

State of North Carolina
MEMORANDUM OF UNDERSTANDING
DEPARTMENT OF PUBLIC SAFETY
AND
TEXTBEHIND

THIS AGREEMENT is entered into between the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, 2020 Yonkers Road, 4227 MSC, Raleigh NC 27699-4227, hereinafter referred to as the "Department," and the entity TextBehind 14315 Jarrettsville Pike, Suite # 102, Phoenix, MD 21131, hereinafter referred to as "Vendor", for the purposes of services described herein.

Subject to satisfactory performance, this AGREEMENT shall be effective for a term of one year beginning on or about July 1, 2021 and continuing for a period of two (2) year thereafter. By mutual agreement of both parties, this AGREEMENT may be renewed for one additional one-year periods following the end of the initial term.

WITNESSETH:

WHEREAS, the Department, desires to obtain offender mail management software and services through utilization of Vendor's service; and,

WHEREAS, the parties have entered into a verbal agreement for the use of the services described herein and hereby desire to reduce the terms of their agreement to writing;

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

- I. **SCOPE OF SERVICES** – Vendor shall provide the following services at no cost to the Department. The Department shall be given at least 60 days prior notice before any Vendor price increase of services to Offender's and/or Offender's families.

I.1 GENERAL

- A. TextBehind CAMMP (Comprehensive Access to Mail Management Portal) software access for unlimited users.
- B. One-on-one training and user manuals to the Department's staff who will use the CAMMP investigating portal.
- C. Dedicated Post Office Box for all of the Department's facilities.
- D. Friend and family hand written mail addressed to the Department's offender population is to be screened for contraband at no cost to either the Department or the friends or family of the offender.

TextBehind's office will become the general mail reception address for ALL incoming mail from the family and friends if they want to continue to hand-write their letters to an offender. TextBehind will make photocopies of the communication including the envelope and make it available to be reviewed and printed by the NCDPS within 24 hours after it has been processed. TextBehind will perform this function with all due diligence to process all incoming mail within 24 hours. TextBehind will process all Inbound Communications received from hand written letter (Physical Mail) Users to ensure that they contain only communications or photos, and do not contain any drugs, weapons, or other contraband. In the event that a package that a hand-written letter User sends to TextBehind contains drugs, weapons, or other contraband, TextBehind will promptly notify the law enforcement agency having primary jurisdiction over the matter as well as the NCDPS where the inmate would currently be residing. All Inbound Communications from hand written letter Users will be properly logged and archived on TextBehind's Secure Storage, and accessible by the NCDPS through CAMMP Portal.

- E. Production grade printer/copier at each applicable Department facility to print mail received by Vendor on-location. In case of equipment failure, the Department shall notify Vendor and Vendor shall print all mail for the applicable facility and ship it as overnight package for next-day delivery. Or, provide Department with an additional secondary printer, if requested. Routine maintenance shall be conducted on all equipment provided and damaged or nonfunctioning equipment shall be repaired within 24 hours' notice to Vendor.
- F. A sufficient amount of white copy paper and ink for the copiers/printers at each facility for the term of the agreement. Copy paper and ink shall be supplied on a regular basis as determined by the need of the facility.

I.2 EDUCATIONAL & MARKETING MATERIALS

- A. Flyer/advertisement printouts to be provided for the offender population.
- B. Mail Policy Change Posters to be provided for display inside recreation rooms where offenders may be notified further of the mail policy change.
- C. Friend and Family "New Mail Policy" Service Brochures and Posters to be provided for placement in the correctional facility visiting room where visiting family and friends may be notified further of the mail policy change.
- D. Provide sufficient number of educational and marketing materials to meet each facility's needs.

I.3 TRANSITIONAL PLAN & FACILITY STAFF TRAINING

- A. Under the terms of the AGREEMENT, the Department will expand Vendor's services to all operational male facilities and continue Vendor's services in all of the Department's female facilities, which include: North Piedmont Correctional Center for Women, Swannanoa, Anson Correctional Institution and the North Carolina Correctional Institution for Women (NCCIW). The Department reserves the right to increase or decrease the number of facilities participating under this AGREEMENT during its effective term. The Department will notify Vendor sixty (60) days prior to adding or removing a facility from participation under the terms of this Agreement.

- B. The OMS Manager (Offender Management System) for the Department will setup an automatic roster export (CSV file) and drop it in the SFTP (Secure FTP) folder provided by Vendor for Vendor to update offender housing information on letters. The SFTP frequency will be on a mutually agreed upon timeframe.
- C. Occasionally, an offender may be inadvertently given two (2) permanent identification numbers as the result of multiple incarcerations or supervisions. In all of these cases the two (2) records must be merged into a single record with all of the offender's mail still visible. If accidentally merged incorrectly there shall be a process for separating and resorting the mail with the correct offender.
- D. One-on-One CAMMP software training in person with user manual provided to the mail manager at each facility.
- E. The first day the new mail policy is in effect at a participating facility, Vendor's Representative are to work side by side with the mail room manager, either in person or virtually, to make certain the new daily mail process is easily configured to the facility manager requirements.
- F. At the close of each calendar quarter, Vendor's will provide a performance review document and meet with Prisons Administration to track the use of the new mail management service and other associated factors for further discussion and any change requests required at the time.

II. GENERAL TERMS AND CONDITIONS:

II.1 RECORDS AND AUDIT:

All records and documents pertaining to this AGREEMENT shall be retained for a period of three (3) years after the expiration of this AGREEMENT. To the extent permitted by law, both parties agree to make all records available to the other party and to authorized state and federal auditors and officials.

II.2 ASSIGNMENT:

Neither this AGREEMENT nor any interest therein shall be assigned to a third party.

II.3 SITUS:

The place of this AGREEMENT, its situs and forum, shall be North Carolina, and in said state shall all matters, whether sounding in contract or tort or otherwise relating to the validity, construction, interpretation, an enforcement of this AGREEMENT be determined.

II.4 GOVERNING LAWS:

This AGREEMENT is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina.

II.5 AMENDMENTS:

Changes or amendments to this AGREEMENT shall be made by giving written notice. Changes or amendments shall be approved by both parties, and signed by the Contract Administrator for the Department and a duly authorized representative of the Vendor.

II.6 TERMINATION:

This AGREEMENT may be terminated:
By either party upon at least sixty (60) days' written notice to the other party.

II.7 ENTIRE AGREEMENT:

Unless otherwise specified herein, this AGREEMENT and any documents incorporated specifically by reference embody the entire agreement of the parties and any prior contemporaneous representations, either oral or written, are hereby superseded.

II.8 CONFIDENTIAL INFORMATION:

Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Vendor under this AGREEMENT shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Department.

To the extent permitted by applicable statutes and rules, the Department will maintain as confidential trade secrets that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the Department will notify Vendor of such action and allow Vendor to defend the confidential status of its information.

II.9 GENERAL INDEMNITY:

Vendor shall hold and save the Department, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of this AGREEMENT and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the contractor is notified in writing within 30 days that the Department has knowledge of such claims. Vendor represents and warrants that it shall make no claim of any kind or nature against the Department's agents who are involved in the delivery or processing of contractor goods to the Department. The representation and warranty in the preceding sentence shall survive the termination or expiration of this AGREEMENT. Provided, however, that nothing in the foregoing shall be construed as to conflict with or to limit the indemnity of the Department.

II.10 INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:

Subject to the exclusions set forth in subsection (d) of this part, Vendor shall hold and save the Department, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, arising out of any claim that any service or deliverables provided in connection with this AGREEMENT infringes upon the intellectual property rights of any third party, including in any copyrighted material, patented or patent-pending invention, article, device or appliance provided in connection with the Agreement

- a. Vendor warrants to the best of its knowledge that:
 - i. Performance under the AGREEMENT does not infringe upon any intellectual property rights of any third party; and
 - ii. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- b. Should any service or deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the Department the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and make every reasonable effort to assist the Department in procuring substitute deliverables. If, in the sole opinion of the Department, the cessation of use by the Department of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this AGREEMENT impractical, the Department shall then have the option of terminating the AGREEMENT, or applicable portions thereof, without penalty or termination charge.
- c. The Vendor, at its own expense, shall defend any action brought against the Department to the extent that such action is based upon a claim that the service or deliverables supplied by the Vendor, their use or operation, infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the Department in any such action. Such defense and payment shall be conditioned on the following:
 - i. That the Vendor shall be notified within a reasonable time in writing by the Department of any such claim; and
 - ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the Department shall have the option to participate in such action at its own expense.
- d. Vendor will not be required to defend or indemnify the Department if any claim by a third party against the Department for infringement or misappropriation results from the Department's material alteration of any Vendor-branded deliverables or

services, or from the continued use of the deliverable(s) or Services after receiving notice of infringement on a trade secret of a third party.

II.11 PREA:

The NC Department of Public Safety is committed to a standard of zero-tolerance pertaining to unduly familiar or sexually abusive behavior either by another juvenile or by staff, volunteer, vendor, contractor or party. Staff, volunteers, vendors, contractors or parties are strictly prohibited from engaging in personal dealings or any conduct of a sexual nature with any inmate or juvenile. Conversation and conduct with any inmate or juvenile must be professional at all times. Sexual acts between a juvenile or inmate and staff, volunteer, vendor, contractor or party may violate North Carolina law. Additionally, sexual acts between a juvenile or inmate and staff member will contradict the standards of the federal Prison Rape Elimination Act of 2003 (PREA). Such acts also may be punishable, at a minimum, as a Class E felony in North Carolina. Under North Carolina, consent of the inmate or juvenile may not available as a defense for an individual who is charged criminally based on sexual conduct with the inmate or juvenile. Also, pursuant to PREA standards, no juvenile or inmate can consent to engage in sexual activity with staff, volunteers, vendors, contractors or parties. Any contractual facility will comply with the national standards to prevent, detect, and respond to PREA (115.12, 212, 312) and permit the Department to monitor this aspect of the contract to ensure compliance with the PREA standards.

As a valued partner with DPS, it is important to remember that if you become aware of a report of any incidents of unduly familiar or sexually abusive behavior or sexual harassment, you have a duty to report this information immediately to your contact person with the Agency, by email to prea@ncdps.gov, or the DPS Communications office at (800) 368-1985.

Additionally, it may violate North Carolina law to sell or give an inmate or juvenile any alcoholic beverages, barbiturate or stimulant drug, or any narcotic, poison or poisonous substance, except upon the prescription of a physician; and it may violate North Carolina law to give an inmate or juvenile any tobacco or tobacco products, alcohol, or cell phones. It may also violate NCDPS policy to convey to or take from any juvenile or inmate any letters, or verbal messages; to convey any weapon or instrument by which to effect an escape, or that will aid in an assault or insurrection; to trade with any inmate for clothing or stolen goods or to sell any inmate any article forbidden by NCDPS policy.

By signing this document, you acknowledge that you understand and will abide by this policy as outlined above.

III. CONTRACT ADMINISTRATION:

- III.1 Angela Wainright, Purchasing Officer, Purchasing & Logistics, NC Department of Public Safety, 3030 Hammond Business Place, 4227 MSC, Raleigh, NC 27699-4227, (919) 324-6476, angela.wainright1@ncdps.gov is designated as the Purchasing Officer for the Department, with responsibilities for all matters relating to this AGREEMENT.

- III.2 Trish Deal, Acting Director of Administrative Services, NC Department of Public Safety, 831 West Morgan Street, Raleigh, NC 984-255-6002, trish.deal@ncdps.gov
- III.3 Zia Rana, CEO TextBehind, 14315 Jarrettsville Pike, Suite # 102, Phoenix, MD 21131, 202-538-2225, zia@textbehind.com

IV. EXECUTION OF AGREEMENT:

In compliance with this Request, and subject to all the conditions herein, the undersigned offers and agrees to provide services as requested at the rates included and within the time specified herein.

<u>TextBehind</u>	
By:	
SIGNATURE:	6/23/2021
NAME:	Mr. Zia Rana
TITLE:	President & CEO

<u>NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY BY:</u>	
SIGNATURE:	 DATE SIGNED: 6/25/2021
NAME:	Angela Wainright
TITLE:	<u>Purchasing Officer</u>

<u>NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY BY:</u>	
SIGNATURE:	 DATE SIGNED: 6-24-21
NAME:	Todd Ishee
TITLE:	<u>Commissioner</u>

Policy

It is the policy of the Department of Public Safety to provide a work environment free of alcohol and drugs in order to ensure the safety and wellbeing of employees, correctional clientele, and the general public. All employees of the Department of Public Safety, including permanent full-time, trainee, permanent part-time, permanent hourly, probationary, and temporary shall abide by this policy.

Purpose

This document is intended to advise managers and employees of the guidelines of an alcohol/drug free work place, and to set out the penalties for violation(s) of the guidelines.

Procedures/Operational Guidelines

All employees of the Department of Public Safety are expected to be physically and mentally prepared and able to perform their assigned duties throughout the workday. No employee shall report to the work site impaired by or suffering from the effects of drugs or alcohol.

Individuals reporting for work under the influence or the effects of alcohol and/or drugs shall be issued discipline, up to and including dismissal, consistent with the policy governing personal conduct.

No employee shall manufacture, distribute, or dispense controlled substances (drugs/alcohol) at the work site or away from the work site. No employee shall use "across the counter" medication to the point of impairment while at the work site, or in any situation which may bring discredit to the Department. Use or abuse shall be viewed as personal misconduct and shall be cause for immediate disciplinary action up to and including dismissal.

Possession of an illegal substance in any situation, at work or away from the work site shall be cause for discipline. Possession of controlled substances, i.e. Prescription medication or alcohol, must be in compliance with existing laws. Violations will result in discipline up to and including dismissal based on personal misconduct.

Employees who are arrested, detained, or served a warrant for any alcohol/drug related incident, at the work site or away from the work site have 24 hours to file a written report of the situation with the work facility(s) supervisor/manager, i.e. Warden, Superintendent, Branch Manager. The work facility(s) supervisor/manager shall make a recommendation for appropriate disciplinary action based on the facts of the case after conducting a thorough investigation.

If sufficient facts cannot be obtained due to pending litigation, the work facility(s) supervisor/manager shall request, in writing, that any recommendation for disciplinary action be delayed until the court has disposed of the matter. Once the legal proceedings have been completed, the employee shall furnish a certified copy of the court disposition within 48 hours of the judgment. The recommendation for discipline shall be made at this time, if not previously addressed.

Any conviction of a drug or alcohol related the Personnel Office shall report offense which occurred at the work site to the federal government; therefore, the appropriate manager shall report such offenses to the Personnel Office so that the Personnel Office may comply with the requirement.

The Department of Public Safety utilizes the State Employee Assistance Program (EAP) administered through the Office of State Personnel. The EAP provides employees with a comprehensive referral service to aid in coping with or overcoming personal problems, including drug and alcohol problems. Consultants with the State EAP will provide managerial/supervisory training and coordinate employee orientation.

This policy shall be posted in an accessible area for employee review and shall be periodically reviewed in staff meetings and at line up. In addition, each present employee and all new employees shall be given a copy of this policy for their information.