

**COPY**

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**CONTRACT FOR SERVICES  
BETWEEN  
T-NETIX, Inc.  
AND  
INDIANA DEPARTMENT OF ADMINISTRATION  
DIVISION OF INFORMATION TECHNOLOGY**

This Contract for Services (hereinafter 'Contract') entered into by and between the State of Indiana, Department of Administration, Division of Information Technology, RM N551, Indiana Government Center North, 100 N. Senate Avenue, Indianapolis, Indiana 46204 (hereinafter 'State') and T-NETIX, Inc with principal place of business at 1544 Valwood Parkway, Suite 102, Carrollton, TX 75006. (hereinafter 'Contractor').

**RECITALS**

WHEREAS, the State desires to contract for services in the area of Public and Inmate Long Distance Services; and

WHEREAS, Contractor is willing to provide such services;

NOW, THEREFORE, the above named parties enter into this Contract upon the following terms and conditions:

**CONTRACT PROVISIONS**

**1. Contractor Role and Responsibility**

The contractor, in consideration of the terms and conditions contained in this Contract, agrees to provide to the State Public Telephone InterLATA, Intrastate, and Interstate Long Distance Service (and any service features related thereto) capable of meeting the requirements set forth in the RFP (ASA1-1-47).

In addition, the Contractor agrees to pay the State a percentage of revenues generated from the use of state pay telephones in accordance with the commission rates set forth below in Paragraph 16.

**2. Term**

This Contract shall commence upon execution by the Contractor and all the representatives of the state of Indiana as required under law to enter into this Contract. The initial Contract term shall be forty-eight (48) consecutive months. The term shall end at midnight EST of the same month and same day forty-eight (48) months following Contract execution; There may be additional renewals of two (2) years each for a total term of eight (8) years at the State's option.

### **3. Local Operating Company Charges**

The Contractor shall pay, without limitation, any and all Local Operating Company charges incurred as a result of converting the State's public telephones lines and/or circuits to the Contractor's long distance service.

### **4. Contract Administration**

Contractor acknowledges that the Indiana Department of Administration, Division of Information Technology is the sole representative for conducting business with Contractor concerning the services provided to the State for agencies or other government entities. Contractor expressly agrees to make any presentation, proposal, negotiation, discussion, written contact or any other business correspondence or matter relating to the State with the Division of Information Technology and not with any other government entity.

### **5. Faithful Performance Bond**

The Contractor agrees to furnish to the Indiana Department of Administration a Performance Bond in the amount \$1,000,000 which must be delivered to the State concurrent with the Contractor's execution of this contract. The performance bond may be in the form of a cashier's check, a certified check, or a surety bond. If a surety bond is executed, the surety company must be authorized to do business in the State of Indiana as approved by the Indiana Department of Insurance. The performance bond shall be made payable to the Indiana Department of Administration and shall be effective throughout the life of the Contract including any extension of the Contract term.

Any change in work, extension of time, or termination of this Contract, if any, made pursuant to this Contract, shall in no way release the Contractor or any of its sureties from any of their obligations relating to any act which occurs prior to termination of this contract. Such bond shall contain a waiver of notice of any change to this Contract.

Notwithstanding any other provisions relating to the beginning of the term, this contract will not become effective until the performance bond required by this contract is delivered in the correct form and amount to:

Indiana Department of Administration  
Procurement Division  
Room W468, Indiana Government Center  
402 W. Washington Street  
Indianapolis, IN 46204-2263  
Attn: Shelly Harris

### **6. Incorporated by Reference**

The Request for Proposal (RFP) distributed by the Indiana Department of Administration, State of Indiana, and the Contractor's response thereto (including the letters and other communication from the Contractor listed in, and attached to, Exhibit "B" to this agreement), are incorporated herein by reference, and are hereinafter collectively referred to as "the Proposal",

or "Contractor's proposal".

Reference hereafter to certain of the subjects, topics, provision, terms, obligations, rights, duties and other matters in said instruments is not meant to exclude the importance of other portions of said instruments, rather the reference(s) is (are) intended to amplify upon or clarify the import, meaning and/or effect(s) thereof as they might relate to the rights, duties, and obligations of the parties to this Contract.

The reference or non-reference to certain portions of the RFP and proposal shall not preclude the reasonable construction of the terms of said instruments which may be required from time to time during the term of this Contract; provided, that when the parties desire to clarify the construction of significant areas of dispute, said construction shall be effectuated only by the written mutual agreement of the parties, hereto, or as otherwise provided in this Contract.

If there be any conflict between this Contract, the RFP, and/or the Contractor's response to the RFP, this Contract shall govern.

Notwithstanding the foregoing, it is understood that the State has relied upon the truthfulness of the Contractor's proposal and its various parts, including but not limited to, proprietary information, and confidential information submitted by the Contractor, which is not reproduced herein, in entering into this Contract and should said materials prove to be false or misleading, the State may seek appropriate remedies at law and in equity and may produce and disclose in court proceedings said materials.

## **7. Changes**

All changes to this Contract shall be by formal amendment of and shall be signed by all parties required to affix their signatures thereto by Indiana law.

The State may from time to time add or delete service locations and make minor changes to the phone systems without such requiring the execution of a formal amendment as required under 36. Change notification may be given by telephone, fax, written letter, or email.

## **8. Acceptance Procedure**

Contractor shall Cutover all new service locations within thirty (30) calendar days of notification by the State or the affected Local Exchange Carrier.

Upon installation of the Public Telephone Long Distance Service, an acceptance test will be performed by the State, with the assistance of the Contractor where appropriate, at the new service location. The acceptance testing period will begin at installation and continue for sixty (60) days or until seven (7) days following the State's receipt of the first commission check and set of monthly reports related to that location, whichever period of time is greater.

During the acceptance testing period, the State will have the productive use of the Public Telephone Long Distance Service and determine whether the service conforms to the requirements specified in this RFP and the Contractor's Proposal.

During the acceptance testing period the Contractor will, without charge to the State, furnish such services as shall be necessary to correct any defects in the operation or performance of the Public Telephone Long Distance Service to maintain it in good working order in accordance with the functional and performance specifications cited in the RFP and the Contractor's Proposal.

### **9. Communication Charges**

All cost and expenses incurred by Contractor in providing the Public Telephone Long Distance Service shall be borne by the Contractor.

### **10. Implementation**

The Contractor shall be responsible for full implementation of the Public Telephone Long Distance Services and in all other respects making the services ready for operational use.

### **11. Failure to Deliver Conforming Services**

The Cutover dates of the Public Telephone Long Distance Service at individual locations as mutually agreed upon from time to time between the parties will be fixed so that the utilization of services is consistent with timing schedules of the State's programs. If any portion of the service is not Cutover by the date specified, the delay could result in loss and damage to the State. It would be impracticable and extremely difficult to fix the actual damage sustained in the event of any such delay. The State and the Contractor, therefore presume that in the event of any such delay, the amount of damage which will be sustained from a delay will be the amount set forth in this paragraph, and they agree that in the event of any such delay caused by any failure on the part of the Contractor, Contractor shall pay such amount as liquidated damages and not as a penalty. The State shall notify Contractor in writing any claim for liquidated damages pursuant to this paragraph. The amount of liquidated damages as it pertains to this paragraph shall be an amount of \$60 per day per telephone for each calendar day of delay in completing Cutover for a location, but not for more than 180 calendar days per location.

### **12. Delivery Postponement**

The State shall have the right to postpone Cutover of the Public Telephone Long Distance Service or any part thereof for a period of no more than ninety (90) calendar days upon notice to the Contractor thirty (30) days prior to the Cutover date for the service.

### **13. Notice to Proceed**

The Contractor will be expected to start active and continuous work on the Contract after receiving a written notice to proceed. In no case shall the Contractor begin work prior to the receipt of the notice to proceed. In the event that any Contract is canceled after an award has been made but prior to the issuing of the notice to proceed, no reimbursement will be made to the Contractor for any expenses that may have been accrued, relative to the Contract prior to that time.

#### **14. Warranty**

The Contractor warrants, represents and assures that the Public Telephone Long Distance Service to be provided hereunder shall conform in all aspects to the requirements of the Contract and as designed will meet the functional and performance standards contained therein and will meet or exceed the representations contained in the Proposal during the entire term of the Contract.

#### **15. Service Degradation**

Contractor warrants that the communications network providing the service under this agreement will perform in all respects with the manufacturer's specification for the network. This warranty shall be in effect throughout the term of this contract.

If the communications network providing the long distance service fails to perform as specified above, and the State notifies Contractor, Contractor shall correct such service degradations promptly and without charge to the State. The State may report and Contractor shall repair any and all service degradations seven (7) days a week, twenty-four (24) hours per day. For the purpose of this provision Service degradation shall be defined as any complete loss of long distance service as defined in the RFP.

When long distance service is interrupted and interruption exceeds one (1) hour, as measured from the time interruption is reported to or is detected by the Contractor, whichever occurs first, Contractor will provide the State a commission credit per affected telephone line, per day of service interruption based on the average daily revenue for the phone line using the previous month's average to calculate.

#### **16. Commission Payments**

##### **Inmate Payphones**

Contractor shall provide to the State payment of a thirty-five percent (35%) rate of commission for billed revenues for Contractor 0+, 00- and 01 (excluding 500, 700, 800, 888, 900 and Directory Assistance) that are generated for the Contractor from the State of Indiana's Public Telephones covered under this RFP. Commission will be calculated based on a monthly period.

##### **Public Payphones**

Contractor shall provide to the State payment of a fifty percent (50%) rate of commission for billed revenues for Contractor 0+, 00- and 01 (excluding 500, 700, 800, 888, 900 and Directory Assistance) that are generated for the Contractor from the State of Indiana's Public Telephones covered under this RFP. Commission will be calculated based on a monthly period.

#### **17. Independent Contractor**

Both parties hereto, in the performance of this Contract, will be acting in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Neither party will assume any liability for any injury (including

death) to any person, or any damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of the other party. The Contractor is solely responsible for making any and all worker's compensation, unemployment, income or other tax withholdings or any other payroll deductions for individuals performing work under this Contract. Individuals performing work hereunder are employees of the Independent Contractor and are not employees of the state of Indiana.

#### **18. Work Standards**

The Contractor agrees that it will, in providing services under this Contract, execute its respective responsibilities by following and applying at all times the highest degree of expertise and skill common among members of the telecommunications profession and fully understands that the State has relied on the Contractor's expertise and skill with regard to these services.

#### **19. Progress Reports**

The Contractor will submit progress reports to the State upon request. The report will be oral unless the State upon receipt of the oral report should deem it necessary to have it in written form. The progress report shall serve the purpose of assuring the State that work is progressing in line with schedule, and that completion can be reasonably assured on the scheduled date.

#### **20. Access to Records**

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred and shall make such materials available at their respective offices at all reasonable times during the Contract term and for three (3) years from the date of final payment under the Contract for inspection by the State, and copies thereof shall be furnished at no cost to the State if requested.

#### **21. Assignment**

The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent, except that the Contractor may assign its right to receive payments to such third parties as the Contractor may designate without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned.

#### **22. Successors and Assignees**

The Contractor binds his successors, executors, administrators, and assignees to all covenants of this Contract. Except as above set forth, the Contractor shall not assign, sublet, or transfer its interest in this Contract without the prior written consent of the State of Indiana.

#### **23. Force Majeure:**

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of (or if failure to perform the services is caused by) natural

disaster, actions or decrees of governmental bodies, or communication line failure not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

#### **24. Nondiscrimination**

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to an individual's hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of that person's race, color, religion, sex, disability, national origin, ancestry or status as a veteran. The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding the Contractor, and its subcontractors, if any, agree that if the Contractor employs 50 or more employees and does at least \$50,000 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. Breach of this covenant may be regarded as a material breach of the Contract. The State shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference.

#### **25. Multi-term Funding Cancellation Clause**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of this Contract, the Contract shall be cancelled. A determination by the State Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

#### **26. Taxes**

The State of Indiana is exempt from Federal, State, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

#### **27. Penalties/Interest/Attorney's Fees**

The State will in good faith perform its required obligations under this Contract and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 et seq., IC 34-54-8-1 et seq., and IC 34-13-1-1 et seq.

#### **28. Compliance with Laws**

The Contractor agrees to comply with all applicable Federal, State, and local laws, rules and regulations, or ordinances, and all provisions required thereby to be included herein, are hereby incorporated by reference. The enactment of any Federal or State statute or the promulgation of regulations thereunder after execution of this Contract shall be reviewed by the Attorney General

and the Contractor to determine whether the provisions of the Contract require formal amendment.

### **29. Default by State**

If the State, after sixty (60) days written notice, fails to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

### **30. Governing Laws**

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

### **31. Indemnification**

Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses, caused by any act or omission of the Contractor and/or its subcontractors, if any.

### **32. Substantial Performance**

This Contract shall be deemed to have substantially performed only when fully performed according to its terms and conditions and any modification thereof.

### **33. Publicity**

Contractor or any organization contracted by or working with Contractor shall not refer to the existence of this Contract in any press release, advertising or materials distributed to prospective customers, without first obtaining the prior written consent of the State.

### **34. Waiver of Rights**

No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

### **35. Travel**

The State will not be responsible for travel, living, and out of pocket expenses actually incurred by Contractor in performing the Contract.

### **36. Modifications**

This Contract may be modified only by written instrument duly executed by an authorized representative of the Contractor and the legally authorized representatives of the State of Indiana.



### **37. Non-Collusion and Acceptance.**

The undersigned attests under penalties of perjury that he is the contracting party, or that he is the representative, agent, member or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of the agreement.

### **38. Conflict of Interest**

**A. As used in this section:**

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party" means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

**B.** The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.

**C.** The Department will not exercise its right of cancellation under section b. above if Contractor gives the department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.

**D.** Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts which Contractor knows or reasonably could know.

### **39. Disputes**

Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract which are not affected by the dispute. Should the Contractor fail to continue without delay to perform its responsibilities under this Contract in the accomplishment of all non-disputed work, any additional costs incurred by the Contractor or the

State as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State of Indiana for such costs. If the Contractor and the State cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of said dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration who shall reduce a decision to writing and mail or otherwise furnish a copy of thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for a decision. The Commissioner's decision shall be final and conclusive unless the Contractor mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the decision, a written appeal. Within ten (10) working days of receipt the Commissioner may reconsider the decision. If no reconsideration is provided within ten (10) working days the Contractor may submit the dispute to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The nonpayment by the State to the Contractor of one or more invoices not in dispute in shall not constitute default, however, the Contractor may bring suit to collect such monies without following the disputes procedure contained herein.

#### **40. Notices**

Notices to either party shall be in writing to the address indicated above or at such other address as either party may later designate for itself in writing. Notices shall be deemed effective when received, or 24 hours following the date of postmark, if sent by prepaid certified mail, return receipt requested.

#### **41. Severability**

Should any provision of this Contract be found invalid, ineffective or unenforceable under present or future law, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

#### **42. Authority to Bind Contractor**

The signatory for the Contractor represents, warrants and assures that he or she has been duly authorized to execute contracts on behalf of the Contractor designated above, has filed proof of such authority with the Indiana Department of Administration, W479 Indiana Government Center South, 402 W. Washington Street, Indianapolis, Indiana, 46204, and has obtained all necessary or applicable approvals from the home office of the Contractor to make this Contract fully binding on the Contractor when his or her signature is affixed hereto and accepted by the State.

#### **43. Insurance**

Contractor understands and acknowledges that the State will not maintain private or any other insurance with regard to this Contract.

#### **44. Confidentiality of State Information**

The Contractor understands and agrees that data, materials and information disclosed to the Contractor may contain confidential and protected data. Accordingly, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to others or discussed with other parties without the prior written consent of the State.

#### **45. Confidentiality of Data, Property Rights in Products and Copyright Prohibition**

The Contractor further agrees that all information, data, findings, recommendations, proposals, etc., by whatever name described and by whatever form therein, secured, developed, written, or produced by the Contractor in furtherance of this Contract shall be the property of the State and that the Contractor shall take such action as is necessary under law to preserve such property rights in and of the State while such property is within the control and/or custody of the Contractor. By this Contract the Contractor specifically waives and releases to the State any cognizable property right in the Contractor to copyright or patent such information, data, findings, recommendations, proposals, etc.

#### **46. Ownership of Documents and Materials**

All documents, information, programs, materials or other information (hereinafter 'materials') created while performing chargeable services under this Contract shall be the exclusive property of the State. Use of materials other than related to Contract performance by the Contractor without the prior written consent of the State is prohibited. The Contractor shall be responsible for any loss or damage to these materials while they are in the possession of the Contractor, and any loss or damage shall be restored at the Contractor's full expense. Full, immediate and unrestricted access to the materials shall be available to the State.

#### **47. Renewal Option**

There may be renewals of two (2) years each for a total term of eight (8) years. Renewals shall be at the mutual agreement of the parties in compliance with IC 5-22-17-4. Any such renewal shall be executed during the last six (6) months of the previous term of the Contract. The term of the Contract, including any renewals thereof, may not exceed eight (8) years. This Contract may be temporarily extended, but such extension is subject to the approval of the Commissioner of the Department of Administration and the State Budget Director.

#### **48. Drug-Free Workplace Certification**

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Contractor will give written notice to the State within ten (10) days after receiving actual notice that an employee has been convicted of a criminal drug violation occurring in Contractor's workplace in connection with this Contract.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of

contracting opportunities with the Contractor for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Contract amount set forth in this agreement is in excess of \$25,000.00, Contractor hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000. No award of a contract or grant shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000, shall be valid unless and until this certification has been fully executed by the Contractor or Grantee and made a part of the contract or agreement as part of the contract documents. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

The Contractor/Grantee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor s workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform employees that (1) the dangers of drug abuse in the workplace; (2) the Contractor s policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- C. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the contracting State Agency and the Indiana Department of Administration within ten (10) days after receiving notice from an employee under subdivision (c)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

#### **49. Covenant Against Contingent Fees**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

For breach or violation of this warranty, the State shall have the right to terminate this Contract in accordance with the termination clause, and, at its sole discretion, to deduct from the Contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **50. Contractor Personnel**

The Contractor shall at all times employ qualified and sufficient personnel to perform the contracted services in the manner and within the period of time requested by the State. Contractor further understands that the State has relied on the qualifications and experience of the Contractor's personnel as the primary basis for awarding this Contract. Accordingly, if certain personnel are requested by the State to perform a specific task, then that personnel shall be assigned to perform the task unless the employee(s) is terminated or resigns from employment. If an employee terminates or resigns from employment with the Contractor, the Contractor shall promptly replace the employee with a person of equal or greater skill and expertise. The State must approve such replacement. The Contractor shall bear all cost and responsibility for insuring that replacement personnel are trained and adequately prepared to assume all responsibilities of the previously assigned employee.

Any person assigned by the Contractor shall, at the written request of the State, be removed forthwith by the Contractor. If the person is not removed or if replacement personnel are deemed unsuitable for proper completion of the work, the work may be suspended by written notice until the requirements have been met or if such request by the State is not met, the State will not be responsible for any charges associated with work performed by non-approved personnel.

#### **51. Termination**

The State may terminate and cancel this Contract without prejudice to any rights or cause of action the State may have against the Contractor, if the Contractor is adjudged bankrupt; or the Contractor makes a general assignment for the benefit of creditors; or a receiver is appointed due to the Contractor's insolvency; or a court of competent jurisdiction finds that the Contractor persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction.

The State, in addition to other rights set forth elsewhere in the Contract, may terminate the whole or any part of this Contract at any time if the State determines that the Contractor has failed to make satisfactory progress toward performance. In such a case, the State will transmit a Termination

Notice of the default of the Contractor by certified mail, return receipt requested, at least ten (10) days prior to termination date, and the Contract shall be terminated effective on the date specified in the State's notice. The Contractor shall continue Contract performance to the extent not terminated under the provision of the above paragraph and shall be compensated for his performance pursuant to the rates set forth herein. In the event that the State terminates the Contract, in whole or in part as provided in this clause, the State may procure, upon such terms and in such manner as it may deem appropriate, services similar to those so terminated, and the Contractor shall be liable to the State for any reasonable transition costs to another vendor for such similar services. The rights and remedies of the State provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## **52. Termination for Convenience**

The performance of work under this Contract may be terminated, in whole or in part, if the State determines that such termination is in the best interest of the State. Termination of work shall be affected by delivery to the vendor of a termination notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

## **53. Foreign Corporation**

Pursuant to IC 23-1-49-1 et seq. foreign (non-Indiana) corporations are prohibited from doing business within the state of Indiana without having first obtained a certificate of authority from the Indiana Secretary of State to transact business. Contractor further represents and assures that it has complied with the mandates of IC 5-22-16-4, relative to foreign corporations doing business with Indiana government if Contractor is a foreign corporation, at the time of its execution of the Contract.

## **54. Public Records Law**

This Contract is subject to the Indiana Public Records Act, IC 5-14-3-1 et seq. Contractor understands and expressly agrees that the entire contents of this Contract, including pricing or any attachment or referenced document, is subject to the inspection of and disclosure to any party, including copying, without any limitation whatsoever.

## **55. Entire Agreement**


This Contract constitutes the entire understanding between the parties with respect to the subject matter; all prior agreements, representatives, statements, negotiations, and undertakings, whether written or oral, are superseded hereby.

**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK**

The parties having read and understood the foregoing terms of this Contract do by their respective signatures dated below agree to the terms thereof, including, if this contract is in excess of \$25,000, paragraph 35, Drug-Free Workplace Certification.

Contractor: T-NETIX, Inc.

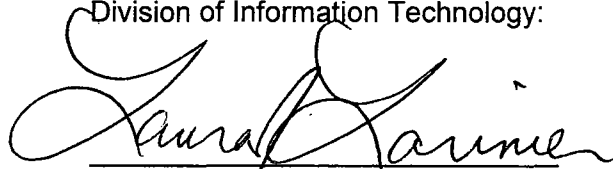
Department of Administration  
Division of Information Technology:



Richard E. Cree  
E.V.P. Business Development &  
Intellectual Property

Date: 7-24-01

Federal I.D. #: 84-1037352




Laura J. Larimer  
Director

Date: 8/2/01

Department of Administration:

State Budget Agency:



Glenn R. Lawrence  
Commissioner

Date: 8/6/01



Betty Cockrum  
Director

Date: 8/10/2001

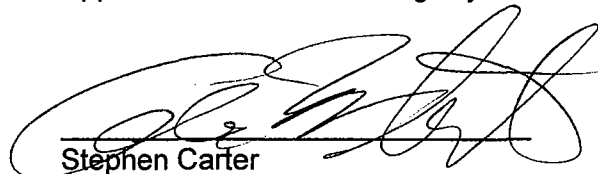
Information Technology Oversight  
Commission:

Approved as to form and legality:



Wm Pierce for  
Printed Name  
Commission Chair

Date: 3-Aug-2001



Stephen Carter  
Attorney General

Date: 8/17/01