Agreement No: 2007112807995

STATE OF MAINE DEPARTMENT OF Conedions

Agreement to Purchase Services

THIS AGREEMENT, made this _	24th day ofJuly	<u>/_, _2007_</u> , is by and	between the Sta	te of Maine,	Dept.
of Corrections, hereinafter called	"Department," and	Public Communication	ns Services, Inc.	, located at	11859
Wilshire Blvd., Suite 600, Los A	Angeles, CA 90025	, telephone numbe	r 310.231.1000,	hereinafter	called
"Provider", for the period of Oct.					

The Employer Identification Number of the Provider is 95-4615444

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

Rider A - Specifications of Work to be Performed

Its:

Rider B - Payment and Other Provisions

Rider C – Exceptions to Rider B (None)

Rider D, E, and/or F - (At Department's Discretion) (None)

Rider G – Identification of Country in Which Contracted Work will be Performed

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in __4 ___ original copies.

DEPARTMENT OF Corrections

Denise Lord, Assoc. Commissioner Corrections

and

PUBLIC COMMUNICATION SERVICES, INC.

Dravident - ADT

Total Agreement Amount: \$ -0-

Approved: Setty M. Jamoreau

Chair, State Purchases Review Committee

BP54 (Rev 6/04)

DEC 1 0 2007

MFASIS ACCOUNT CODING

DOC TOTAL	FND	AGY	ORG	SUB	APPR	ACTIVITY	OBJ	SUB	JOB NO.	REP1
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RIDER A SPECIFICATIONS OF WORK TO BE PERFORMED

RECITALS

- A. Provider is in the business of installing, maintaining, operating and managing inmate telephone systems and providing related services at correctional facilities; and
- B. The Department now desires to engage Provider to render collect and pre-paid calling services at the Department's correctional facilities, and Provider is willing to provide such services.

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

1. COSTS AND CALL RATES

a. Costs.

- i. The costs and expenses of providing Services, including installation charges and labor costs, shall be Provider's sole responsibility and shall not be charged to the Department, except as otherwise expressly provided for in this Agreement.
- b. For use of the CORIS Phone System's VOIP infrastructure and call control software Provider shall pay to The Department 60% on the total gross billable collect and pre-paid revenue at each Facility, calculated at the rates set forth in Exhibit A. The Department will keep 100% of all debit revenues collected. Provider shall be responsible for maintaining books and records sufficient to permit the proper determination of payments due to the Department. Provider shall send a statement to the Department setting forth the current payment due to the Department, and payment shall be paid monthly. Other than the specified payment above, The Department shall not be entitled to receive any other fees or remuneration in connection with this Agreement or the Services provided by Provider.
- c. <u>Call Rates</u>. The collect and prepaid-collect call rates charged at each Facility shall be in the amounts set forth in Exhibit A.

d. 6 Month Review:

- i. Provider and the Department shall review the call distribution and network capacity to determine any required changes.
- ii. The Rates identified in Exhibit A shall be reviewed 6 months following the activation of services by Provider. If at that time the revenue realized by either the Department or Provider is 15% less than the annualized revenue amount predicted in the projected revenue model in Exhibit B, these rates shall be reviewed and modified to best reflect the call distribution of the calls made through the system. These rates shall be mutually agreed upon by both Provider and the Department.



2. The Department may request that the Provider's employees who are currently working with the Department be employed by the Provider for a period of time after the new telephone system is implemented. The number of hours worked each week and the period of time each such employee shall be so employed shall be at the Department's sole discretion. The Provider's employees salaries and benefits during such employment will be their current salaries and benefits as established by Provider and as approved by the Department and all such costs will be deducted from the monthly payments due to the Department from the Provider. The Department may elect to terminate any employee by giving the Provider 30 days prior written notice of such election. Notwithstanding anything hereinabove to the contrary, the Provider shall not be in default under this Agreement in the event any of its employees elects not to work with the Department as provided for herein. Exhibit C sets forth the current salary information of the Provider's employees, but is subject to change.

3. Provider's Existing Equipment at the Department

- a. At no additional cost Provider will support the repair or replacement of existing TDD / TTY devices provided to the Department. Each facility will maintain a minimum of one TDD / TTY device in support of ADA compliancy. The TDD/ TTY devices will utilize a Department provided analog telephone network connection in support of the devices.
- b. As risk mitigation during implementation of the Department's new phone system, Provider will keep its current inmate phone equipment at the Department's eight facilities for at least 12 months after the last facility is converted to the new inmate phone system.
- c. Provider will maintain the analog telephone lines connected to the existing system at each Department facility for a period of one month after the last facility has been implemented.
- 4. <u>Provider Responsibilities</u>. Provider shall provide the following services:
 - a. Provide collect call services to the Department inmates and friends and families.
 - b. Provide real time validation services to validate called party telephone number for billable versus non-billable telephone number status.
 - c. Define the appropriate logic between Provider and CORIS to provide the appropriate collect and prepaid response based on the agreement Business Rules.
 - d. Provide systems response codes allowing the Department's CORIS system to process collect calls or prepaid calls.
 - e. Provide a validation response to CORIS that determines whether they allow or block a collect call.
 - f. Provide third party billing to end users for collect calls.
 - g. Provide access via a toll free number to a centralized prepaid platform that will allow an inmate and end user a one-time, one-minute complimentary call for the purpose of communicating the need to establish a prepaid account.



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- h. Provide the end user multiple options for establishing a prepaid account, to include: Customer Service Representative, SSIVR, eCommerce Portal, Western Union, and Money Gram.
- i. Provide a maximum call duration for prepaid enabled accounts to CORIS based on the prepaid account balance.
- j. Provide a validation code to CORIS for prepaid enabled accounts that do not have sufficient funds in the prepaid account balance.
- k. Provide a prepaid marketing message to notify end –users when the end-user's prepaid account does not have sufficient funds...
- 1. Provide an updated prepaid account balance utilizing a CORIS generated response (CDR or minutes of usage #) for complete and incomplete prepaid calls.
- m. Provide velocity checking of inmate calls to manage the number of calls to the centralized prepaid platform for the purpose of establishing a prepaid account.
- n. Provide end user response to CORIS for calls that are refused or permanently blocked.
- o. Provide voice prompts in six languages (English, Spanish, French, Vietnamese, Thai, and Somali).
- p. Provide 24 x 7 technical service for collect and prepaid calls.
- q. Provide 18 x 5 customer service for prepaid setup and information.
- r. Provide 24 x 7 automated prepaid account service setup and information.
- s. Provide 9 x 5 customer service for collect billing questions.
- t. Provide a secure VPN connection to Provider's collocation centers.
- 5. <u>Department Responsibilities</u>. The Department shall be responsible for the following:
 - a. Provide all services for the processing and termination of debit calls.
 - b. Provide the network to be able to originate and terminate debit, prepaid and collects calls from the facilities to the end-users.
 - c. Provide all necessary equipment at the facilities including inmate telephone units, call processing systems, data network equipment and devices to interface with Provider's back office systems.
 - d. Provide maintenance, technical support and service support for all facilities within the State of Maine.
 - e. Provide a collect call validation request with the defined fields and in the defined format. (including Source ANI, Destination ANI, Client ID, CDR ID, and an Inmate ID.).
 - f. Respond appropriately to all validation codes for collect and prepaid calls.



- g. Provide CDR's for complete and incomplete collect and prepaid calls (through Web services in near real-time, within 60 seconds of call completion).
- h. Provide a defined 35 digit DTMF string to the centralized prepaid platform for the purpose of establishing a prepaid call.
- i. Provide velocity checking of inmate calls to the centralized prepaid platform for prepaid enabled accounts that do not have sufficient funds for placing a prepaid call.
- j. Provide call disconnection for prepaid enabled calls that have reached their prepaid maximum call duration.
- k. Provide call disconnection on inmate calls to the centralized prepaid platform upon the termination of the inmate and end user one-time, one-minute complimentary call from the centralized prepaid platform.
- 1. Provide a secure VPN connection to PCS utilizing the ME DOC Public Internet network access as a transport medium.
- m. Provide read-only access to Call Detail Records and audio streaming of Call Recordings located on the CORIS platform in support of answering customer inquiries and complaints.



EXHIBIT A

Rates

Call Rates - Collect*

	COLLECT CALL RATES			
	Connect	Rate/Minute		
Local	\$1.55	\$0.25		
IntraLATA	\$1.55	\$0.25		
InterLATA	\$1.55	\$0.25		
InterState	\$3.00	\$0.69		
Canada	\$3.95	\$0.69		

Call Rates - Prepaid *

	PREPAID CALL RATES		
	Connect	Rate/Minute	
Local	\$1.55	\$0.25	
IntraLATA	\$1.55	\$0.25	
InterLATA	\$1.55	\$0.25	
InterState	\$3.00	\$0.69	
Canada	\$3.95	\$0.69	

^{*}Rates do not include State, Federal and Local Taxes or Regulatory Fees

EXHIBIT B

Projected Annual Gross Revenue Share

Based on Pricing Model submitted to the Department from Provider on July 12th, 2007 (Projects 5.5 million minutes of total inmate call time)

			Table 3 - R	venue Share	
	Ann	ual Revenue		der Share	Share
Collect	\$	486,996	\$	194,798	\$ 292,198
Prepaid	\$	243,504	\$	97,402	\$ 146,102
¹ Debit	\$	1,033,092	\$	-	\$ 1,033,092
	\$	1,763,592	\$	292,200	\$ 1,471,392

EXHIBIT C

Provider's Current Salaries for Data Entry Staff

Alisa Kelley--\$12.48/hr

George Phillips--\$13.87/hr

Christopher Childs--\$11.94/hr

RIDER B

METHOD OF PAYMENT AND OTHER PROVISIONS

1.	AGREEMENT	AMOUNT	\$ - 0 -

2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

- 3. <u>BENEFITS AND DEDUCTIONS</u> 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.
- 4. <u>INDEPENDENT CAPACITY</u> In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.
- 5. <u>DEPARTMENT'S REPRESENTATIVE</u> The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.
- 6. <u>AGREEMENT ADMINISTRATOR</u> All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name:

Mark McCarthy

Title:

Correctional Operations

Address:

111 State House Station, Augusta, ME 04330

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.



- 7. <u>CHANGES IN THE WORK</u> 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 execution of the work.
- 8. <u>SUB-AGREEMENTS</u> Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.
- 9. <u>SUBLETTING, ASSIGNMENT OR TRANSFER</u> 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 written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.
- 10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:
 - a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

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

- b. 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.
- c. 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.



- d. 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) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. 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 the Departments.
- f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
- g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- 11. EMPLOYMENT AND PERSONNEL

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

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



- 13. WARRANTY

 The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- 14. <u>ACCESS TO RECORDS</u> The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.
- 15. <u>TERMINATION</u> The performance of work under the 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 interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the 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.
- 16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.
- 17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.
- 18. STATE HELD HARMLESS The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This



Page __14___ of ____20___

indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

- 19. NOTICE OF CLAIMS The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.
- 20. <u>APPROVAL</u> This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.
- 21. <u>LIABILITY INSURANCE</u> The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.
- 22. <u>NON-APPROPRIATION</u> Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are deappropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.
- 23. **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.
- 24. <u>INTEGRATION</u> All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.
- 25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.



- 26. <u>SET-OFF RIGHTS</u> 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, 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.
- 27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the 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 the Agreement, or to exercise an option or election under the 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, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.



RIDER C EXCEPTIONS TO RIDER B



RIDER D Not Required: For use at Department's Discretion



RIDER E Not Required: For use at Department's Discretion



RIDER F Not Required: For use at Department's Discretion



RIDER G <u>IDENTIFICATION OF COUNTRY</u> <u>IN WHICH CONTRACTED WORK WILL BE PERFORMED</u>

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

e he	ioimeu.
\boxtimes	United States. Please identify state: ME
	Other. Please identify country:
Notific	cation of Changes to the Information
above.	The Provider agrees to notify the Division of Purchases of any changes to the information provided

