

NEW

**State of Maine**



**Master Agreement**

**Effective Date:** 02/22/18

**Expiration Date:** 10/31/22

**Master Agreement Description:** Augusta Area Fiber Optic Connectivity

**Buyer Information**

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

**Issuer Information**

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

**Requestor Information**

Wayne Gallant 207-624-9424 ext. wayne.e.gallant@maine.gov

**Authorized Departments**

18B BUREAU OF INFORMATION SERVICES

**Vendor Information**

**Vendor Line #:** 1

**Vendor ID**  
VC1000034334

**Vendor Name**  
BIDDEFORD INTERNET

**Alias/DBA**

**Vendor Address Information**

43 LANDRY ST

BIDDEFORD, ME 04005

US

**Vendor Contact Information**

Claude Cestaro

207-602-1203 ext.

ccestaro@gwi.net

## Commodity Information

**Vendor Line #:** 1

**Vendor Name:** BIDDEFORD INTERNET

**Commodity Line #:** 1

**Commodity Code:** 72523

**Commodity Description:** Augusta area fiber optic connectivity

**Commodity Specifications:** Augusta Area Fiber Optic Connectivity as per the attached specifications/Contract Agreement.

**Commodity Extended Description:** Agreement Amount: \$210,000.00 Actual Agreement Service dates are as follows:

Service From date: 8/1/2012 Service To date: 10/31/2022

<b>Quantity</b>	<b>UOM</b>	<b>Unit Price</b>
0.00000		\$0.00
<b>Delivery Days</b>	<b>Free on Board</b>	
0		
<b>Contract Amount</b>	<b>Service Start Date</b>	<b>Service End Date</b>
\$0.00	02/22/18	10/31/22
<b>Catalog Name</b>	<b>Discount</b>	
	0.0000 %	
	<b>Discount Start Date</b>	<b>Discount End Date</b>

## **Commodity Terms and Conditions**

**Vendor Line #:** 1

**Commodity Line #:** 1

**T&C #:** 165

**T&C Name:** Payment Terms

**T&C Details:** Net 30

## Terms and Conditions

### **Agreement Terms and Conditions**

**T&C #:** 165

**T&C Name:** Payment Terms

**T&C Details:** Net 30

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

THIS AGREEMENT, made this 25th day of July, 2012, is by and between the State of Maine, Department of Administrative and Financial Services, Office of Information Technology, hereinafter called "Department," and GWI, located at 2 City Center Portland, Maine 04101, telephone number 207-602-1320, hereinafter called "Provider", for the period of August 1, 2012 to October 31, 2022.

The AdvantageME Vendor/Customer number of the Provider is VC100034333

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- RFQ
- Rider E- GWI Response
- Rider F - GWI License Agreement
- Rider G - Identification of Country in Which Contracted Work will be Performed

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in three (3) original copies.

Office of Information Technology

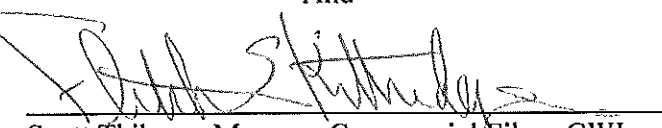
By:

  
James R Smith, CIO

And

GWI

By:

  
~~Scott Thibeau, Manager Commercial Fiber, GWI~~

Fletcher Kittredge, CEO, GWI

Total Agreement Amount: \$210,000.00

Approved: \_\_\_\_\_  
Chair, State Purchases Review Committee  
BP54 (Rev 9/07) - (Rev Rider B-IT 7/15/09)

**AdvantageME ACCOUNT CODING**

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT	SUB UNIT	OBJ	JOB NO.	PROGRAM
		038	18B	3041	02	9009		

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

**Department Account Coding And Approval For Use by OIT**  
(As needed, Department completes applicable fields)

Department Name: \_\_\_\_\_  
 Department Contact Name and Phone Number: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Department Internal Agreement Number (if applicable): \_\_\_\_\_

RFP Number: 18B 12030900000000000798 \_\_\_\_\_  
 Service/Program Name: Augusta Area Fiber Optic Connectivity \_\_\_\_\_  
 Fixed Asset Name (if applicable): \_\_\_\_\_  
 Fixed Asset Improvement (Y/N) \_\_\_\_\_

**Type of Agreement**  
 New  Amendment

ACCOUNT #	FY 2010 Encumbrance	FY 2011 Encumbrance	Agreement Total
Example: 010.18F.0291.01.5312			
Total			

**Approval Signatures:**  
 Program Administrator: \_\_\_\_\_ Date: \_\_\_\_\_  
 Finance Approver: \_\_\_\_\_ Date: \_\_\_\_\_  
 Department Approver: \_\_\_\_\_ Date: \_\_\_\_\_

RIDER A  
SPECIFICATIONS OF WORK TO BE PERFORMED

GWI shall provide the Department use of 24 strands of dark fiber optic service between Central Maine Commerce Center and Cross Office Building, Augusta, Maine per terms of this agreement.

**RIDER B-IT****METHOD OF PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT** \$210,000.00
2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:
  - \$50,000.00 to be paid upon completion of fiber plant design and provision of installation timetable to State.
  - \$50,000.00 to be paid upon completing of Make Ready by FairPoint..
  - \$40,000.00 to be paid upon completion of construction of 24 strand dark fiber from Cross Building to Commerce Center.
  - \$16,000.00 to be paid upon acceptance and sign off of project by the Department.
  - \$6,000.00 to be paid every year on the anniversary of project sign off date for the 9 consecutive years.

The Department agrees that Retainage shall not apply to contract payments. This agreement supercedes the retainage paragraph below.

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: Thomas Howker  
 Title: Contracts  
 Address: 26 Edison Drive Augusta, Maine 04333  
 Telephone: 207-624-8878  
 E-mail address: Thomas.N.Howker@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: Dave Rodrigue  
 Title: System Section Manger  
 Address: 26 Edison Drive Augusta, Maine 04333  
 Telephone: 207-624-8832  
 E-mail address: dave.rodrigue@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 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 no greater than:

1. Damages for violation or infringement of any copyright or trademark;
2. Damages for bodily injury (including death) to persons, and damages for physical injury to tangible personal property or real property; and
3. The amount of any other actual direct damages up to the greater of \$500,000 or three times the value of the Product or Service that is the subject of the claim, up to a maximum of \$25,000,000. For example, if the Product or Service that is the subject of the claim was valued at \$15,000,000, then the Provider would be liable for no more than \$25,000,000. For purposes of this subsection, the term "Product" would typically include the following, but not be limited to, Materials, Source Code, Machine Code, and Licenses.

Notwithstanding the above, Provider shall not be liable for any indirect or consequential damages.

**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, for the duration of the Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection with, the fulfillment of this Agreement by the Provider, its agents, representatives, employees, or Subcontractors.

1. **Minimum Coverage**

1. Commercial general liability (including products, completed operations, and broad-form contractual): \$1,000,000 per occurrence;
2. Workers' Compensation and employer's liability: as required by law;
3. Professional liability: \$1,000,000; and
4. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence.

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

1. The Provider's insurance coverage shall be the primary insurance. 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, effecting 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.
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

Paragraph 6, SUBCONTRACTORS -- The Provider may enter into subcontracts without consent of the Department.

Paragraph 35, PRODUCT WARRANTY – This section does not apply as this is not a product. It is a license agreement.

Paragraph 41, OWNERSHIP - This section does not apply as this is a license agreement.

Paragraph 42, CUSTOM SOFTWARE - This section does not apply as this is a license agreement.

Paragraph 43, OFF-THE-SHELF (OTS) SOFTWARE - This section does not apply as this is a license agreement.

Paragraph 44, SOFTWARE AS SERVICE - This section does not apply as this is a license agreement.

RIDER D

RFQ 18B 120309/798 Augusta Fiber Optic Connectivity

**Request for Bids**  
**Augusta Area Fiber Optic Connectivity**

The State of Maine Office of Information Technology (OIT) is soliciting bids to provide and maintain dark fiber plant in the Augusta Maine area for a period of ten (10) years. This plant will consist of twenty four (24) strands of single mode dark fiber connectivity between the Cross Office Building (210 State Street) and the Central Maine Commerce Center (45 Commerce Drive).

All strands must be ready for the State's use by August 1, 2012.

The vendor will be responsible for any required build out, installation at OIT specified demarcation points, and all ongoing dark fiber support and maintenance costs for the period of the contract.

Vendor must be registered with the Maine Public Utilities Commission to do business as a CLEC, ILEC or dark fiber provider.

Specifications

- Twenty four (24) dedicated strands of single mode G.652.D compliant fiber optic connecting the Cross Office Building (210 State Street basement telecommunications room) to the Central Maine Commerce Center (45 Commerce Drive OIT's MDF telecommunications room).
- Maximum length not to exceed 10 kilometers with a maximum loss of .25dB/km at 1550nm.
- Fusion spliced connections with a loss of no more than .20 dB/splice and .75dB/connector.
- All single mode fiber optic cable will be terminated on a rack mounted patch panel. All patch panel terminations will utilize SC connectors.
- Vendor is responsible for all aerial licenses (pole attachments), conduit access and/or other right of way permits required. State conduit space (pathway) from Civic Center Drive to the Central Maine Commerce Center and from Sewall Street to the Cross Office Building may be utilized.
- Vendor is responsible for coordinating with utilities for all make ready work required in utility spaces.
- Vendor will be responsible for coordinating installation in State and leased buildings with OIT.
- Prior to acceptance Vendor will conduct a fiber condition test and provide the State with a report of the results. Testing will be conducted on each fiber strand with calibrated OTDR equipment by a qualified fiber testing technician at 1310nm and 1550nm wave lengths. Testing will consist of bi-directional span testing recording the loss of each splice and over all span loss measurements. Each fiber path will be tested in an A-to-Z, then Z-to-A manner with results added together and divided by two to calculate a bi-directional average.

Maintenance

- Vendor is responsible for all maintenance of the dark fiber strands. This includes but is not limited to, routine preventative, repairs, troubleshooting, problem resolution, utility work, and attachment/right of way leases.

- Vendor will fix any repair or replace any fiber that results in the maximum loss specifications being exceeded.
- Vendor must provide 7 x 24 hour response and restoration service. This service includes a respond to trouble reports within two hours and complete restoration within 24 hours. The initial response will include an overview of the problem, estimated time to repair and a point of contact. After initial response vendor will provide updates no less than every 2 hours until full restoration. If requested, an incident report is to be provided to OIT within five (5) working days of service restoration.
- Vendor will identify a twenty-four (24) hour, seven (7) day a week procedure for reporting troubles. The procedure must include a toll free trouble reporting number.
- Vendor will notify OIT of service affecting maintenance no less than 72 hours in advance of the planned outage.

Bid Format

Vendor must submit quarterly costs for all twenty four strands as specified above. Pricing must include all costs including build out, installation, maintenance, support, pole attachment, taxes and any other associated fees.

One time costs for build out, installation, make ready, etc	_____
Annual maintenance, attachment fees, taxes, etc for year 1	_____
Annual maintenance, attachment fees, taxes, etc for year 2	_____
Annual maintenance, attachment fees, taxes, etc for year 3	_____
Annual maintenance, attachment fees, taxes, etc for year 4	_____
Annual maintenance, attachment fees, taxes, etc for year 5	_____
Annual maintenance, attachment fees, taxes, etc for year 6	_____
Annual maintenance, attachment fees, taxes, etc for year 7	_____
Annual maintenance, attachment fees, taxes, etc for year 8	_____
Annual maintenance, attachment fees, taxes, etc for year 9	_____
Annual maintenance, attachment fees, taxes, etc for year 10	_____

Award will be based on lowest total cost for the ten year contract term.

Administrative

The winning vendor must enter into a formal State of Maine Contract for Special Services with a ten year term and options for a five year extension. Bids must be submitted through the State Advantage accounting and procurement system.

RIDER E  
GWI Response

GWI

- > Vendor will fix any repair or replace any fiber that results in the maximum loss specifications being exceeded.
- > Vendor must provide 7 x 24 hour response and restoration service. This service includes a respond to trouble reports within two hours and complete restoration within 24 hours. The initial response will include an overview of the problem, estimated time to repair and a point of contact. After initial response vendor will provide updates no less than every 2 hours until full restoration. If requested, an incident report is to be provided to OIT within five (5) working days of service restoration.
- > Vendor will identify a twenty-four (24) hour, seven (7) day a week procedure for reporting troubles. The procedure must include a toll free trouble reporting number.
- > Vendor will notify OIT of service affecting maintenance no less than 72 hours in advance of the planned outage.

Bid Format

Vendor must submit quarterly costs for all twenty four strands as specified above. Pricing must include all costs including build out, installation, maintenance, support, pole attachment, taxes and any other associated fees.

One time costs for build out, installation, make ready, etc	\$ 130,000.00
Annual maintenance, attachment fees, taxes, etc for year 1	\$ 4,000.00
Annual maintenance, attachment fees, taxes, etc for year 2	\$ 4,000.00
Annual maintenance, attachment fees, taxes, etc for year 3	\$ 4,000.00
Annual maintenance, attachment fees, taxes, etc for year 4	\$ 4,000.00
Annual maintenance, attachment fees, taxes, etc for year 5	\$ 4,000.00
Annual maintenance, attachment fees, taxes, etc for year 6	\$ 4,000.00
Annual maintenance, attachment fees, taxes, etc for year 7	\$ 4,000.00
Annual maintenance, attachment fees, taxes, etc for year 8	\$ 4,000.00
Annual maintenance, attachment fees, taxes, etc for year 9	\$ 4,000.00
Annual maintenance, attachment fees, taxes, etc for year 10	\$ 4,000.00

Award will be based on lowest total cost for the ten year contract term.

Administrative

The winning vendor must enter into a formal State of Maine Contract for Special Services with a ten year term and options for a five year extension. Bids must be submitted through the State Advantage accounting and procurement system.



**GWJ Concerns:**

**Based upon the RFQ, our pricing is based upon access to Utility Conduit crossing Capitol Street. If Utility Conduit is not available, this will adjust our price if GWJ is responsible for the installation of Utility Conduit.**

## RIDER F

GWI License AgreementSPECIFICATIONS OF LICENSE AGREEMENT**1 Grant of Use and Access Rights**

1.1 License. Effective as of the applicable Completion Date (defined below), Provider shall grant to Department, and Department shall accept from Provider, the license to use ("License"), for lawful communications purposes, 24 designated Dark Fiber strands located within a fiber optic cable between termination points located at the Cross Office Building (210 State Street in Augusta, Maine) and at the Central Maine Commerce Center (45 Commerce Drive in Augusta) as specified in an RFQ "Augusta Area Fiber Optic Connectivity (the "Strands"). The term "Dark Fiber" means single mode strands within a bundle of fiber optic cable through which an associated light signal or light communication transmission must be provided to furnish service and that Provider does not hereby undertake to furnish. Without limiting any other provision of this Agreement, Department acknowledges and agrees that the Dark Fiber is being provided to Department without electronics or optronics, and that Provider shall have no obligation hereunder to light or otherwise activate such Dark Fiber.

1.2 Applicable Completion Date. The "Completion Date" shall be the date on which the Strands are installed and are determined by Provider to be available for use by Department. Provider shall notify Department in writing and in advance of the Completion Date. The Completion Date shall be on or before October 1, 2012, subject to change and approval by the Department and GWI.

1.3 Rights Limited to Strands. Nothing contained herein shall be construed to grant a license to use or permit Department to have access to any other facilities or fiber strands of Provider other than the Strands. Neither this Agreement nor any conveyance, license or use permitted hereunder shall constitute a conveyance, transfer or assignment of property rights of any nature, or otherwise create or vest in Department any ownership interest or property rights in the Strands or in the fiber optic cable except the right provided under the License specifically granted herein. Department acknowledges and agrees that the fiber optic cable will contain more Dark Fiber strands than the Strands subject to the License. Nothing contained in this Agreement shall be construed to limit or restrict Provider's right to grant and renew rights to any entity to use the fiber optic cable or any strands which are not actually licensed to Department hereunder subject to industry standard physical and electronic safeguards against information loss or disclosure. Further, except as expressly provided in this Agreement, nothing herein contained shall be construed as a limitation, restriction or prohibition against Provider with respect to any agreement(s), licenses and arrangement(s) which Provider has heretofore entered into, or may in the future enter into, with Third Parties, provided that any such agreements, licenses and arrangements shall not interfere with the exercise of Department's right to use the Strands under this Agreement.

1.4 Access to Provider facilities. Provider shall provide Department access with respect to the Strands at Provider approved locations along the fiber optic cable Network (the "Termination Points"), provided that Department shall comply with the reasonable safety requirements imposed by Provider or any Third Party upon or within whose facilities the fiber optic cable and Termination Points are located.

1.5 Department's Equipment and Accessories. Department acknowledges and agrees that (i) Provider is not supplying, and is not obligated to supply Department with any optronics, transceivers, electronics or optical or electrical equipment or other facilities, including without limitation, any equipment to light the Dark Fiber, any generators, batteries, air conditioners, fire protection and monitoring and testing equipment, all of which are the sole responsibility of Department (ii) Provider is not responsible for performing, any work other than as specified in this Agreement. Nothing contained in this Agreement shall be construed to obligate Provider to construct, install or maintain any fiber optic equipment or other electronic and associated equipment beyond the fiber optic cable. Department shall be responsible, at its sole cost and expense, for supplying, constructing, installing and maintaining any and all associated equipment and facilities other than the Strands and the associated connection boxes, including without limitation, any and all equipment necessary to interconnect with the fiber optic cable and to light and monitor the Strands (hereinafter "Department's Equipment and Accessories").

1.6 Liens. Department shall not permit any liens or other encumbrances to be placed on the fiber optic cable, or any facilities of Provider or its affiliates.

1.7 Designation of Specific Strands. Provider shall have the sole right to designate the specific strands to be licensed hereunder and to determine the means by which the Strands will enter and exit the fiber optic cable and be connected to Department's Equipment and Accessories, said determination to be made in a commercially and technically reasonable manner.

## 2 Term

2.1 Term of Agreement. This Agreement shall expire on the day that is ten (10) years from said Completion Date, unless otherwise terminated in accordance with this Agreement.

2.2 Notwithstanding Section 2.1 above, Department shall be permitted to terminate this contract at the end of 10 years from the Completion Date. Department shall give written notice to Provider at least sixty (60) days before the end of the ten year period.

2.3 Effect of Termination. Upon the earlier of the termination of this Agreement, or the expiration of this Agreement at the end of the term stated in Section 3.1 above, Department shall, at its sole cost and expense, cause Department's Equipment and Accessories to be disconnected from the fiber optic cable and shall remove Department's Equipment and Accessories from Provider's property. In the event Department fails to do so within thirty (30) days of said expiration or termination, Provider shall have the right, but not the obligation, to undertake to make such disconnection without further notice to Department, and without liability to Department or Third Parties resulting from interruption of service. Upon termination of this Agreement, the parties shall be relieved of, and not remain liable for, any of their obligations under this Agreement, except as expressly provided in this Agreement.

2.4 Extension - Department may optionally renew this Agreement for an additional five (5) year term ("Extension Term") with ninety (90) days written notice to Provider. At the start of the Extension Term, the annual charge for maintenance (\$6,000) may be adjusted by changes in the United States Consumer Price Index (All Urban Consumers – "CPI-U) from the Completion Date to the start of the Extension Term and shall remain fixed for the entirety of the Extension Term. Department shall

Provider, as set forth above, Department agrees to reimburse Provider for such cost reasonably incurred by Provider.

#### 4 Relocation And Re-Designation Of Strands

If, following the Completion Date, Provider is required by a party with legal authority to do so to relocate a portion the fiber optic cable, Provider shall provide Department reasonable notice of such requirement, and Provider shall be permitted to proceed with such relocation. In the event that such relocation requires the removal, re-splicing, and/or reconnection of any of Department's Equipment and Accessories, Department shall, upon notice from Provider, promptly cause such action to be taken at its sole cost and expense.

#### 5 Liability, Indemnities And Insurance

5.1 Limitation of Provider Liability. IN NO EVENT SHALL PROVIDER'S LIABILITY ARISING OUT OF DELAYS IN INSTALLATION OR RESTORATION OF THE STRANDS OR OUT OF MISTAKES, ACCIDENTS, OMISSIONS, INTERRUPTIONS, ERRORS OR DEFECTS IN THE ORDERING, PROCESSING, PROVISIONING, OR TRANSMISSION OF SERVICE OR FOR ANY OTHER BREACH HEREUNDER, HOWEVER CAUSED, EXCEED THREE TIMES THE TOTAL VALUE OF THE AGREEMENT. WITHOUT LIMITING THE FOREGOING, PROVIDER SHALL HAVE NO OBLIGATION TO PROVIDE ALTERNATIVE ROUTING WITH RESPECT TO ANY DARK FIBER CAPACITY PROVIDED PURSUANT TO THIS AGREEMENT. IN NO EVENT, NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, SHALL PROVIDER BE LIABLE TO DEPARTMENT OR ANY OTHER PERSON, FIRM OR ENTITY, FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF FORESEEABLE, ARISING OUT OF ANY MISTAKE, ACCIDENT, ERROR, OMISSION, INTERRUPTION, OR DEFECT IN TRANSMISSION, OR DELAY ARISING OUT OF OR RELATING TO THE LICENSING OF DARK FIBER OR THE OBLIGATIONS OF PROVIDER PURSUANT TO THIS AGREEMENT INCLUDING, WITHOUT LIMITATION ANY FAILURE TO TIMELY OR ACCURATELY PROVISION OR INSTALL, MAINTAIN OR REPAIR ANY PORTION OF THE FIBER OPTIC CABLE, OR CONDITIONS WHICH MAY RESULT FROM ACTIONS BY REGULATORY OR JUDICIAL AUTHORITIES PARTIES TO ANY OF PROVIDER'S UNDERLYING RIGHTS, OR BY ANY CARRIERS OR THIRD PARTIES THAT PROVIDER RELIES ON TO PROVIDE ANY SERVICE TO DEPARTMENT. PROVIDER MAKES TO DEPARTMENT ONLY THE EXPRESS WRITTEN WARRANTIES, IF ANY, SET OUT HEREIN. OTHERWISE, PROVIDER MAKES NO WARRANTY WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF THE STRANDS OR FIBER OPTIC FACILITIES OR LOCAL ACCESS OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY PROVIDER ARE HEREBY EXCLUDED AND DISCLAIMED.

#### 5.2 Damage to Facilities.

5.2.1 Damage to Fiber Optic Cable. Department shall exercise due care to avoid damaging the fiber optic cable, the Utility's facilities, and any other Provider equipment or facilities or the equipment or facilities of Third Parties attached to, or making use of, the Utility's facilities.

Department assumes all responsibility for any and all loss from any damage to such facilities caused by Department's employees, agents or contractors. Department shall make an immediate report to Provider and any other user of the occurrence of any such damage and agrees to reimburse the respective parties for all costs and losses incurred in making repairs. In addition to the foregoing indemnities and without limiting the application or effect thereof, Department hereby agrees and acknowledges that it shall be liable to Provider for any and all damages to Provider's facilities resulting from or caused by the use of the fiber optic cable by Department, its agents or employees or assigns, including without limitation, the operation and maintenance of Department's Equipment and Accessories.

- 5.2.2 Damage to Department's Equipment and Accessories. Provider shall exercise due care to avoid damaging Department's Equipment and Accessories. Except as provided in Section 5.1, Provider assumes all responsibility for any and all loss from any damage to such facilities caused by Provider's employees, agents or contractors. Provider shall make an immediate report to Department and any other user of the occurrence of any such damage and agrees to reimburse Department for all costs and losses incurred in making repairs. Except as provided in Section 12.1 hereof, in addition to the foregoing indemnities and without limiting the application or effect thereof, Provider hereby agrees and acknowledges that it shall be liable to Department, for any and all damages to Department's Equipment and Accessories resulting from or caused by Provider's maintenance of the fiber optic cable.

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

## GENERAL TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES UNDER BUYER PURCHASE ORDERS (BPOs) AND MASTER AGREEMENTS (MAs)

1. **DEFINITIONS:** The following definitions are applicable to these standard terms and conditions:
  - a. The term “Buyer” or “State” shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
  - b. The term “Department” or “DAFS” shall refer to the State of Maine Department of Administrative and Financial Services.
  - c. The term “Bureau” or “BGS” shall refer to the State of Maine Bureau of General Services.
  - d. The term “Division” shall refer to the State of Maine Division of Purchases.
  - e. The term “Contractor”, “Vendor”, or “Provider” shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
  - f. The term “Contract” or “Agreement” shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.
  
2. **WARRANTY:** The Contractor warrants the following:
  - a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and
  - b. That all goods and services covered by this Contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and
  - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
  - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
  - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

3. **TAXES:** Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

4. **PACKING AND SHIPMENT:** Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest

transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**5. DELIVERY:** Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, the Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

**6. FORCE MAJEURE:** The State may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that 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, or 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. The State may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

**7. INSPECTION:** All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Division of Purchases, at its option, may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.

**8. INVOICE:** The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars, must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.



**9. ALTERATIONS:** The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreements, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

**10. TERMINATION:** The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.

In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

**11. NON-APPROPRIATION:** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, 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.

**12. COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are

contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

**13. INTERPRETATION:** This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

**14. DISPUTES:** The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

**15. ASSIGNMENT:** None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.

**16. STATE HELD HARMLESS:** The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

**17. SOLICITATION:** The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

**18. WAIVER:** The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.

**19. MATERIAL SAFETY:** All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

**20. COMPETITION:** By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.

**21. INTEGRATION:** All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.