



# State of Maine Department of Administrative and Financial Services

Document Type	Contractor Name	Advantage CT or RQS Number
Contract Amendment	GTL INC dba LINK TO LIFE	20210929000000000877
Department	Contract Start Date	Internal Department Contract Number
03A-Department of Corrections	10/5/21	
Short Description of Goods or Services	Contract End Date	Contract Amount
Inmate/Resident Phone Services	6/30/2022	\$0.00
		Approval Date Time
		10/14/21 6:12 PM

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



AMENDMENT

DATE: 10/8/2021

ADVANTAGE CONTRACT #: 03A 20170111\*2095 (former contract #)
03A 20210929\*0877 (new contract #)

DEPARTMENT AGREEMENT #: N/A

AMENDMENT AMOUNT: \$ (Unchanged)

This Amendment, is between the following Department of the State of Maine and Provider:

State of Maine DEPARTMENT

DEPARTMENT: Corrections

Address: SHS 111, 25 Tyson Drive

City: Augusta State: Maine Zip Code: 04333

PROVIDER

FORMER PROVIDER: Legacy Inmate Communications .

Address: 10833 Valley View St., Suite 150

City: Cypress State: CA Zip Code: 90630

Provider's Vendor Customer # VC0000215770

SUCCESSOR PROVIDER: Global Tel\*Link Corporation

Address: 900 Western America Circle, ite 300

City: Mobile State: AL Zip Code: 36609

Provider's Vendor Customer # VC1000034213

Each signatory below represents that the person has the requisite authority to enter into this Contract Amendment. The parties sign and cause this Contract Amendment to be executed.

CORRECTIONS

State of Maine Department

DocuSigned by:

Ryan Thornell 10/13/2021

Signature of Authorized Representative Date

Ryan Thornell, Deputy Commissioner

LEGACY INMATE COMMUNICATIONS

Former Provider

DocuSigned by:

Brian Hill 10/12/2021

Signature of Authorized Representative Date

Brian Hill, CEO

**Maine Department of Administrative and  
Financial Services**

DocuSigned by:



10/12/2021

052B9AC7F56A489...

Signature of Authorized Representative      Date

Frederick Brittain, Chief Information Officer

**Global Tel\*Link Corporation**

Successor Provider

DocuSigned by:



10/12/2021

1F5DC7063D02485...

Signature of Authorized Representative      Date

Janna Peters, Director of Contracts and  
Procurement

## AMENDMENT

The contract is hereby amended as follows: (Check and complete all that apply)

<input type="checkbox"/>	<b>Amended Period:</b>	Original Start Date: 1/1/2017      Current End Date: 6/30/2022 New Start Date (if applicable): Click or tap to enter a date. New End Date:  <u>Reason:</u>
<input type="checkbox"/>	<b>Amended Contract Amount:</b>	Amount of Adjustment: \$ _    New Contract Amount: \$ Click or tap here to enter text.  <u>Reason:</u>
<input checked="" type="checkbox"/>	<b>Amended Scope of Work:</b>	Services at Downeast Correctional Facility will be reinstated in November 2021. Services at this facility were terminated by a previous amendment in 2018 when the facility was temporarily closed.
<input checked="" type="checkbox"/>	<b>Other:</b>	<u>Reason:</u> Pursuant to the attached Novation and Assignment Agreement, attached hereto, the purpose of this amendment is to transition inmate/resident phone and tablet services from Legacy Inmate Communications to Global Tel*Link Corporation. The transition of services from the former provider to the latter shall take place on October 5, 2021.

All other terms and conditions of the original contract and subsequent contract amendments, attached hereto, remain in full force and effect. Notwithstanding the foregoing, this Consent to Novation and Assignment as well as the underlying contract shall at all times be governed by and construed in accordance with the laws of the State of Maine.

## NOVATION AND ASSIGNMENT AGREEMENT

**THIS NOVATION AND ASSIGNMENT AGREEMENT** ("Agreement") is entered into this 28 day of January 2020, by and between Legacy Long Distance International, Inc. d/b/a Legacy Inmate Communications, a California corporation ("Assignor"), and Global Tel\*Link Corporation, an Idaho corporation ("Assignee") (each a "Party" or collectively, the "Parties").

**WHEREAS**, as of the date hereof, Assignor and the State of Maine, Department of Corrections (the "Correctional Facility") are parties to that certain Agreement to Purchase Services, Advantage CT #03A 20170111-2095, dated January 3, 2017 (the "Inmate Services Agreement") pursuant to which Assignor provides certain services to Correctional Facility;

**WHEREAS**, on July 2, 2020, Assignor and Assignee entered into that certain Master Transaction Agreement and Asset Purchase Agreement pursuant to which Assignor has agreed to sell and assign to Assignee, and Assignee has agreed to purchase and assume from Assignor, certain assets and specified liabilities on the terms and conditions set forth therein (the "Transaction");

**WHEREAS**, pursuant to the terms and conditions previously agreed to by the Parties, Assignor has agreed to assign, transfer, and convey to Assignee all of Assignor's rights, title, and interest in and to, and Assignee has agreed to assume the Inmate Services Agreement; and

**WHEREAS**, pursuant to the terms and conditions previously agreed to by the Parties, Assignor and Assignee are entering into this Agreement pursuant to which (a) Assignee will become a party to the Inmate Services Agreement, (b) Assignor will novate and assign to Assignee all of Assignor's rights and obligations under the Inmate Services Agreement on the terms previously agreed to by the Parties, and (c) Assignor will be released from all of its obligations under the Inmate Services Agreement arising from and after the Effective Date (as defined below) on the terms previously agreed to by the Parties.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. **Effectiveness**. This Agreement shall become effective as of the closing date of the Transaction relating to the Inmate Services Agreement (the "Effective Date"). All of the provisions herein shall be deemed to be operative and take effect with no further action necessary at the Effective Date simultaneously with the closing of the Transaction with respect to the Inmate Services Agreement.

2. **Assignment by Assignor**. Assignor does hereby grant, bargain, transfer, sell, assign, convey, and deliver to Assignee, its successors and assigns, free and clear of any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, circumstance that impairs the quiet enjoyment or value, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership, as applicable, and Assignee does hereby assume and accept, all of Assignor's rights,

title, and interest in and to the Inmate Services Agreement.

3. Assumption by Assignee. Assignee hereby assumes from Assignor the obligations of Assignor that arise under the Inmate Services Agreement and agrees to be responsible for and obligated to perform the duties and obligations of Assignor thereunder on the terms previously agreed to by the Parties.

4. Joinder. Assignee hereby joins and becomes a party to (as fully as if Assignee had been an original signatory thereto) the Inmate Services Agreement, and the Inmate Services Agreement shall be construed and treated in all respects as if Assignee was named therein instead of Assignor from and after the Effective Date.

5. Novation. Assignor hereby irrevocably novates and assigns to Assignee all of Assignor's rights, title, interests, and obligations under the Inmate Services Agreement, and Assignee hereby irrevocably accepts such rights, title, and interests, and assumes such duties, liabilities, and obligations under the Inmate Services Agreement from Assignor on the terms and conditions contained herein and as previously agreed to by the Parties.

6. Assignee's Performance Obligation. Assignee shall duly perform and discharge all duties, liabilities, and obligations arising out of or related to the Inmate Services Agreement whatsoever from time to time to be performed or discharged by it after the Effective Date by virtue of this Agreement in all respects, as if Assignee was originally named therein instead of Assignor.

7. Further Assurances. The Parties agree to execute and deliver such other instruments and documents and to take such other actions as any Party may reasonably request in connection with the transactions contemplated by this Agreement.

8. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 8):

If to Assignor: Legacy Long Distance International, Inc.  
c/o Jail Education Solutions, Inc. d/b/a Edovo  
215 W Superior Street, Suite 600  
Chicago, IL 60654  
E-mail: brian@edovo.com  
Attention: Brian Hill

with a copy to: Freeborn & Peters LLP

311 South Wacker Drive, Suite 3000  
Chicago, IL 60606  
E-mail: [jshapiro@freeborn.com](mailto:jshapiro@freeborn.com)  
Attention: John T Shapiro

If to Assignee: Global Tel\*Link Corporation  
3120 Fairview Park Drive, Suite 300  
Falls Church, VA 22042  
E-mail: [claudia.regen@gtl.net](mailto:claudia.regen@gtl.net)  
Attention: Claudia Regen

with a copy to: Cahill Gordon & Reindel LLP  
1990 K Street, N.W., Suite 950  
Washington, D.C. 20006  
Attention: Chérie R. Kiser  
E-mail: [ckiser@cahill.com](mailto:ckiser@cahill.com)

9. Miscellaneous.

(a) Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any person other than Assignee, its successors and assigns, any remedy or claim under or by reason of this instrument or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises, and agreements in this instrument shall be for the sole and exclusive benefit of Assignee and its successors and assigns.

(b) This Agreement may not be modified, amended, waived, discharged or terminated other than by written agreement signed by the Parties.

(c) This Agreement shall be binding upon the Assignor and inure to the benefit of Assignee and its successors and assigns.

(d) This Agreement shall be governed by and construed in accordance with the laws of the state of Maine without giving effect to any choice or conflict of law provision or rule (whether of the state of Maine or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the state of Maine.

(e) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Exchange and delivery of this Agreement by exchange of electronic copies bearing the signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party. Such electronic copies shall constitute legally enforceable original documents.

\* \* \* \*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

**ASSIGNOR:**

**LEGACY LONG DISTANCE  
INTERNATIONAL, INC. D/B/A LEGACY  
INMATE COMMUNICATIONS**

By:   
Name: Brian Hill  
Title: CEO

**ASSIGNEE:**

**GLOBAL TEL\*LINK CORPORATION**

By:   
Name: Alicia Freeman  
Title: VP Contracts & Procurement



**CONSENT TO NOVATION AND ASSIGNMENT**

Pursuant to Section 7 of Rider B-IT of the Inmate Services Agreement, the State of Maine, Department of Corrections (the "Correctional Facility") approves the novation and assignment of that certain Agreement to Purchase Services, Advantage CT #03A 20170111-2095, dated January 3, 2017 (the "Inmate Services Agreement"). Accordingly, the undersigned hereby: (i) consents to the foregoing novation and assignment and accepts Assignee as the obligor under the Inmate Services Agreement in place of Assignor on the terms and conditions set forth herein; and (ii) grants to Assignee the same rights under or arising out of or related to the Inmate Services Agreement as were granted to Assignor thereunder in every way as if Assignee was and had been a party thereto instead of and in place of Assignor.

**IN WITNESS WHEREOF**, the undersigned has caused this Consent to be duly executed as of the day and year first above written.

**CORRECTIONAL FACILITY:**

**STATE OF MAINE, DEPARTMENT OF  
CORRECTIONS**

By: \_\_\_\_\_

Name: RANDALL LIBERTY

Title: MAINE Dept. of Corrections,  
Commissioner

Advantage CT#: 03A 20170110\*2095

STATE OF MAINE  
DEPARTMENT OF CORRECTIONS  
Agreement to Purchase Services

THIS AGREEMENT, made this 3rd day of January, 2017, is by and between the State of Maine, Department of Corrections, hereinafter called "Department," and Legacy Inmate Communications, located at 10833 Valley View Street, Suite 150, Cypress, CA 90630, hereinafter called "Provider", for the period of January 1, 2017 to June 30, 2019.

The AdvantageME Vendor/Customer number of the Provider is VC0000215770.

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 – RFP # 201511215 for Prisoner/Resident Phone and Remote Video Visitation System
- Rider E – Proposal Response Submitted by Legacy Inmate Communications
- Rider G – Identification of Country in Which Contracted Work will be Performed

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one (1) original copy.

LEGACY INMATE COMMUNICATIONS

By: [Signature]  
Curtis Brown, President & CEO

Date: 1/25/17

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
OFFICE OF INFORMATION TECHNOLOGY

By: [Signature] 26 JAN 2017  
FOR Jim Smith, Chief Information Officer

Date: \_\_\_\_\_

DEPARTMENT OF CORRECTIONS

By: [Signature]  
Jody Breton, Deputy Commissioner

Date: 1/30/17

Total Agreement Amount: \$1,417,500 – Est. (paid from Inmate Trust Fund)

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



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

**1. Agreement Summary**

The Provider will install, implement and maintain a debit only prisoner/resident - phone system and a remote video visitation system for statewide MDOC facilities. The system includes all equipment, hardware, software, system engineering, material maintenance, labor, training and all things necessary to provide, install, implement, interface, and maintain the phone and video visitation system.

**2. Facilities Served:**

- Maine State Prison [Warren, ME]
- Maine Correctional Center [Windham, ME]
- Long Creek Youth Development Center [South Portland, ME]
- Bolduc Correctional Facility [Warren, ME]
- Mountain View Correctional Facility [Charleston, ME] – (Now combined with Charleston Correctional Facility and operating as one facility)
- Women's Reentry Center [Windham, ME] – (Currently under construction; anticipated opening March, 2017)
- Downeast Correctional Facility [Machiasport, ME]

Should an MDOC facility move or be re-located, the Department will notify the Provider in advance and the Provider agrees to continue provision of the contracted services without interruption.

**3. Contract Term:**

The initial contract term is set forth above. Following the initial term of the contract, the Department may opt to renew the contract for three (3) renewal periods of one year each, subject to continued availability of funding and satisfactory performance.

**4. Description of Services Provided Under This Contract:**

- A. The parties agree that the services described in MDOC's solicitation document, RFP #201511215 for Prisoner/Resident Phone and Remote Video Visitation System (incorporated into this Agreement as Rider D), together with the proposal response submitted by the Provider (incorporated into this Agreement as Rider E), fairly and accurately describe the services to be provided under this contract. Despite other ancillary services proposed by the Provider, this contract is limited to the services specified in the Department's RFP document.
- B. Rider E includes two additional documents—Implementation Plan and Testing and Acceptance Plan—which will serve as "updates" to plans submitted in the Provider's original proposal. As reflected in the updated plans, the Provider will initially install standard telephones in lieu of their Bridge Communication Devices (BCDs), with the exception of two BCD units being installed at MCC for the piloting of video visitation services. When/if MDOC decides it would like to expand video visitation to other facilities, the Provider will install said services in order to accommodate the Department's needs, at no additional cost or obligation to the Department.
- C. The parties mutually understand and agree that in the event of any conflict among the provisions of the above documents that constitute the State of Maine Contract for Special Services with Provider, the

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conflict shall be resolved by giving precedence to the documents in the order listed, with the State of Maine Agreement to Purchase Services (Division of Purchases Form BP54-IT; Face Page) having the highest precedence, and the Legacy Technical Proposal Response being subordinate to all other listed documents.

- D. The parties further agree that, after appropriate consultation with the Department, the Provider will add, remove, swap or change necessary equipment in order to meet the Department's ongoing needs. Such changes may occur during the initial installation phase or at any future point during the term of this contract.

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

1. **AGREEMENT AMOUNT:** The "per minute" Call Rates and Commission Rates under this Agreement are delineated as follows:

<u>Telephone</u>	Call Rate	\$0.09
	Inter national Rate	\$0.20
	Commission Rate	\$0.05

<u>Video Visitation</u>	Remote Visitation Rate	\$0.25
	Commission Rate	\$0.05

2. **INVOICES AND PAYMENTS:** Legacy will provide a detailed invoice to the MDOC within five (5) days of the end of each month.

- A. For Telephone services, the MDOC agrees to pay Legacy \$0.04 for each domestic Debit Call Minute (DCM) of usage and \$0.15 for each international DCM.
- B. For Video Visitation services, Legacy agrees to pay MDOC \$0.05 per minute of usage following a mutually agreeable invoicing/verification process.

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:

- E. 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.
- F. All invoices must include the vendor's Federal ID Number.
- G. All invoices must include either the Purchase Order number or the Contract number relating to the commodities/services provided.
- H. 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 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

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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: Scott Goulette  
 Title: Financial Analyst  
 Address: 11 SHS, 25 Tyson Drive, Augusta, ME 04333  
 Telephone: 207-287-2729  
 E-mail address: scott.goulette@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: Martin Murphy  
 Title: Manager of Correctional IT  
 Address: 11 SHS, 25 Tyson Drive, Augusta, ME 04333  
 Telephone: 207-287-4514  
 E-mail address: martin.murphy@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.

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**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.

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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;

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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.

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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:

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- 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.*

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

2. Workers' Compensation and employer's liability, as required by law;
  3. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
  4. Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
  5. Crime, in an amount not less than \$\_\_\_\_\_ (*The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider*); and
  6. Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.
3. **Other Provisions** Unless explicitly waived by the Department, the insurance policies shall contain, or be endorsed to contain, the following provisions:
1. The Provider's insurance coverage shall be the primary and contributory. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.

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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**

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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.



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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

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Department may provide or procure the services necessary to cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

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

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

**40. CONFIDENTIALITY**

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

**41. OWNERSHIP**

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

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

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

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

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

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

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

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

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

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

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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. **PRICE PROTECTION**

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

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

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

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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

RIDER D

RFP # 201511215 for Prisoner/Resident Phone and Remote Video Visitation System – Incorporated by reference and attached hereto.

RIDER E

Proposal Response Submitted by Legacy Inmate Communications – Incorporated by reference and attached hereto.



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.

**Department of Corrections  
CONTRACT FOR SPECIAL SERVICES – AMENDMENT**

BY AGREEMENT of both parties this 6th day of September, 2018 the Contract for Special Services between the State of Maine, Department of Corrections hereinafter called "Department," and Legacy Inmate Communications, hereinafter called "Contractor," is hereby amended as follows:

1. The termination date is extended from June 30, 2019 to June 30, 2022.

**Reason:** The parties have agreed to exercise the three (3) one-year renewal periods allotted under the original contract.

2. The dollar amount of the contract is increased by N/A – no cost increase.

3. The Scope of Services in Rider A is amended as follows: The amended Scope of Services is provided on Amended Riders A and B attached hereto.

All other terms and conditions of the original contract dated January 3, 2017 remain in full force and effect.

IN WITNESS WHEREOF, the Department and Contractor, by their duly authorized representatives, have executed this amendment in 1 originals as of the day and year first above written.

**DEPARTMENT OF CORRECTIONS**

By:

[Signature]  
Ryan Thornell, Deputy Commissioner

9.10.2018  
(Date)

and

**LEGACY INMATE COMMUNICATIONS**

By:

[Signature]  
Brian Hill, CEO

9/10/18  
(Date)

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

Department number and Contract number (CT #):	<u>03A 20170111-2095</u>
Encumbered <input type="checkbox"/> or Unencumbered <input checked="" type="checkbox"/> : (check one)	Vendor Code: <u>VC0000215770</u>
Old Contract Amount: <u>\$ 1,417,500 Est.</u>	Amount of Increase: <u>\$ N/A</u>
New Contract Amount: <u>Unchanged</u>	Amount of Decrease: <u>\$ N/A</u>
New Service to Date: <u>June 30, 2022</u>	Account Codes: <u>Inmate Trust Funds</u>

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

**1. Agreement Summary:**

The Provider will install, implement and maintain a debit only prisoner/resident - phone system and a remote video visitation system for statewide MDOC facilities. The system includes all equipment, hardware, software, system engineering, material maintenance, labor, training and all things necessary to provide, install, implement, interface, and maintain the phone and video visitation system.

A. The provider will also make available a Tablet Program with Edovo Connect and other services on the tablet. Provider will provide at least 360 Tablets and supporting equipment to implement and operate the Tablet Program. The Tablets will be placed for use by prisoners in a facility within the areas defined by the Department.

1. Tablets will initially be deployed in two phases.
2. Phase I to kick off no later than November 2018 (No less than 140 tablets)
3. Phase I deployment includes:
  - a) Maine Correctional Center- Women's Center
  - b) Mountain View Correctional Center- Units C, D, E
  - c) Maine State Prison-IMHU
4. Phase II to kick off no later than Winter, 2019 (No less than 220 tablets)
5. Phase II deployment to include:
  - a) Mountain View Correctional Facility -all other wired areas
  - b) Maine State Prison- 400 building, activities building
6. Tablets may be deployed at additional facilities upon mutual agreement by both parties, under the terms of this agreement.

B. The Department and Provider will establish a direct billing system for the Provider's video visitation system, SMS, and other services.

**2. Facilities Served:**

Downeast Correctional Facility – due to facility closure  
Service to all other facilities remains intact.

**3. Contract Term:**

The parties agree to exercise the three (3) one-year renewal periods allotted under the original contract. The termination date is hereby extended from June 30, 2019 to June 30, 2022.

**4. Description of Services Provided Under This Contract:**

A. The parties agree that the services described in MDOC's solicitation document, RFP #201511215 for Prisoner/Resident Phone and Remote Video Visitation System (incorporated into this Agreement as Rider D), together with the proposal response submitted by the Provider (incorporated into this Agreement as Rider E), fairly and accurately describe the services to be provided under this contract. ~~Despite other ancillary services proposed by the Provider, this contract is limited to the services specified in the Department's RFP document.~~

C. The parties mutually understand and agree that in the event of any conflict among the provisions of the above documents that constitute the State of Maine Contract for Special Services with Provider, the conflict shall be resolved by giving precedence to the documents in the order listed, with the Contract for Special Services – Amendment having the highest precedence, followed by the State of Maine Agreement

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to Purchase Services (Division of Purchases Form BP54-IT), and the Legacy Technical Proposal Response being subordinate to all other listed documents.

Additional Scope:

E. Edovo Tablet Program

1. Physical Specifications

Each Tablet shall be correctional-grade and, at a minimum, the Tablet screen shall be a color LCD shatter resistant touch screen at least 7" in diagonal. Additionally, each Tablet comes with a 90-day warranty against manufacturer defects to include costs of return shipping. Prisoners shall be prohibited from having access to the internet or any external applications. The Tablets must communicate with pre-approved Applications and servers only.

2. Content and Functionality

a) Provider shall equip the Tablets (at a minimum) with the attendant Edovo Insight, Edovo Educational Suite with Incentive Based Learning, Edovo Connect functionality, and other functionality and software, including agreed upon programming content that includes but is not limited to behavioral health, education, vocation, reentry preparation, and general career skill building.

i. The Department understands the term Edovo Insight- to mean - *An analytics tool that enables facility administrators, corrections officers, and investigators information access to ensure the safety and security of their facilities.*

ii. The Department understands the term Edovo Educational Suite to mean- *A Learning Management System built for the corrections industry. Learners can access curated courses aimed at enhancing knowledge and marketable skills, improving decision making, and aiding in reentry. The platform is designed to help incentivize learners to find a path, guide them in their growth, track progress, and reward them for their efforts.*

iii. The Department understands the term Edovo Connect to mean- *An affordable, accessible, friction-less communications platform enabling the incarcerated to connect with sponsors on the outside, such as friends, family, and support organizations. The Department approves the use of SMS Text messaging as part of Edovo Connect. At the Department's request, Provider may add additional services to Tablets under the umbrella of Edovo Connect.*

b) At the Department's request, Provider may add "for-fee" services to the tablets (including but not limited to premium content and subscription services or communication services). These "for-fee" services shall be paid by the prisoners directly or indirectly by a third party. The addition of "for-fee" services will not impede the use of Edovo Educational Suite, Edovo Insight, Edovo Connect or other programming content previously available without fee to prisoners.

3. Software

All software used on the Tablets shall be deemed "off-the-shelf" software and therefore fall under Section 43 of Rider B-IT.

4. Title

All title to the tablets, charge carts, router, server, firewall, and platform and licensed material remains with Provider and upon termination of this Amendment will be returned to Provider in good and working order. Any damage to or theft of the equipment or tablets outside of ordinary wear and tear

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will be the responsibility of the facility to make the determination on how the damage or theft will be paid for.

5. Substitution

Any and all tablets and hardware described herein and to be provided pursuant to this Agreement may be substituted by Provider, at its sole discretion, by items of equal or greater quality.

6. Edovo Connect

a) The Tablet operating system will provide a secure platform (Edovo Messenger) that will allow for incarcerated individuals to send and receive direct messages to approved external contacts.

b) The Tablet operating system will not include additional messaging services such as phones and Edovo Mail unless requested by the Department and then agreed by upon mutual consent.

c) All messages will be reviewable by the Department. Department staff can search and filter messages by sender, receiver, keyword, and date range and staff can also block select messages and select the reason for the action. Both the sender and receiver of the message will receive a notice stating that a message was blocked and the reason it was blocked.

d) Message logs will be stored and accessible for the duration of the contract. Users will have access to their past messages and conversations, and administrative staff will have access to all messages for review and analysis.

i. Communication will be received by the external party as a standard SMS message. The invitation text includes a link where the family member can deny or accept request. If a request for communication is denied, any further messages from the incarcerated user to that individual will be blocked. Messaging plans are unique to each pair of sender and receiver, are billed on a monthly basis, and can be cancelled anytime. External sponsors may also disable or re-enable communication with their contacts at any time. Subject to the Department's approval, Provider reserves the right to change how the message is received by the external party during this contract.

7. User Agreement

In conjunction with the use of a Tablet, each person who logs on and creates an account will be required to confirm acceptance of Terms of Use and the Privacy Policy, which shall be available for review within the log-in area of the Tablet. The Terms of Use and Privacy Policy shall be inserted as a pre-condition to use of the Tablet and clicking a checkbox to acknowledge acceptance of the terms shall be a requirement for users. The Provider will submit a revised Terms of Use and Privacy Policy to the Department for its review and approval within 30 days of this amendment signing.

8. Installation and Training

a) Provider shall provide and install all necessary equipment to establish broadband internet connection necessary to operate Tablets.

b) Provider shall deliver Tablets and Tablet charge carts and associated equipment to the Facilities for the operation of the Tablet program.

c) Provider shall provide two (2) two-hour training sessions for Department staff at each facility who will administer the Tablet Program in the facilities.

d) Provider shall conduct initial on-site testing of the Tablets and network prior to the programming implementation.

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- e) Provider shall proactively monitor hardware assets it has provided through this agreement via a secure networking monitoring system and perform remote troubleshooting. If non-tablet hardware failure is detected and not due to negligence or misuse of the Department, Facility, or prisoners/users, Provider shall ship replacements for installation (i) by Facility (if preferred by Department), or (ii) Provider personnel or through a subcontractor authorized by Provider.
  - f) Provider will replace or repair tablets which are malfunctioning, or defective based upon manufacturing defect.
  - g) Provider will, at no cost to the Department, replace 5% of Tablets annually for physical damages, including but not limited to physically damaged screens, physically damaged ports, physically damaged buttons, and general case wear and tear. Additional replacement or repair of Tablets will be conducted on an as needed basis at a rate of \$250 per tablet. Provider will invoice the department for the total number of additional tablets that have been replaced and associated shipping costs.
9. Responsibilities of the Department  
During the Amended Period, the Department shall:
- a) Designate an individual to serve as the principal contact for communications with Provider regarding implementation and operation of the Tablet Program and provide the identity of that individual and that individual's contact information to Provider, which information the Department shall keep current.
    - i. Provider's communication with the Department will be solely through the Department's Deputy Commissioner or Designee, Director of Strategic Initiatives.
  - b) Designate an individual or individuals in the unit at each Tablet facility to administer the daily checking in/out of Tablets and provide the identity of such individual and such individual's contact information to Provider, which information the Department shall keep current.
    - i. When Provider is communicating with designated individual at Tablet facility, Provider shall Cc Department's Deputy Commissioner or Designee, Director of Strategic Initiatives.
  - c) Select the specific populations within the Facility who are eligible to have access to the Tablets and make the Tablets available for use on a daily basis to the prisoners unless such activity is precluded due to significant security concerns.
  - d) Designate a secure location within the Facility for storage of the Tablets and ensure that Tablets are stored securely within wireless connectivity range when not in use.
  - e) Monitor use of the Tablets, take appropriate action with regard to misuse of Tablets and report misuse to Provider.
  - f) Provide or make available for purchase, prior to launch day, functionally compatible earbuds or headphones to be made available throughout the duration of the Edovo program. Earbuds / Headphones must be pre-approved by Provider prior to launch. Department is required to send a pair of sample earbuds / headphones to Provider for testing purposes prior to approval.
  - g) Request a Return Merchandise Authorization (RMA) Form from Provider for any non-operating tablets.

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- h) Be solely responsible for the safety and security of the prisoners who participate or Department employees or third parties directed by Department who coordinate or oversee the program.
- i) Provide Provider a daily digital file of accurate prisoner information. This file will be uploaded to the Provider FTP site by 9:00 p.m. daily and will, at a minimum, contain: First and last name, Prisoner ID and Date of Birth.
- j) Issue Provider a tax-exempt certificate upon execution of this agreement.

F. **Technical Consulting**

Provider can, at its discretion and Department's request, provide technical consulting for the purposes of providing the intended services. (These are for services not covered in the scope of this Amendment and Provider will support the platform provided as part of the Amendment).

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

1. **AGREEMENT AMOUNT:** The "per minute" Call Rates and Commission Rates rates under this Agreement are delineated as follows:

Telephone	Call Rate	\$0.09 per min
	International Rate	\$0.20 per min
	Commission Rate	\$0.05 per min.

Video Visitation	Remote Visitation Rate	\$0.25 per min
	Commission Rate	\$0.05 per min

<u>Edovo Connect*</u>	<u>Up to 10 Messages</u>	<u>\$ Free</u>
	<u>250 Messages</u>	<u>\$10.00 per month</u>
	<u>600 Messages</u>	<u>\$20.00 per month</u>
	<u>2,000 Messages</u>	<u>\$50.00 per month</u>

\*Pricing may change from time to time upon mutual written consent of Provider and Department.

<u>Technical Consulting</u>	<u>By phone</u>	<u>Mutually agreed upon rate</u>
	<u>On-site Daily rate -- (one day min.) + travel expenses</u>	<u>Mutually agreed upon rate</u>

All rates (other than commission rates) under this agreement are payable to the Provider by friends and families of prisoners/residents housed in Department facilities.