Website Accessibility Policy (Maine.Gov/oit/accessibleweb).

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

**40. CONFIDENTIALITY**

1. All materials and information given to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information.
2. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and the Department shall take all necessary steps to protect confidential information regarding all persons served by the Department, including the proper care, custody, use, and preservation of records, papers, files, communications, and any such items that may reveal confidential information about persons served by the Department, or whose information is utilized in order to accomplish the purposes of this Agreement.
3. In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately.
4. The Provider shall comply with the Maine Public Law, Title 10, Chapter 210-B (Notice of Risk to Personal Data Act).

**41. OWNERSHIP**

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

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

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

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

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

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

1. This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the OTS software supplied by the Provider, installed at the Department's site, at mutually agreed upon times. In the event that a separate license agreement accompanies the OTS software, then the terms of that separate license agreement supersede the above license granted for that OTS software.

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

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

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

1. The Provider, as depositor, shall enter into an escrow contract, upon terms acceptable to the Department, with a recognized software Escrow Agent. The escrow contract must provide for the Department to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of the Department's data, and all updates thereof (the "Deposit Materials"), in electronic format. Deposits will occur no less frequently than once a month.
2. The escrow contract shall provide for the retention, administration, and controlled access of the Deposit Materials, and the release of the Deposit Materials to the Department, upon receipt of a joint written instruction from the Department and the Provider, or upon receipt of written notice from the Department that:
  - a. The Provider has failed to carry out its obligations set forth in the this Agreement; or
  - b. A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or
  - c. The Provider has filed a voluntary petition in bankruptcy, or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or becomes subject to an involuntary petition in bankruptcy, which petition or proceeding is not dismissed or unstayed within sixty (60) days from the date of filing; or
  - d. The Provider is in material breach of its maintenance and support obligations and has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or
  - e. A condition has occurred that materially and adversely impacts the Provider's ability to support the software and the Provider has failed to cure such condition within thirty (30) days from the date of receipt by the Provider of written notice of such condition.
3. The Provider is responsible for all fees to be paid to the Escrow Agent.
4. The Escrow Agent may resign by providing advance written notice to both the Department and the Provider at least thirty (30) calendar days prior to the date of resignation. In such an event, it is the obligation of the Provider to establish a new escrow account with a new Escrow Agent.

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

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

**47. ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to this Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise an

option or election under this Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, but the same shall continue in full force and effect. Use of one remedy shall not waive the Department's right to use other remedies. Failure of the Department to use a particular remedy for any breach shall not be deemed as a waiver for any subsequent breach. No waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies under this Agreement.

RIDER C  
EXCEPTIONS TO RIDER B-IT

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").

2. 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.

3. 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 (ITCs); provided, however, FairPoint shall provide to Department, upon written request, the name of the person or entity engaged as contractors, consultants or ITCs for work performed under this Agreement.

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

5. 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 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.

6. Rider B-IT Section 13 Termination is deleted in its entirety and replaced with the following: The Department may terminate this Agreement or the Services whenever Customer determines that termination is in the best interest of the Department. Notwithstanding such termination, the Department shall pay Provider all sums due and owing for any services rendered prior to said termination and not otherwise disputed.

7. Rider B-IT Section 16 (State Held Harmless) is deleted and replaced with the following:

The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all third-party claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages related to violations of third-party 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, its agents, representative, or contractors or for actions taken in reasonable reliance on written instructions of the Department.

8. Exception to Rider B-IT Section 17 (Limitation of Liability) – This Section will be revised by adding the following 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. Notwithstanding the foregoing, nothing in this Section 17, or any other term of Agreement, is intended or to constitute (a) abrogation of the sovereign immunity of the State; or (b) waiver of the State’s immunity under the Maine Tort Claims Act.”

9. 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 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.

10. Rider B-IT Section 25 Set-off rights is deleted.

11. 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.

12. 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, this Agreement, the SIP Service Schedule, or FairPoint operations, FairPoint’s policies, this Agreement, the SIP Service 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.”

13. Rider B-IT Section 41 (Ownership) is deleted. 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

AGREEMENT TO PURCHASE SERVICES (BP54-IT)

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.

14. Rider B-IT Sections 42 (Custom Software) is deleted.
15. Rider B-IT Section 43 (Off-The-Shelf (OTS) Software) is deleted.
16. Rider B-IT Section 44 (Software as Service) is deleted

RIDER D

Not Required: For use at Department's Discretion

RIDER E

Not Required: For use at Department's Discretion

RIDER F

Not Required: For use at Department's Discretion

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

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

**United States. Please identify state: 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 Competitive Award Authorization Form

**Form Instructions:** Please provide the information requested in the form below. This form must accompany contracts being proposed for approval that are the direct result of a competitive Request for Proposals (RFP), a subsequent contract renewal that was anticipated in the RFP or when Competitive Quotes are obtained. If the renewals allowable under the original RFP have been exhausted, another competitive RFP should be conducted.

<b>Contract Administrator:</b>	Jon Richard	<b>Office/Division/Program</b>	DAFS/OIT
<b>Contract Amount:</b>	To be determined	<b>Contract (CT) Number:</b>	MA 18P 171101*053
<b>Start Date:</b>	11/01/2017	<b>End Date:</b>	10/31/2020
<b>Selected Bidder's Name, City and State:</b>	Northern New England Telephone Operations LLC 1 Davis Farm Road Portland, ME 04103		
<b>Short Description of Service:</b>	Legacy Plain Old Telephone Services (PSTN)		

**1. Information on the Competitive Process Used**

**If a RFP process was used:**

**RFP#:** 201706118                       Initial contract.    First renewal.    Second renewal.    Third renewal.  
 If this is a first, second, or third renewal after an RFP, you need not complete the remainder of section 1 nor sections 2, 3 and 4. Simply enter the original RFP number, check the appropriate box, sign and date the form and send it with the contract.

**If competitive quotes were obtained:**

This contract award is the result of obtaining Competitive Quotes.

*The RFP process can be used for any contract award, but please note that as an alternative to the RFP process, Competitive Quotes can be used in determining awards for contracts if both of the following criteria apply:*  
 A. *The total contract amount is \$10,000 or less; and*  
 B. *If the services sought are straightforward in nature, such that price, availability and pass/fail criteria are the determining factors in the award decision (i.e. no subjective evaluation factors needed to be used).*

*\*Renewals are not allowed for Competitive Quote awards. Once a contract expires that was the result of obtaining Competitive Quotes, new quotes are to be sought if the need for the services continues.*

**2. Identify All Bidders**

- A. For **RFPs**, please list all bidders who submitted proposals before the stated Proposal Submission Deadline.
- B. For contracts where **Competitive Quotes** were obtained, the following needs to be included in this section:
  - 1) List all vendors who were contacted for quotes;
  - 2) List all vendors who responded and the quoted amounts for each and;
  - 3) Clearly identify the selected vendor (place in bold).

*Please note, in accordance with 5 M.R.S. §1825-A(3), competitive bidding must be conducted with a **minimum of three** vendors, unless three vendors are not available. If three are not available, please mention below how this was determined. If more than three are available, it is **HIGHLY RECOMMENDED** to contact all vendors to seek as many quotes as possible.*

Northern New England Telephone Operations LLC

# State of Maine Competitive Award Authorization Form

### 3. Review and Scoring Process.

- A. For contract awards based on an **RFP**, describe the process that was followed in reviewing and scoring the proposals. A consensus approach is encouraged, but not required. Be sure to retain copies of all scoring documentation, in accordance with your Department's archiving requirements.
- B. If this contract award is the result of obtaining **Competitive Quotes**, then please specify below that the quote with the lowest price was selected from among the bidders that met the State's requirements.  
**Please attach to this document all Competitive Quotes received (not RFP proposals).**

Consensus approach

### 4. Reminder regarding Award Notification Letters.

Award notification letters should be sent out to bidders following all competitive processes. If you are not already aware, please note that award notification letters must state that the award is conditional, pending SPRC Approval and negotiation of a mutually agreeable contract. The letters must also include a notification of all bidders' right to appeal the decision. Please be sure to use the template on the Division of Purchases' website:  
[http://www.maine.gov/purchases/files/Sample\\_Award\\_Notification\\_Letter.doc](http://www.maine.gov/purchases/files/Sample_Award_Notification_Letter.doc)

**Signature of requesting Department's Contract Administrator (or other relevant stakeholder):**



**Printed Name:**

Ellen Lee

**Date:**

8/24/17