



IT MASTER AGREEMENT

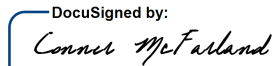
DATE: 8/26/2024	CONTRACT AMOUNT: \$0.00
ADVANTAGE CONTRACT #: MA 18P 24082600000000000023	
DEPARTMENT AGREEMENT #:	
START DATE: 7/1/2024	END DATE: 12/31/2025

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

STATE OF MAINE DEPARTMENT		
DEPARTMENT NAME: Corrections		
ADDRESS: SHS 111, 25 Tyson Drive		
CITY: Augusta	STATE: ME	ZIP CODE: 04333
PROVIDER		
PROVIDER NAME: Global Tel*Link Corporation DBA ViaPath Technologies		
ADDRESS: 3120 Fairview Park Drive, Suite 300		
CITY: Falls Church	STATE: VA	ZIP CODE: 22042
PROVIDER'S VENDOR CUSTOMER #: VC0000188366		

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

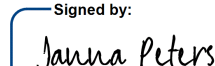
Department Representative:

DocuSigned by:
 9/12/2024

BY: **Conner McFarland, Manager of Correctional Operations**

Date

Provider Representative:

Signed by:


BY: **Janna Peters, Sr. Director of Contracts & Procurement**

Date 9/10/2024

Department of Administrative and Financial Services, Office of Information Technology:

DocuSigned by:
 9/13/2024

BY: **Nicholas Marquis, Chief Information Officer**

Date

Upon final approval by the Division of Procurement Services, a case details page will be made part of this contract.

IT MASTER AGREEMENT

DEPARTMENT AND PROVIDER POINT OF CONTACT

AGREEMENT ADMINISTRATOR: The following person is designated as the Agreement Administrator on behalf of the Department for this Contract.

NAME: Conner McFarland	
EMAIL: Conner.mcfarland@maine.gov	TELEPHONE: 207-458-1076

PROCUREMENT SERVICE MANAGER: The Procurement Services MA Manager manages the MA contract documents. All other communication is to be with the agency the services were provided to.

NAME: Justin Franzose	
EMAIL: Justin.Franzose@maine.gov	TELEPHONE: 207-624-7337

VENDOR CONTACT: The vendor contact person will help consumers place orders, inquire about orders that have not been delivered, all shipping issues, quality issues and any issues pertaining to the Master Agreement (MA) contract. All orders not submitted through a Delivery Order will be sent through the vendor contact person. The vendor contact person for this MA is:

NAME: Robert Giglio		
EMAIL: robert.giglio@viapath.com		TELEPHONE: 781-363-1573
ADDRESS: 900 Western America Circle, Suite 300		
CITY: Mobile	STATE: AL	ZIP CODE: 36609

Any changes to the individuals identified above may be changed at any time through written notice by either party.

IT MASTER AGREEMENT

TABLE OF RIDERS

The following riders are hereby incorporated into this Contract 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
☒	RIDER D – Participating Addendum
☒	RIDER E – Master Agreement with Nevada 99SWC-NV22-13385
☐	RIDER F - Included at Department's discretion
☒	RIDER G - Debarment, Performance, and Non-Collusion Certification
☒	RIDER H - Identification of Country in Which Contracted Work will be Performed
☒	ATTACHMENT A - Confidentiality and Non-Disclosure Agreement
☒	ATTACHMENT B – Price Sheet

IT MASTER AGREEMENT

RIDER A: SPECIFICATIONS OF WORK TO BE PERFORMED**TABLE OF CONTENTS**

- I. INTRODUCTION/OVERVIEW
- II. CONTRACT PERIOD
- III. AUTHORIZED USER
- IV. ORDERING PROCEDURE
- V. SPECIFICATIONS/SCOPE OF WORK
- VI. TECHNICAL REQUIREMENTS

I. INTRODUCTION/OVERVIEW:

The provision of resident telephone and tablet use is a critical element for resident communications at all Maine DOC facilities. Global Tel*Link Corporation, DBA ViaPath Technologies, ("ViaPath" or "Provider") has been Maine Department of Corrections ("Department" or "Maine DOC") resident communications provider since 2017, which was competitively awarded at that time. ViaPath is now an awardee for resident communications under NASPO Master Agreement # 99SWC-NV22-13385, in which the State of Maine participated. All services provided through the NASPO Master Agreement (<https://www.naspoaluepoint.org/portfolio/inmate-communications/global-tellink-corporation-dba-viapath-technologies-viapath/>) are available to the State of Maine.

For the avoidance of doubt, the NASPO Master Agreement shall govern and take precedence over this "IT Master Agreement" unless such terms are specifically modified or amended herein by the parties.

II. CONTRACT PERIOD:

Start 7/1/2024 through 12/31/2025

Following the initial term of the contract, the Department, at their discretion, may opt to extend / renew the contract for up to three (3), one (1) year renewal terms, which aligns with allowable extensions under NASPO.

- ☒ Initial Term
- ☐ First Renewal
- ☐ Second Renewal

III. AUTHORIZED USER:

State of Maine Departments authorized to utilize this MA contract:

State of Maine Department of Corrections

IT MASTER AGREEMENT

Municipalities, political subdivisions, and school districts in Maine:

- ☒ Are NOT permitted to utilize this MA.
- ☐ Are permitted to utilize this MA as written.
- ☐ Are permitted to utilize this MA with the following conditions:

IV. ORDERING PROCEDURES:

Delivery Orders (DO) will be created in AdvantageME for all orders from State Agencies. All DOs must include a quote for the commodities and/or services provided. For a quote that includes implementation services, a project specific Statement of Work may be required to be attached to the Delivery Order (delete if not applicable). DO's over \$5,000 will be emailed to the vendor's email address referenced on the MA as a .pdf file.

Public school systems and/or municipalities will handle their own orders and will be responsible for all payments.

V. SPECIFICATIONS/SCOPE OF WORK:**A. General Provisions**

Provision of resident telephone, remote video visitation and tablet services at all Maine DOC facilities. Under this agreement the Provider endeavors to accomplish the following (new) objectives:

- Encourages continued contact and increased operational efficiencies by adding a wireless tablet program to the entire Maine Department of Correction locations – ViaPath will add a wireless network and ViaPath Inspire™ tablets at all Facilities.
- Expand opportunities for remote visitation – ViaPath will expand the technologies and equipment necessary to utilize ViaPath's VisitNow video visitation platform on the tablet. This will expand the ability for the resident population to communicate with their loved ones by providing on-demand video calling.
- Expand opportunities for tablet and video visitation at Long Creek Youth Development Center – ViaPath will expand the technologies and equipment necessary for tablet technology as well as utilizing ViaPath's VisitNow video visitation platform on the tablets. Pricing for Long Creek Youth Development Center will be determined separately under a Delivery Order.
- Continuing to provide best-in-class service through a dedicated onsite team – ViaPath will continue to provide Maine DOC with an excellent service presence to ensure timely service and maintenance on the resident telephone system and tablet program.

B. Contract Deliverables and Rates

1. Wireless Tablet Program – Add tablet program at all locations:
 - a) Inspire™ tablets (1:1 tablet ratio)
 - b) AC Tablet Charger (individual outlet charger for each tablet)
 - c) Add wireless access points (WAPs) and required network hardware

IT MASTER AGREEMENT

2. Wireless Tablet Content
 - a) Inmate Calling via Tablet – Provided at the same rate as ITS calls
 - b) Secure Messaging
 - c) Automated Requests and Grievances
 - d) Streaming Music
 - e) Streaming Movies and Television
 - f) Games
 - g) E-Books
 - h) Law Library Access to Lexis Nexis (Licensing provided by DOC)
 - i) Commissary Ordering
3. Video Visitation
 - a) On-Demand VisitNow Remote Visitation via Tablets
 - b) Wall-mounted Visitation Docking Stations (NFCs)
4. Enterprise Management Solutions
 - a) Full-time, onsite Service Team: Service Technicians (service to all sites)
5. Inmate Telephone System
 - a) ITS Voice Communication \$0.09 – Per Minute
 - b) ITS International Rate \$0.14 plus termination fee*

*termination fee for the international destination of the call as published on the Provider's website, which may be updated every 3 months in accordance with the FCC Order. These rates can be found at: <https://www.gtl.net/legal-and-drivact/federal-tariffs-and-wice-lists/>. In the event a posted termination fee for any given destination exceeds \$0.06 (thereby rendering total charges greater than \$0.20 per minute), Provider will cap the total charge so as not to exceed \$0.20 per minute.
 - c) ITS commission \$0.05 – Per Minute
 - d) Ancillary Service Charges. Pursuant to legislation adopted in April 2022 (HP 853), effective October 1, 2022, the Department must provide to an inmate that has less than \$10 in the inmate's facility account a free telephone call allowance for 30 minutes of telephone calls per week. A service provider may not charge a fee to the inmate for providing the required free outgoing telephone calls.
 - e) Taxes and fees on inmate calls. The Provider reserves the right to bill any and all applicable state, local, and federal taxes, fees, and surcharges in addition to normal usage charges, including, but not limited to: Federal Excise Tax, State Sales Tax, Municipal Taxes, Federal Universal Service Fund Surcharge, State Universal Service Fund Surcharge, Regulatory Surcharges, and Gross Receipts Tax. All applicable taxes, fees, and surcharges are billed as separate line items and are not included in the rates quoted in this contract. All taxes, fees, and surcharges are subject to periodic adjustment. Federal Universal Service Fund Surcharges are calculated by multiplying the gross invoice amount attributable to interstate and international inmate calling services during each billing period by a percentage as determined by the FCC each calendar quarter.

IT MASTER AGREEMENT

6. Wireless Tablet System
 - a) Standard Profile (Ex: music, movies, games, entertainment); ability to “multi-task” (use several apps at the same time) \$0.05 – Per Minute
 - b) Free Profile (Ex: requests, facility documents, eBooks, Law Library, commissary) \$0.00 – Per Minute
 - c) ViaPath Foundation Education Package (Edovo Core) \$0.00 – Per Minute
7. Secure Messaging
 - a) Outbound messaging (from resident to F&F) – FREE
 - b) Inbound message (from public) \$0.15 – Per Message
 - c) Photo message (from public only) \$0.20 – Per Message
 - d) Video message (from public only) \$0.60 – Per Message
8. Video Visitation
 - a) VisitNow On-Demand Video Calls \$0.25 – Per Minute
9. Special Offer to Maine DOC Residents: Each Resident will be able to message friend and family contacts at no cost. Friends and Family will be able to message back at \$0.15 per message (up to 2,000 characters).
10. **Tablet Equipment, Services and Cabling.** Provider will supply equipment, hardware, circuits, and cabling to deploy tablet services at the locations at no cost to the Department. Provider will retain all rights, title, and interest in and to all equipment (including any associated hardware and software), and tablet services supplied. Cabling will become the property of the Department upon the expiration of the Agreement. Upon termination of services at any location(s), Department will collect and deliver to Provider all tablets and related equipment assigned to the location(s) and provide Provider a reasonable opportunity to collect all associated equipment and hardware (except cabling).
11. **Tablet Support and Maintenance.** Provider will provide all support and maintenance services for tablet services, including the tablets, subject to the limitations described herein. At no cost to the Department, Provider will provide up to 25% of deployed tablets per year to cover normal wear and tear as determined by the Provider. If additional tablets are requested or required to maintain a contractual inmate-to-tablet ratio, the additional tablets will be provided at a rate of up to \$249.99 per tablet, which includes shipping, processing, maintenance and the software license for the use of the tablets. Provider will invoice Department for the total number of additional tablets that have been shipped. Provider will retain ownership of the tablets and all licensed software. Provider will respond promptly to all support requests; provided, however, that reports or requests involving the security features of the tablets will have priority. Department acknowledges that the resolution of certain hardware and software events will be subject to supply chain lead times, and that tablets may not be available while being repaired or maintained. The Department will permit Provider authorized personnel access to the equipment, information, data, data communication services, and communication lines required for

IT MASTER AGREEMENT

the installation, operation, and/or maintenance of services, at such times and for such purposes as reasonably necessary or appropriate to permit Provider to perform its obligations herein, and if required, Department shall provide security escorts for Provider personnel.

Provider shall have the discretion to select the brand, type, and other specifications of the tablets, including the specific services and applications available on the tablets, and may replace, upgrade, or substitute the tablets at any time during the Term. Tablets shall at all times remain the sole and exclusive property of Provider. Each inmate provided with access to a tablet must agree to accompanying terms and conditions to be granted use of the tablet.

Provider reserves the right to terminate tablet services at any location and all locations if equipment is subjected to recurring vandalism or there is insufficient revenue to warrant the continuation of tablet services at such Location(s), including the failure by Provider to recover the infrastructure investment for services within twelve (12) months following the deployment of services at the locations.

12. Tablet Department Obligations. Department must allow: (i) installation and use of a multiple channel wireless network within the 2.4GHz through 5 GHz bands at all locations; (ii) use of wired headphones and lithium batteries for the tablets; and (iii) installation of tablet charging enclosures; and (iv) access to no less than 80% of its inmate to paid Content subject to the payment by the inmate of Content usage fees listed herein. In addition, Department must: (1) distribute the tablets to inmates according to its established protocol and procedures and shall use best efforts to ensure that the tablets are used for their intended purposes; (2) allow and facilitate the sale of Headsets, silicon earbuds and other Tablet accessories through its commissary without mark up; (3) facilitate the collection, testing, and re-distribution of accessories, including headsets, and silicon earbuds (4) allow the creation of Inmate Accounts for use with Provider's products; (5) allow inmate family and friends to make deposits into Inmate Accounts; (6) facilitate the integration of Inmate Accounts and commissary accounts for the real-time exchange of funds in compliance with State of Maine Office of Information Technology ("OIT") policies, at no charge to Provider's by either Department, or its third-party vendors, if any; (7) facilitate the recycling and reuse of Tablets; (8) provide Provider's with secure space to store tablets and other Provider's equipment associated with tablet services; (9) provide at its expense all necessary power and power source; (10) designate a single point of contact authorized to act on behalf of the Department on all matters involving tablet services, including reporting to Provider any damage or malfunction with equipment; (11) distribute one (1) headset to each inmate who is provided with access to a tablet the first time.

13. Tablet and Telephone Equipment. Department agrees to reasonably protect the equipment against willful abuse and promptly report any damage, services failure or hazardous conditions to the Provider. Department shall not, and shall not allow any third party to, tamper with or otherwise modify the services or equipment supplied by Provider under this Agreement or associated software or connect the equipment or services or associated software to any hardware or software that is not provided by Provider.

IT MASTER AGREEMENT

14. Tablet and Telephone Monitoring and Recording. Department agrees that Provider has no responsibility to advise Department with respect to any law, regulation, or guideline that may govern or control any telephone recording or monitoring by Department, monitor and/or record use of the tablets, including the ability to monitor and record communication made through the tablets, and monitor content streamed on the tablets or compliance therewith. Department has its own legal counsel to advise it concerning any and all such law, regulation, or guideline, and compliance therewith, and makes its own determination on when and how to use the telephone and tablet monitoring and recording capabilities supplied through this Agreement. Provider disclaims any responsibility to provide, and in fact has not provided, Department any legal advice concerning such applicable law, regulation, or guideline, or compliance therewith. Department shall be solely responsible for any liability, costs and expenses relating to any claims made against Provider arising out of failure of Department (or the Provider at the direction of the Department) to comply with such law, regulation or guideline. Department acknowledges that all call detail records ("DRs") and call recordings contained in the inmate telephone system equipment Provider provides to Department under this Agreement are the exclusive property of the Department for the term of this Agreement and any resulting extensions of this Agreement; provided, however, that Provider shall have the right to use the DRs and recordings to respond to legal requests, to provide the services under this Agreement, and for other lawful business purposes.

15. Telephone Equipment. Provider reserves the right to remove or relocate equipment which is subjected to recurring vandalism or insufficient traffic and/or revenue to warrant the continuation of service. Provider shall not exercise such a right of removal or relocation unreasonably. Provider shall notify Department in writing of its intention to remove or relocate equipment prior to such action. Upon removal of equipment by the Provider, Provider shall restore said premises to its original condition, ordinary wear and tear excepted; however, Provider shall not be liable for holes placed in walls, pillars, or floors or other conditions on the premises which resulted from the proper installation of equipment. Department shall not, and shall not allow any third party to, make alterations or attachments to the equipment.

Provider shall be responsible for: (a) furnishing, installing, repairing and servicing the equipment; (b) the establishment (if and to the extent required of Provider by law) and compliance with all Tariffs and rules, regulations, orders and policies of federal and state regulatory authorities applicable to the automated inmate telephone system services provided by Provider; (c) the establishment and maintenance of all billing and payment arrangements with the local and interexchange carriers if available; (d) the processing of all telephone call records; (e) the performance (alone or through third-parties) of all validation, billing, outclearing and collection services; and (f) the handling of all billing and other inquiries, fraud control, and all other services essential to the performance of Provider's obligations under this Agreement. Provider reserves the right to take all necessary actions to control unbillables, uncollectibles, bad debt and fraud in connection with the inmate telephone system.

Provider does not furnish, maintain or provide consumables for peripheral equipment associated with the inmate telephone system. Consumables consist of items such as printer paper, cassette tapes, or compact disks.

IT MASTER AGREEMENT

16. Data Exchange:

- a) In an effort to facilitate inter-agency cooperation and cross-jurisdictional enhanced security related efficiencies, Department hereby grants Provider the right to access, analyze and disseminate Department data generated from various data systems at the Facilities including offender data, cell detail data, message data, deposit data, and visitation data (the "Information") to other law enforcement and correctional agencies for law enforcement and correctional purposes in accordance with the below terms and conditions:
- The Department, as owner of the Information, has elected to allow review of the Information by Provider and personnel of other agencies for law enforcement and correctional investigative purposes.
 - Department has requested, and Provider is willing, to make this remote information exchange capability available to Department to enable Department to grant other agencies access to the Information through remote access and analytic tools provided by Provider, subject to the terms of this Agreement.
 - Department may opt out of this Section at any time upon [30 days] written notice to Provider. Thereafter, the Information will cease being exchanged with other agencies.
 - Provider has no responsibility to advise Department with respect to any law, regulation, or guideline that may govern or control the Information or monitoring, or compliance therewith. Department has its own legal counsel to advise it concerning any and all such applicable law, regulation, or guideline, and compliance therewith. Provider disclaims any responsibility to provide, and has not provided, Department any legal advice concerning such applicable law, regulation, or guideline, or compliance therewith.
 - By granting Department's request in this Section, Provider would be acting at the direction of Department, and Provider has no responsibility to advise, and has not advised, Department on the propriety or lawfulness of providing other agencies access to the Information using the capabilities made available by Provider.
 - This Section is for the sole benefit of Provider and Department and their successors and permitted assigns, and nothing herein expressed or implied will give or be construed to give to any other person or entity, including any recipient of the Information, any legal or equitable rights hereunder.
- b) The Provider will not sell or otherwise share any of the Information collected from its various data systems to third parties without prior written consent from the Department instructing the Provider which data may be shared with which parties.
- c) Except as specifically indicated herein, title to all equipment provided under this Agreement ("Equipment") shall be and shall at all times remain with the Provider. Except as specifically indicated herein, all software, documentation, and other intellectual property (collective the "IP") supplied or made available through this Agreement is being provided on a term license only, as long as this Agreement is in effect, and shall not constitute a sale of that IP. Nothing in this Agreement or through Provider's performance hereunder shall constitute a transfer of right, title, or interest in or to the IP, which are retained by Provider and its licensors.
- d) During the term of this Agreement, Provider grants Department a non-exclusive, non-transferable, license to use the IP solely for accessing the services supplied by Provider in the manner contemplated by this Agreement. Department shall not: (a) make available or distribute all or part of the IP to any third party by assignment,

IT MASTER AGREEMENT

sublicense or by any other means; (b) copy, adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the IP; or (c) use the IP to operate in or as a time-sharing, outsourcing, or service bureau environment, or in any way allow third party access to the IP. The use of software is supplied in object code only, and nothing herein shall be construed as granting any license whatsoever to the underlying source code that is used to generate the software, or creating an implied license in any IP.

- e) Equipment shall not be disconnected or moved by Department from the location in which it is installed. By written agreement of the Parties, installed Equipment may be relocated by the Provider.

VI. TECHNICAL REQUIREMENTS:

- A. ACCESSIBILITY: All IT products must be accessible to persons with disabilities and must comply with State Accessibility Policy and Standards and the Americans with Disabilities Act. All IT applications must comply with the Digital Accessibility Policy

(<https://www.maine.gov/oit/sites/maine.gov/oit/files/inline-files/DigitalAccessibilityPolicy.pdf>).

- B. STATE IT POLICIES: All IT products and services delivered as part of this Agreement must conform to the State IT Policies, Standards, and Procedures (<https://www.maine.gov/oit/policies-standards>) effective at the time this Agreement is executed.

IT MASTER AGREEMENT

RIDER B-IT: METHOD OF PAYMENT AND OTHER PROVISIONS

1. **BENEFITS AND DEDUCTIONS:** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.
2. **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.
3. **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.
4. **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 14, State held Harmless.

5. **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, which shall not be unreasonable withheld or delayed. Such approval shall not in any case relieve the Provider of its responsibility for performance of work under this Agreement.
6. **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

IT MASTER AGREEMENT

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.
7. **EMPLOYMENT AND PERSONNEL:** The Provider shall not engage on a full-time, part-time or other basis during the period of this Contract, any executive employee who participated in any way in the solicitation, award or administration of this Agreement according to [MRS Title 5 §18-A, 2](#) and in harmony with [MRS Title 17 §3104](#). Any contract made in violation of these sections is void.
8. **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

IT MASTER AGREEMENT

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.

9. 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,

IT MASTER AGREEMENT

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.

10. 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.

IT MASTER AGREEMENT

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

- 11. GOVERNMENTAL REQUIREMENTS:** The Provider shall comply with all applicable governmental ordinances, laws, and regulations.
- 12. 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.
- 13. 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.
- 14. 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.
- 15. 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.
- 16. 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.
- 17. 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 or its employees. 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

IT MASTER AGREEMENT

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

a) 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 claim, 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*) \$(Amount will vary and will be equivalent to the total cost of the given purchase order), and payable, whether incurred by the Department or the Provider; for and on behalf of the Department, including, but not limited to:
 - C.1) Consumer notification, whether or not required by law;
 - C.2) Forensic investigations;
 - C.3) Public relations and crisis management fees; and
 - C.4) Credit or identity monitoring, or similar remediation services.

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

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

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

Number of PII Records	Insurance Occurrence per
<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>

b) Workers' Compensation and employer's liability, as required by law;

c) Property (including contents coverage for all records maintained pursuant to this

IT MASTER AGREEMENT

Agreement): \$1,000,000 per occurrence;

- d) Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
- e) Crime, in an amount not less than \$(Amount will vary and will be equivalent to the total cost of the given purchase order), (The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider); and
- f) Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.

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

- a) 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.
- b) 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.
- c) The Provider shall furnish the Department with certificates of insurance, and with those endorsements, if any, affecting coverage, required by these Insurance Requirements. 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.
- d) 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.
- e) 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".

18. 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, or the federal government (if applicable), then the State is not obligated to make payment under this Agreement.

19. 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.

20. INTEGRATION: In the event of a conflict between the documents comprising this Agreement, the Order of Precedence shall be:

- 1) This IT Master Agreement
- 2) Rider C Exceptions
- 3) Rider B-IT Terms and Conditions
- 4) Rider A Scope of Work
- 5) Rider D Participating Addendum
- 6) Rider E Master Agreement with Nevada 99SWC-NV22-13385

IT MASTER AGREEMENT

- 7) Rider F Included at Department's Discretion
- 8) Rider G Debarment, Performance, and Non-Collusion Certification
- 9) Rider H Identification of Country in which contracted work will be performed
- 10) ATTACHMENT A: Confidentiality and Non-Disclosure Agreement
- 11) ATTACHMENT B: Price List

21. 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.

22. 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.

23. 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.

24. PERIOD OF WORK: Work under this Agreement shall begin no sooner than the date on which this

IT MASTER AGREEMENT

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.

25. 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.

26. 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.

27. 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.

28. 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

IT MASTER AGREEMENT

submit a "Disclosure of Lobbying Activities" form to the Department.

29. 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.

30. 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.

31. 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

IT MASTER AGREEMENT

publish, duplicate, use, and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

32. 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.

33. 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 not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 10, Termination.

34. 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.

35. 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).

36. 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

IT MASTER AGREEMENT

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.

37. 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.

38. 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 purposes) 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.

IT MASTER AGREEMENT

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.

39. 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 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.

40. THIS ITEM IS INTENTIONALLY LEFT BLANK

41. THIS ITEM IS INTENTIONALLY LEFT BLANK

42. 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

IT MASTER AGREEMENT

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.

43. CYBERSECURITY AND PROHIBITED TECHNOLOGIES: Through the execution of this Contract, the Provider certifies that the aforementioned organization, its principals and any subcontractors named in this Contract:

- A. is not a foreign adversary business entity, <https://www.maine.gov/oit/prohibited-technologies>, Title 5 MRSA §2021 (3); and
- B. is not on the list of prohibited companies or does not obtain or purchase any information or communications technology or services included on the list of prohibited information and communications technology and services <https://www.maine.gov/oit/prohibited-technologies>, Title 5 MRSA §2030-B.

Contracts entered into by a state agency in violation of 5 M.R.S. §2030-B are void. A person who executes this contract in violation of this section commits a civil violation for which a fine may be adjudged in an amount that is twice the amount of this contract or \$250,000, whichever is greater, Title 5 MRSA §2030-A.

IT MASTER AGREEMENT

RIDER C: EXCEPTIONS

5. **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, which shall not be unreasonable withheld or delayed. Such approval shall not in any case relieve the Provider of its responsibility for performance of work under this Agreement. Provider shall have the right to assign some or all its rights and/or obligations under this Agreement at any time to any entity that controls, is controlled by or is under common control with Provider (each an "Affiliate") without the consent of the Department; provided, further, Provider shall remain liable for any failure of any Affiliate to perform any assigned obligations. For the avoidance of doubt, a merger involving (i) Provider or (ii) a sale of Provider or all of Provider's assets shall not constitute an assignment requiring consent of Department for purposes of this Agreement.
10. **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. Provider shall be entitled to reimbursement for the actual cost of the infrastructure investment (to include related labor and installation costs) made, if the Department terminates for convenience during the first two (2) years of the Agreement.
14. **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.

Provider and its affiliates and suppliers will in no way be responsible, or liable for, and provider in no way, guarantees the safety, efficacy or use of, the tablets, headphone cords, or other accessories, or the use of any device or accessory in any related activities by any tablet service users, inmates or Department personnel. Furthermore, Provider and its supplier are in no way responsible for any physical harm or other injury, foreseen or unforeseen, in the use of the tablets, headphones, or related accessories. Department is solely responsible for keeping cords away from those who present risk to themselves or others.

Except as otherwise expressly stated in the agreement, tablet services and each of its components, including the tablets, are provided "as is" without warranty of any kind. To the maximum extent permitted by applicable law, provider and its licensors and suppliers, and their respective affiliates

IT MASTER AGREEMENT

disclaim all warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose and non-infringement of third-party intellectual property rights, and lack of viruses, and any warranties regarding the security, reliability of enhanced services. Provider does not warrant that tablet services will meet your requirements, be error-free or that all errors may be corrected. Provider does not warrant that use of tablet services will be continuous or uninterrupted and provider will not be responsible or liable for any interruption of transmission in connection with tablet services.

To the maximum extent permitted by applicable law, in no event will provider or its suppliers or licensors, or their respective affiliates be liable for any consequential, incidental, indirect, special, or punitive damages whatsoever, including without limitation damages for loss of revenue or profits, or for business interruption relating to or arising out of tablet services, including the tablets, even if provider has been advised of the possibility of such damages. The foregoing limitations, exclusions and disclaimers will apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

17. 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 or, 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

a) Technology Errors & Omissions Insurance and Cyber Liability Insurance,~~or Professional Liability Insurance, or Insurance by any other name,~~ covering claims arising out of the following:

- A. All negligent acts, errors, omissions in the performance of technology services, negligence, including any that results in infringement of intellectual property (except patent and trade secret), as noted in the policy, in an amount not less than \$1,000,000 per occurrence claim, and as an annual aggregate;
- B. Network security and privacy risks, including, ~~but not limited to,~~ unauthorized access, failure of security of the provider's computer system, breach of privacy, wrongful disclosure, collection, or other negligence in the handling of failure to protect confidential information, including wrongful collection, related regulatory defense, and penalties, where insurable by law, in an amount not less than \$1,000,000 per occurrence claim, 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) \$ (Amount will vary and will be equivalent to the total cost of the given purchase order), and payable, ~~whether incurred by the Department or if incurred by the Provider; for and on behalf of the Department,~~ including, but not limited to:
 - C.1) Consumer notification, whether or not required by law;
 - C.2) Forensic investigations;
 - C.3) Public relations and crisis management fees; and
 - C.4) Credit or identity monitoring, or similar remediation services.

IT MASTER AGREEMENT

The policy shall affirm coverage for contingent bodily injury and property damage indirectly 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>

- b) Workers' Compensation and employer's liability, as required by law;
- c) Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence;
- d) Automotive Liability of not less than \$400,000 per occurrence single limit if the Provider will use vehicles to fulfill the contract;
- e) Crime, in an amount not less than \$ (Amount will vary and will be equivalent to the total cost of the given purchase order) , (The total monetary amount potentially at risk due to this contract; or Cash Currency and Negotiable Securities actually entrusted to this Provider); and
- f) Business Interruption, in an amount that would allow the Provider to maintain operations in the event of a Property loss.

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

- ~~a) 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.~~
- ~~b) 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.~~
- c) 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

IT MASTER AGREEMENT

time.

- d) 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. The Insurer will use its best efforts to deliver notice.
- e) 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".

37. CUSTOM SOFTWARE: Reserved. ~~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.~~

39. SOFTWARE AS SERVICE: Reserved. ~~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 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~~

IT MASTER AGREEMENT

~~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.~~

44. CHANGE OF LAW: Any rule, regulation, or other change mandated by any federal, state, or local authority which may interfere with or adversely affect Provider's rights, obligations, or intended benefit under the Agreement shall entitle Provider to, at its option, renegotiate or terminate the Agreement.

IT MASTER AGREEMENT

RIDER D: PARTICIPATING ADDENDUM

NASPO ValuePoint

PARTICIPATING ADDENDUM



INMATE COMMUNICATIONS

Led by the **State of Nevada**

Master Agreement #: 99SWC-NV22-13385

Contractor: Global Tel*Link Corporation d/b/a ViaPath Technologies ("ViaPath")

Participating Entity: **STATE OF MAINE**

This Participating Addendum is entered into by Contractor and Participating Entity (collectively, the "Parties").

Scope and Participation:

[Removable Instruction: Check one of the boxes below. If Participating Entity has no exclusions or limitations to the scope of the Master Agreement, check the first box.]

1. Scope:

This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above.

☒ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above, except the following:

- *Kiosk and Payment Services*

Any scope exclusions specified herein apply only to this Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Nevada and Contractor for Inmate Communications. This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Term:

☒ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as

NASPO ValuePoint

PARTICIPATING ADDENDUM**INMATE COMMUNICATIONS**Led by the **State of Nevada**

amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

☐ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate on [date], unless terminated sooner or otherwise amended in accordance with the terms set forth herein. Notwithstanding the previous, in no event shall the term of the Participating Addendum exceed the term of the Master Agreement, as amended.

4. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:

CONTRACTOR:

Name:	Rob Giglio
Address:	3120 Fairview Park Drive, Suite 300, Falls Church, Virginia 22042
Telephone:	781-363-1573
Email:	robert.giglio@viapath.com

PARTICIPATING ENTITY:

Name:	Conner McFarland
Address:	SHS 111, 25 Tyson Drive, Augusta, ME 04333
Telephone:	207-458-1076
Email:	Conner.McFarland@maine.gov

Participating Entity Modifications and Additions to the Master Agreement

This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor.

X This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions:**

Please see Attachment 1 for limitations, modification and additions.

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PARTICIPATING ADDENDUM**INMATE COMMUNICATIONS**Led by the **State of Nevada**

Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

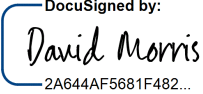
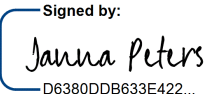
5. ***“Reserved”***.

6. **Subcontractors**: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity’s state, as shown on Contractor’s NASPO ValuePoint- specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor’s contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.

7. **Orders**: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing and other terms and conditions of, the Master Agreement unless the Parties to the order agree in writing that another contract or agreement applies to the order.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

PARTICIPATING ENTITY**CONTRACTOR**

Signature:  DocuSigned by: David Morris 2A644AF5681F482...	Signature:  Signed by: Janna Peters D6380DD633E422...
Name: David Morris	Name: Janna Peters
Title: Acting Chief Procurement Officer	Title: Sr. Director of Contracts & Procurement
Date: 9/13/2024	Date: 9/10/2024

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

IT MASTER AGREEMENT

RIDER E: MASTER AGREEMENT WITH NEVADA

1. The fully executed Master Agreement is accessible through the NASPO ValuePoint Portfolio located at: <https://www.naspovaluepoint.org/portfolio/inmate-communications/global-tellink-corporation-dba-viapath-technologies-viapath/>.
2. Under the Documents/Details section, click on “Master Agreement Documents”.
3. Download the full Price Sheet by selecting the file named “GTL_ViaPath_Master Agreement”.

IT MASTER AGREEMENT

RIDER G: Debarment, Performance, and Non-Collusion Certification

By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals, and any subcontractors named in this proposal:

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.
- b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
 - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.
 - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
 - iv. have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.
- c. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

- Failure to provide this certification may result in the disqualification of the Bidder’s proposal, at the discretion of the Department.

To the best of my knowledge all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.

Name: Janna Peters	Title: Sr. Director of Contracts & Procurement	
Authorized Signature: Signed by: Janna Peters D6380DDB633E422...		Date: 9/10/2024

IT MASTER AGREEMENT

RIDER H: 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: Enter Country**

Notification of Changes to the Information:

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

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

ATTACHMENT A: CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Master Agreement #: **18P 24082600000000000023**

THIS AGREEMENT is hereby executed between the State of Maine (“State”), acting by and through the Maine Office of Information Technology (“OIT”) and [Global Tel*Link Corporation, DBA ViaPath Technologies having a principal place of business at 3120 Fairview Park Drive, Suite 300 Falls Church Virginia, 22042 (“Vendor”), in relation to services and/or products to be provided by the vendor pursuant to [MA 18P 24082600000000000023] (“Contract”) as of July 1, 2024 (“Effective Date”).

1. Definitions

A. Authorized Person

“Authorized Person” is defined as a person authorized by OIT as having a need to receive, possess, store, access, view and/or use Confidential Information for an Authorized Use.

B. Authorized Use

“Authorized Use” is defined as the use of Confidential Information by the Vendor or Authorized Persons, solely for the purpose of performing the Contract. Disclosure, display, use, duplication, storage or transmittal of Confidential Information, in any form, for any purpose other than that set forth in the Contract, including extrapolation or retention of summary information, data or business processes, even if without specific identifiers, shall be deemed an “unauthorized use.”

C. Confidential Information

“Confidential Information” shall mean any information that OIT or the State, regardless of form or medium of disclosure (e.g., verbal, observed, hard copy, or electronic) or source of information (e.g., OIT, other state agencies, state employees, electronic systems, or third-party contractors) provides to Vendor, or which Vendor obtains, discovers, derives or otherwise becomes aware of as a result of Vendor’s performance of the Contract. It includes any sensitive information that may be protected from disclosure pursuant to a federal or state statutory or regulatory scheme intended to protect that information, or pursuant to an order, resolution or determination of a court or administrative board or other administrative body. In addition, information concerning OIT’s information technology infrastructure, systems and software and procedures will be considered Confidential Information. It also includes a Vendor’s Service Organization Control audit report (SOC 2 Type 2) when submitted upon request to OIT and labeled as confidential.

Confidential Information shall not include information which the Vendor can clearly demonstrate to OIT’s reasonable satisfaction is:

- (a) information that is previously rightfully known to the Vendor on a non-confidential basis without restriction on disclosure;
- (b) information that is or becomes, from no act or failure to act on the part of the Vendor, generally known in the relevant industry or in the public domain; and
- (c) information that is independently developed by Vendor without the use of Confidential

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

Information.

At all times the State shall be the owner of any and all Confidential Information.

D. Services

“Services” is defined as the services to be performed by the Vendor in connection with the operation or management of the Contract.

E. Vendor

“Vendor” is defined to include the Vendor and the Vendor’s respective employees, agents and subcontractors assigned by Vendor and approved by the State to perform obligations under the Contract (all of the foregoing collectively referred to as “Representatives”).

2. Duty to Protect Confidential Information; Reporting Requirements

In consideration for the ability to perform the Services, the Vendor shall hold all Confidential Information in confidence and protect that Confidential Information with the same standard of care required to keep its own similar information confidential. The Vendor must abide by all commercially reasonable administrative, physical, and technical standards for maintaining this information confidential, which must be in accordance with standards established by the National Institute of Standards and Technology (“NIST”). In addition, the Vendor must safeguard all Confidential Information from unauthorized access, loss, theft, destruction, and the like. The Vendor may not, without prior consent from OIT, disclose any Confidential Information to any person for any reason at any time; provided, however it is understood that the Vendor may disclose Confidential Information to its Representatives and its business, financial and legal advisors who require the Confidential Information for the purpose of evaluating or performing the Services on the condition that, prior to such disclosure, the Representatives and advisers have been advised of the confidential and non-public nature of the Confidential Information and are subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Agreement. The Vendor shall be responsible for any breach of this Agreement by any of the Vendor’s Representatives or advisors.

The Vendor shall promptly report any activities by any individual or entity that the Vendor suspects may compromise the availability, integrity, security, or privacy of any Confidential Information. The Vendor shall notify OIT immediately upon becoming aware that Confidential Information is in the possession of, or has been disclosed to, an unauthorized person or entity.

3. Discovery and Notification of Breach of Confidential Information

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of a breach of security or suspected security incident, intrusion, unauthorized use or disclosure involving Confidential Information, the Vendor shall notify OIT by telephone call (207-624-7700) and email to the OIT information security team (Security.Infrastructure@maine.gov) within the following timeframes:

- A. Upon the discovery of a breach of security or suspected security incident involving Confidential Information in electronic, or any other medium if the information was, or is reasonably believed to have been, acquired by an unauthorized person; or

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

- B. Within twenty-four (24) hours of the discovery of any suspected security incident, intrusion, unauthorized use or disclosure of Confidential Information in violation of this Agreement, or potential loss of Confidential Information affecting this Agreement.

Notification shall also be provided to the OIT Contract Manager and the OIT Information Security Officer. The Vendor shall provide a written report of all information known at the time. The Vendor shall take:

- A. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- B. Any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

4. Written Report

In addition to the report required above, the Vendor shall provide a written report of the investigation to the OIT Chief Information Security Officer within ten (10) working days of the discovery of the breach of security or suspected security incident, or unauthorized use or disclosure involving Confidential Information. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

5. Notification to individuals.

The Vendor shall notify individuals of the breach or unauthorized use or disclosure of Confidential Information when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. Any notification provided must first be approved by the OIT Chief Information Security Officer, who shall approve the time, manner and content of any such notifications prior to their release.

6. Use Restriction

Vendor shall not receive, possess, store, access, view and/or use Confidential Information for any purpose other than an Authorized Use. Vendor shall not permit unauthorized persons or entities to gain access to Confidential Information and shall not divulge methods of accessing Confidential Information to unauthorized persons.

7. Security Obligations

The Vendor agrees to comply with the following security obligations as well as any other such obligations specified in the contract, including requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, or conveyed to him/her during the course of the Agreement. The Vendor agrees to comply with the following security obligations:

- A. Implement administrative, physical and technical safeguards in accordance with NIST standards that reasonably and appropriately protect the confidentiality, integrity and availability of any Confidential Information that is created, received, maintained, used, possessed, stored, accessed, viewed and/or transmitted on behalf of OIT or through OIT or any agency, instrumentality or political subdivision of the State of Maine Government;
- B. Unless otherwise authorized by OIT, Confidential Information may NOT be stored on personal (non-State) computing or other electronic or mobile storage devices or taken or removed in any form from OIT or the State;
- C. Vendor shall comply with all applicable federal and state laws governing confidentiality and/or

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

privacy of information;

- D. Vendor shall comply with all applicable OIT policies and procedures including but not limited to those that provide for accessing, protecting, and preserving State assets;
- E. Access to any and all Confidential Information will be limited to only those authorized persons who need the Information to perform the services required under the Contract;
- F. Obtain fingerprint-based criminal history record checks for all Vendor's employees, agents and subcontractors when requested by OIT pursuant to federal and state statutory and regulatory directives, at the expense of the Vendor;
- G. Vendor shall instruct all personnel having access to Confidential Information about the confidential nature of the Information, the safeguards required to protect the Information, and the sanctions specified in federal and state law for unauthorized disclosure of said Information; and
- H. Vendor shall use only those access rights granted by OIT.

8. Certification by Vendor of Return of Confidential Information, Electronic Information and Tangible Property

Promptly following the written request of OIT, and immediately upon termination of the Services, the Vendor shall return all Confidential Information stored in any format to OIT, or destroy any Confidential Information that Vendor possesses in a format that cannot be returned. Further, Vendor agrees to submit to OIT on Vendor's letterhead a "CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION, ELECTRONIC INFORMATION, AND TANGIBLE PROPERTY" certifying that all copies of Confidential Information, electronic property and tangible property belonging to the State or OIT have been returned, or if necessary, destroyed using the form provided in Appendix A.

9. Termination

Vendor's Authorized Use of Confidential Information shall terminate automatically upon: (a) breach of this Agreement as determined solely by OIT, (b) completion or termination of Vendor's Services, or, (c) termination of Vendor's Contract, whichever occurs first. Vendor's indemnification, confidentiality, and related assurances and obligations hereunder shall survive termination of the Agreement.

10. Compliance

If Vendor breaches or threatens to breach this Agreement, the State shall have all equitable and legal rights (including the right to obtain injunctive relief and specific performance) to prevent such breach and/or to be fully compensated (including litigation costs and reasonable attorney's fees) for losses or damages resulting from such breach. Vendor acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the Confidential Information. Vendor shall hold OIT harmless from, and indemnify OIT for any claims, losses, expenses and/or damages arising out of the unauthorized disclosure by the Vendor, its Representatives, or third party partners, of Confidential Information or other unauthorized use of the Confidential Information, including but not limited to, paying the State any costs of enforcing this Agreement, securing appropriate corrective action, returning Information furnished hereunder, as well as any other costs reasonably incurred by the State in enforcing the terms of this Agreement.

11. Governing Law

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. The place of this Agreement, its situs and forum, shall be Kennebec County, Maine, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation, and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of Maine, and stipulates that the State Courts in Kennebec County shall be the proper venue for all matters. If any provision of the Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.

12. Entire Agreement

This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives effective as of the Effective Date set forth above.

**Global Tel*Link Corporation DBA
ViaPath Technologies:**

By: _____
Signed by: Janna Peters
D6380DD8633E422...

Printed: Janna Peters

Title: Sr. Director of Contracts & Procurement

Date: 9/10/2024

**State of Maine /Office of Information
Technology:**

By: _____
DocuSigned by: Nathan Willigar
2F03B059A65C496...

Printed: Nathan Willigar

Title: Chief Information Security Officer

Date: 9/12/2024

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY (OIT)

APPENDIX A TO CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

CERTIFICATION OF RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION,
ELECTRONIC INFORMATION, AND TANGIBLE PROPERTY BY VENDOR PURSUANT TO
VENDOR CONFIDENTIALITY & NONDISCLOSURE AGREEMENT DATED _

Pursuant to the Vendor Confidentiality and Non-Disclosure Agreement between the State of Maine, acting by and through the Office of Information Technology (“OIT”) and _____ (“Vendor”) dated _____, Vendor acknowledges his/her responsibility to return or destroy all Confidential Information upon termination of the Vendor’s services to OIT. This document certifies that all copies of Confidential Information, electronic property and tangible property belonging to the State of Maine or OIT have been returned, or if necessary, destroyed, as described below:

Description of *returned* Confidential Information, electronic information or tangible property:

Description of *destroyed* Confidential Information, electronic information or tangible property:

Vendor Signature

--

Vendor Name

--

Date

--

IT MASTER AGREEMENT

ATTACHMENT B: PRICE SHEET

1. The full price sheet for this Master Agreement is accessible through the NASPO ValuePoint Portfolio located at: <https://www.naspovaluepoint.org/portfolio/inmate-communications/global-tellink-corporation-dba-viapath-technologies-viapath/>.
2. Under the Documents/Details section, click on “Product Documents”.
3. Download the full Price Sheet by selecting the file named “GTL_Cost Proposal”.