

CONTRACT

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Contract made this 3 day of ~~April~~ <sup>April</sup> 2001, by and between the Georgia Department of Corrections ("GDC") and MCI WORLDCOM Communications, Inc., on behalf of itself and its U.S.-based affiliates and successors ("Contractor").

2001 APR 26 A 11: 29

WHEREAS, the Georgia Technology Authority ("GTA") issued Request for Proposals Number 167-080, 955586, as amended through Addendum No. 6 (the "RFP") soliciting proposals for inmate phone service in correctional institutions as described in the RFP; and

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WHEREAS, on January 19, 2001, Contractor submitted a proposal in response to the RFP and, as requested by GTA, submitted clarifications dated March 3 & April 16, 2001("Contractor's Proposal"); and

WHEREAS, Contractor's Proposal was deemed by the State of Georgia to be that proposal most advantageous to the State.

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

1. Scope Of Work

Contractor agrees to provide and perform all of the products, services and other deliverables required in the RFP, plus those products, services and deliverables as may additionally be described in Contractor's Proposal (collectively, the "Service" or "Services"). Contractor shall provide the Services in response to written orders issued from GDC from time to time identifying the correctional facilities at which the Services are to be provided. The provision of the Services at any correctional facilities shall in all respects be subject to the testing requirements set forth in the RFP.

2. Ownership and Risk of Loss

Ownership and title to all goods and equipment used in providing the Services shall at all times remain with Contractor and Contractor shall assume all risk of loss for such goods and equipment (except for intentional misconduct by State employees).

3. Subcontracts/Assignment

Performance shall not be assigned or subcontracted without the prior written consent of GDC. No subcontract which Contractor enters into with respect to performance under this Contract shall in any way relieve Contractor of any responsibility for any performance required of Contractor. Contractor shall give GDC immediate notice in writing by registered or certified mail of any action or suit filed against it by any subcontractor, and prompt notice of any claim made against Contractor by any subcontractor or vendor which may result in litigation.

4. Contract Term

Contractor shall begin providing the Service on the date specified in the notice of award to which this Contract is attached, and shall continue providing the Service through June 30, 2004. At the conclusion of the initial Contract term, GDC shall, at its discretion, have the option to renew the Contract for two additional fiscal years, exercisable in one-year increments (July 1 - June 30), upon the same terms and conditions as agreed upon herein.

5. Payment

A. No later than the 30<sup>th</sup> (thirtieth) day of the following month, Contractor shall send to GDC the monies from commissions earned each month in the amounts as specified in

Contractor's Proposal along with documentation regarding the call volumes upon which the commissions paid to GDC are based.

- B. Contractor acknowledges and agrees that no payment is due from GDC or the State of Georgia under this Contract from appropriated funds. Contractor's only source of compensation shall be the revenues collected in payment for providing the Service under this Contract.

6. Intermediate Remedies for Non-Performance

- A. If Contractor at any time fails in any respect to provide the Service with promptness and diligence, other than as described in B. hereunder, GDC may (in addition to any other contractual, legal or equitable remedies) proceed to take any one or more of the following actions after 3 (three) days written notice to Contractor: (1) impose a service interruption charge, calculated at the rate of 200% (two hundred percent) of the commission amount that GDC reasonably estimates was lost due to the interruption in Service; or (2) obtain the Service (or some portion thereof) from a third party, thereupon terminating that portion of this Contract pertaining to the Service thus obtained.
- B. If Contractor fails to submit commission payments within the time specified in section 5.A. above, the Contractor will pay late fees for each intervening calendar day that commissions are past due and unrebated. These late fees will be at the rate of 1.5% (one and one-half percent) per day applied to said commissions.

7. Termination

- A. In the event that Contractor breaches any material term or condition of the Contract, or any other event occurs which demonstrates a reasonable likelihood that Contractor is unable or unwilling to fulfill its obligations under this Contract, GDC may terminate this Contract upon providing Contractor with 20 (twenty) days written notice.
- B. This Contract may be immediately terminated in the event that any of the following occurs:
  - 1. Contractor becomes insolvent, or liquidation or dissolution of Contractor begins;
  - 2. A voluntary or involuntary bankruptcy petition is filed by or against Contractor under the U.S. Bankruptcy Code or any similar petition under any state insolvency law;
  - 3. An assignment is made by Contractor for the benefit of creditors; or
  - 4. A proceeding for the appointment of a receiver, custodian, trustee or similar agent is initiated with respect to Contractor.
- C. All documents (electronic or hard copy) as they relate to the Service provided under this Contract are the property of GDC, and will be returned to GDC at its request and at no cost to GDC within 15 (fifteen) days of termination of this Contract.

8. Contractor Accounting Requirements

- A. Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this Contract (collectively the "Records") to the extent and in such detail as will properly reflect all costs for which payment is due or made under this Contract. Contractor's accounting procedures and practices shall conform to GAAP and the costs properly applicable to the Contract shall be readily ascertainable therefrom.

- B. Contractor agrees to make available at all reasonable times during the period set forth below any of the Records of the contracted work for inspection or audit by any authorized representative of GDC or the Georgia State Auditor. Contractor shall preserve and make available its Records for a period of 5 (five) years from the date of final payment under this Contract. Records which relate to appeals, litigation, or the settlements of claims arising out of the performance of this Contract, or costs and expenses of any such agreement as to which exception has been taken by the State Auditor or any of his duly authorized representatives, shall be retained by Contractor until such appeals, litigation, claims or exceptions have been disposed of.

9. Reporting Requirements

Contractor shall submit reports to GDC regarding the Service as specified in the RFP.

10. Performance Bond

Contractor shall obtain, at Contractor's own expense, a performance bond issued by a surety company authorized to do business in the State of Georgia in the amount of \$500,000 to secure the performance of all work related to the diversion/transitional centers, and \$3,000,000 for all work related to the secure facilities, which may be undertaken pursuant to the Contract. The performance bond shall be in the form of the performance bond which is attached to this Contract as Contract Exhibit 1.

11. Insurance Requirements

The following requirements shall be adhered to by Contractor throughout the term of the Contract, any renewal thereof, and as may otherwise be specified herein:

A. Insurance Certificate:

Contractor shall procure and maintain insurance which shall protect the Contractor and the State from any claims for bodily injury, property damage, or personal injury which may arise out of operations under the Contract. Contractor shall procure the insurance policies at the Contractor's own expense and shall furnish the State an insurance certificate listing the State as certificate holder. The insurance certificate must document that the liability insurance coverage purchased by the Contractor includes contractual liability coverage to protect the State. In addition, the insurance certificate must provide the following information:

1. Name and address of authorized agent,
2. Name and address of insured,
3. Name of insurance company (licensed to operate in Georgia),
4. Description of coverage in standard terminology,
5. Policy period,
6. Limits of liability,
7. Name and address of certificate holder,
8. Acknowledgment of notice of cancellation to the State,
9. Signature of authorized agent,
10. Telephone number of authorized agent, and
11. Details of policy exclusions in comments section of Insurance Certificate.

B. Contractor also agrees to provide an insurance certificate to document that the following types of insurance coverages have been purchased by the Contractor:

1. Workers' Compensation Insurance (Occurrence) in the amounts of the statutory limits as established by the General Assembly of the State of Georgia. (A self-insurer must submit a certificate from the Georgia Board of Workers'

Compensation stating the Contractor qualifies to pay its own workers' compensation claims.) In addition, Contractor shall require all subcontractors occupying the premises or performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage.

2. Commercial General Liability Policy (Occurrence). The Commercial General Liability Policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the Commercial Umbrella Policy required in this Contract.
3. Business Auto Policy (Occurrence), to include but not be limited to any owned, non-owned and hired auto liability. The Business Automobile Policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the Commercial Umbrella Policy required in this Contract, not less than \$1,000,000 Combined Single Limits for each occurrence.
4. Commercial Umbrella Policy (Occurrence), which must provide the same or broader coverages than those provided for in the above Commercial General Liability and Business Auto Policies. Policy limits for the Commercial Umbrella Policy shall be \$3,000,000 per occurrence with a \$5,000,000 annual aggregate.

All policies must be on an "occurrence" basis, unless expressly otherwise stated.

The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled or renewed until at least 30 (thirty) days' prior written notice has been given to GDC. Certificates of Insurance showing such coverages to be in force shall be filed with GDC prior to commencement of any work under this Contract. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to GDC. All such coverages shall remain in full force and effect during the initial term of the Contract and any renewal or extension thereof.

## 12. Indemnification

Contractor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the State of Georgia (including the State Tort Claims Trust Fund), GDC, their officers and employees (collectively "Indemnitees"), of and from any and all claims, demands, liabilities, loss, costs or expenses for any loss or damage for bodily injury, including but not limited to, death, personal injury, property damage and attorneys' fees related thereto caused by any act or omission of Contractor, its employees, subcontractors, agents or any other party acting on behalf of Contractor (collectively, the "Indemnity Claims").

This indemnification extends to the successors and assigns of the Contractor, and this indemnification and release survives the termination of this Contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Contractor.

If and to the extent such damage or loss as covered by this indemnification is covered by the State Tort Claims Fund or any other self-insurance funds maintained by the Department of Administrative Services (collectively, the "Funds"), the Contractor agrees to reimburse the Funds for such funds paid out by the Funds. To the full extent permitted by the Constitution and the laws of the State of Georgia and the terms of the Funds, the Contractor and its insurers waive any right of subrogation against the State of Georgia, the Indemnitees, and the Funds and insurers participating thereunder, to the full extent of this indemnification.

Contractor shall, at its expense, procure the commercial general liability policy required by this Contract, in coverage amounts as specified in this Contract, with endorsement waiving right of subrogation against the State, the Indemnitees, the Funds and insurers participating thereunder.

Contractor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnitees. No settlement or compromise of any claim, loss, or damage asserted against Indemnitees shall be binding upon Indemnitees unless expressly approved by the Indemnitees.

Notwithstanding this or any other provision in this Contract, in no event shall either party be liable to the other party, for any indirect, incidental, special or consequential damages sustained or incurred by the other party in connection with this Contract, regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, whether or not such damages are foreseen or unforeseen.

13. Cooperation

In the event that GDC enters into any agreement at any time with any other vendors or government institutions for additional work related to the Service, Contractor agrees to cooperate fully with such other parties in order to facilitate the performance of work by such other parties and to refrain from any activity which would interfere with the performance of work.

14. Non-Exclusivity

This is a non-exclusive contract and in no way precludes GDC from obtaining like goods and services from other vendors.

15. Relationship Of The Parties

All work performed under this Contract by Contractor shall be performed as an independent contractor. Contractor shall be responsible for compliance with all laws, rules and regulations involving their respective employees, including, but not limited to, employment of labor, hours or labor, health and safety, working conditions, workers' compensation insurance, and payment of wages.

16. Inclusion Of Documents

The RFP (including any documents referenced therein) and Contractor's Proposal submitted in response thereto are incorporated into this Contract by reference and form an integral part of this Contract. In the event of a conflict between the RFP and Contractor's Proposal, the RFP shall govern.

17. Taxes

Contractor will pay all taxes lawfully imposed upon it with respect to this Contract. GDC makes no representation as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity.

18. Compliance With All Laws

Contractor shall comply with all laws, ordinances, rules and regulations of any governmental entity pertaining to its performance pursuant to this Contract

19. Survival Of Representations

The terms, provisions, representations and warranties contained in this Contract shall survive the termination or expiration of this Contract.

20. Drug-Free Workplace

- A. If Contractor is an individual, he or she hereby certifies that he or she will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract.
- B. If Contractor is an entity other than an individual, it hereby certifies that:
  - 1. A drug-free workplace will be provided for Contractor's employees during the performance of this Contract; and
  - 2. It will secure from any subcontractor hired to work in a drug-free workplace the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to Contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection B of Code Section 50-24-3."
- C. Contractor may be suspended, terminated, or debarred if it is determined that:
  - 1. Contractor has made false certification hereinabove; or
  - 2. Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia Section 50-24-3.

21. Trading With State Employees

Contractor hereby certifies that this Contract does not and will not violate the provisions of Official Code of Georgia Annotated ' 45-10-20 et seq. in any respect.

22. Notices

All notices under this Contract shall be deemed duly given: Upon delivery, if delivered by hand (against receipt); or three days after posting, if sent by Registered or Certified Mail, Return Receipt Requested; to a party hereto at the address set forth below or to such other address as a party may designate by notice pursuant hereto.

Contractor:

Steve Viefhaus  
Sr. Sales Manager, Government Markets  
WorldCom  
100 South 4<sup>th</sup> Street – 4<sup>th</sup> Floor  
St. Louis, MO 63105  
Tel: 314-342-7105  
Fax: 314-342-7306

With copy to:

WorldCom  
3 Ravinia Drive  
Atlanta, GA 30346  
Attn: Law & Public Policy – Govt. Markets  
Fax: 770-280-6041

GDC:

Michael Murdock, Director, Business and Support Services  
E-Mail [Murdom00@dcor.state.ga.us](mailto:Murdom00@dcor.state.ga.us)  
Administration Division  
Georgia Department of Corrections  
2 Martin Luther King Jr. Dr. SE  
Suite 1054, East Tower  
Atlanta, Georgia 30334

**Following Award:**

Allen Lewis Hauck, Manager, Inmate Telephone Services  
Telephone (404) 463-3598, Fax (404) 651-6447  
E-Mail [Hauckl@dcor.state.ga.us](mailto:Hauckl@dcor.state.ga.us)  
Telecommunications Section  
Georgia Department of Corrections  
2 Martin Luther King, Jr. Dr. SE  
Ste 754, East Tower  
Atlanta, GA 30334-4900

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23. Severability

If any term or provision of this Contract shall be found to be illegal or unenforceable then, notwithstanding, this Contract shall remain in full force and effect and such term or provision shall be deemed stricken herefrom.

24. Headings

The paragraph headings used in this Contract are for reference purposes only and shall not be deemed a part of this Contract.

25. Publicity

Any publicity given to the program or services provided herein including, but not limited to, notices, information pamphlets, press releases, research, reports, signs and similar public notices prepared by or for Contractor shall identify GDC as the sponsoring institution, and shall not be released prior to approval by GDC; however, Contractor may reference this Contract in proposals for other contracts without GDC approval.

26. Time Of The Essence

Time is of the essence in this Contract. Any reference to "days" shall be deemed calendar days unless otherwise specifically stated.

Notwithstanding this or any other provision in this Contract, neither party shall be liable to the other party for any delay or failure of performance, nor be considered in breach or default hereof, nor be liable for any loss, liability or damages (including but not limited to liquidated damages), in whole or in part, to the extent any delay or failure is due to causes or circumstances beyond the reasonable control, and without the negligence of the affected party (collectively, "force majeure"), including but not limited to: acts of God; fire, flood, explosion, vandalism, storm or similar occurrence; any law, order, regulation, directive or request of the United States government, or of any state, county or local government having jurisdiction; national emergency; cable cuts; riots or other civil disturbances; wars (declared or otherwise); strikes, lockouts, work stoppages or other labor difficulties; acts or omissions of the other party or of any third party beyond the reasonable control of the affected party, including but not limited to any local exchange company. Any delay

or failures of performance resulting therefrom shall extend the time for contractor performance by the amount of the delay caused by the force majeure.

27. Authority

GDC is authorized to sign this Contract pursuant to the provisions of the Official Code of Georgia Annotated ' 50-5-50 et seq. Contractor has full power and authority to enter into and perform this Contract, and the person signing on behalf of Contractor has been properly authorized and empowered to enter into this Contract. Contractor further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

28. Parties Bound

This Contract shall be binding on and inure to the benefit of the parties to this Contract and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

29. Choice Of Law

This Contract shall be governed in all respects by the laws of the State of Georgia.

30. Amendments In Writing

No amendment to this Contract shall be effective unless it is in writing and signed by duly authorized representatives of the parties.

NO REPRESENTATION, REQUEST, INSTRUCTION, DIRECTIVE OR ORDER, MADE OR GIVEN BY ANY OFFICIAL OF ANY AGENCY OF THE STATE OF GEORGIA, WHETHER VERBAL OR WRITTEN, SHALL BE EFFECTIVE TO AMEND THIS CONTRACT OR EXCUSE OR MODIFY PERFORMANCE HEREUNDER UNLESS REDUCED TO A FORMAL AMENDMENT AND EXECUTED AS SET FORTH ABOVE. CONTRACTOR SHALL NOT BE ENTITLED TO RELY ON ANY SUCH REPRESENTATION, REQUEST, INSTRUCTION, DIRECTIVE OR ORDER AND SHALL NOT, UNDER ANY CIRCUMSTANCES WHATSOEVER, BE ENTITLED TO ADDITIONAL COMPENSATION, DELAY IN PERFORMANCE, OR OTHER BENEFIT CLAIMED FOR RELYING UPON OR RESPONDING TO ANY SUCH REPRESENTATION, REQUEST, INSTRUCTION, DIRECTIVE OR ORDER.

31. Entire Contract

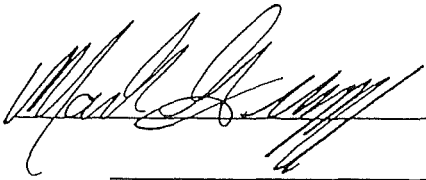
This Contract constitutes the entire agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

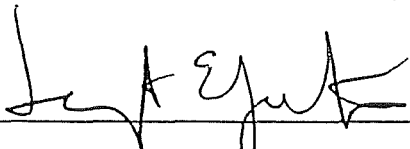


THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THIS CONTRACT, AND AGREE TO BE BOUND BY ALL TERMS, CONDITIONS AND PROVISIONS OF THIS CONTRACT, AS INDICATED BY THEIR SIGNING OF THIS CONTRACT.

GEORGIA DEPARTMENT OF CORRECTIONS

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

Contractor: MCI WORLDCOM Communications, Inc.

By:  \_\_\_\_\_  
Jerry A. Edgerton, Sr. Vice President



- (3) Supplementary to and in addition to the foregoing, whenever the Oblige shall notify the Surety that the Oblige has notice that the Contractor has failed to pay any subcontractor, material men, or laborer for labor or materials certified by the Contractor as having been paid for by the Contractor in accordance with said Contract, which said laborer or materials have been included in a periodical estimate and certified by the Architect for payment and paid for by the Oblige, the Surety shall, within 20 days of receipt of such notice, cause to be paid any unpaid amounts for such labor and materials.
- (4) It is expressly agreed by the Contractor and the Surety that the Oblige, if he desires to do so, is at liberty to make inquiries at any time of subcontractors, laborers, material men, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the work.
- (5) No right of action shall accrue on this bond to or for the use of any person or corporation other than the Oblige named herein or the legal successors of the Oblige.
- (6) For the purposes of this bond, the name and address of the Authorized State of Georgia Licensed Agent to whom correspondence and telecommunications may be addressee and/or with whom business concerning this bond may be conducted will be as follows:

Name        Suzanne Y. Sitler

Address     J. Smith Lanier & Company  
                  Surety Division  
                  P O Box 71429

City         Newnan, GA 30271

Telephone   770-683-1031

SIGNED AND SEALED THIS 9<sup>th</sup> DAY OF May, 2001 IN THE PRESENCE OF:

[Signature]  
 Witness

MCI WorldCom Communications Seal  
 Incorporated

**Scott D. Sullivan**  
**Chief Financial Officer and Secretary**

Title

[Signature]  
 Witness - Brenda Burdette        Surety

Federal Insurance Company    Seal

Suzanne Y. Sitler  
 By: [Signature]  
 Title Attorney-In-Fact

COUNTERSIGNED

By: [Signature]  
 Shirley F. Dukes