

**AGREEMENT FOR PAY TELEPHONE LOCAL AND INTRALATA
LONG DISTANCE SERVICE**

FOR

**THE STATE OF INDIANA
DEPARTMENT OF ADMINISTRATION
INFORMATION SERVICES DIVISION**

WHEREAS, the State of Indiana ("State") desires to enter into this Agreement for Pay Telephone Local and Long Distance Voice and related Facilities Maintenance Services for certain designated pay telephones in return for receiving a percentage of billed revenues generated from pay telephone use; and

WHEREAS, AT&T Corp., on its own behalf and on behalf of its affiliates and subsidiaries, including but not limited to TCG Public Communications, Inc. (jointly, "Contractor") agrees to provide to the State of Indiana Pay Telephone Local and Long Distance Services and pay a mutually agreed to percentage of billed revenues generated from use to the State;

NOW THEREFORE, the parties agree that the terms and conditions specified below will govern the services to be delivered and the payment of commissions:

1. Duties of Contractor

The Contractor shall provide services in the area of local, intraLATA and intraLATA long distance payphone service for Indiana State governmental facilities (the "Payphone Services") as such are listed in The Proposal ("Statement of Work"), RFP, and all Attachments, which are attached and hereby incorporated into this Contract.

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 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 two additional renewals of twenty-four (24) months each, for a total maximum term of eight (8) years. To renew the contract, the State must give written notice to AT&T no later than thirty (30) days prior to the expiration of the initial term or any renewal term. In the event that the State does not give timely notice of its desire to renew the Agreement, the Agreement shall continue on a month-to-month basis, terminable by either party upon thirty (30) days notice, subject to the provisions of Section 23.

3. Contractor's Role and Responsibility

A. The contractor, in consideration of the terms and conditions contained in this Contract, agrees to provide the Payphone Services to the State.

B. The Contractor agrees to pay the State a percentage of revenues generated from the use of the Payphone Services in accordance with the commission rate set forth below in Section 40.

C. Contractor also agrees to cooperate with the State's vendor for interLATA long distance services to be provided to users of the Payphone Services. Any charges payable to Contractor by

the State's vendor for such calls and associated services shall not be subject to the payment of the commission fees specified in Section 40.

4. Local Operating Company Charges

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

5. Contract Administration

Contractor acknowledges that the Indiana Department of Administration, Division of Information Technology is the State's sole representative for conducting business with Contractor concerning the Payphone Services. 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 but this shall not exclude the Contractor from dealing directly with the Department of Corrections regarding operational matters affecting Inmate Services without involving the Division of Information Technology.

6. Faithful Performance Bond

A. The Contractor agrees to furnish to the Indiana Department of Administration a Performance Bond in the amount of \$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. Individual performance bonds may have annual terms and will be renewed or replaced for subsequent years.

B. 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.

C. 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: Shelley Harris

D. If there be any conflict between this Contract, the RFP, and/or the Contractor's response to the RFP, the order of priority shall be (1) this Contract, (2) Contractor's RFP Response and all attachments thereto, and (3) the RFP and all attachments thereto. Contractor's RFP Response and its attachments, and the State's RFP and its attachments, are hereby incorporated by reference.

E. 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

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

B. Subject to the provisions of Section 7.C, the State may from time to time request that Contractor 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 this Section 7. Change notification may be given by telephone, fax, written letter, or email.

C. Contractor and State agree to reasonably negotiate regarding the initial number and location of public pay telephones, and any additions or deletions of public pay telephones. Such negotiations shall consider factors such as: (i) whether a public pay telephone should remain in place or be added in order to meet public safety or convenience requirements; (ii) whether the public pay telephones at a State location may be reduced due to insufficient demand; and/or (iii) whether the total number of public pay telephones in an individual bank of telephones can be reduced without unreasonably inconveniencing the public. The Contractor and State shall seek to minimize the number of public pay telephones (other than public safety telephones) which generate less than \$50.00 in monthly gross revenues for Contractor. The ultimate decision as to whether to remove, add or move any public pay telephones shall be at the sole discretion of the State. Contractor shall not, however, be obligated to pay commissions on any State location in any month in which the average monthly gross revenues to the Contractor from all the public pay telephones at that location are less than \$50.00.

8. Communication Charges

All costs and expenses incurred by Contractor in providing the Payphone Services shall be borne by the Contractor.

9. Implementation

The Contractor shall be responsible for full implementation of the Payphone Services and in all other respects making the services and equipment ready for operational use.

10. Failure to Deliver Conforming Services

The cutover dates of Inmate 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 the timing schedules of the State's programs. If any portion of the Inmate Service is not installed by the date agreed by the parties, 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 Section 10, 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 of any claim for liquidated damages pursuant to this paragraph on or before the date that the State deducts such sums from money payable to the Contractor or demands payment from the Contractor, but not later than sixty (60) days after the original due date for the delayed installation. The amount of 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 installation for a location, but not for more than 30 calendar days per location. Provided, however, that delays outside the direct control of the Contractor, such as due to the site not being ready, changes in the State's orders or requirements, delays by the incumbent local exchange carrier, delays due to actions by the State, or delays due to force majeure, shall not be subject to the payment of liquidated damages. Additionally, the maximum amount of liquidated damages payable under this Section 10 from all causes shall not exceed the sum of ten thousand dollars (\$10,000.00) per location over the term (including any extensions or renewals) of this Contract, or one hundred thousand dollars (\$100,000) in total over the term (including any extensions or renewals) of this Contract. The payment of liquidated damages under this Section 10 shall be the State's sole and exclusive remedy for any failure of Contractor to meet cutover date objectives, unless the failure to meet cutover date objectives is so severe that termination for cause is justified under Section 50.

11. 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.

12. Warranty

The Contractor warrants, represents and assures that the Payphone Services to be provided hereunder shall conform in all aspects to the specifications contained in the RFP Response, which Contractor and State believe 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.

13. Service Degradation

A. Contractor warrants that the communications network providing the Inmate Services under this Contract will perform in accordance with the statements of the RFP Response for the network. This warranty shall be in effect throughout the term of this Contract.

B. If the communications network providing the Inmate Services 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 commence repair of all service degradations seven (7) days a week, twenty-four (24) hours per day. For the purpose of this provision, a service degradation shall be defined as any loss of service as defined in the RFP.

C. When an Inmate Service is interrupted and interruption exceeds four (4) hours, as measured from the time interruption is reported to or is detected by the Contractor, whichever occurs first, Contractor will reimburse the State for the loss of commission revenue. The reimbursement payment will be based on the actual length of time of the outage and will be calculated based on the actual reduction in commissions for the affected telephone unit compared to the previous month's actual commission from the same telephone unit. Additionally, the maximum amount of liquidated damages payable under this Section 10 from all causes shall not exceed the sum of ten thousand dollars (\$10,000.00) per location over the term (including any extensions or renewals) of this Contract, or one hundred thousand dollars (\$100,000) in total over the term (including any extensions or renewals) of this Contract. The payment of liquidated damages under this Section 13 shall be the State's sole and exclusive remedy for any service interruptions, unless the interruptions are so severe that termination for cause is justified under Section 50.

14. Access to Records

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

15. Assignment

The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent, which consent shall not be unreasonably withheld. Provided, however, that Contractor may assign and transfer this Contract in its entirety without such consent to any successor-in-interest of Contractor with or into which Contractor may merge or consolidate or which may succeed to the assets of Contractor or a major portion thereof related to its inmate and pay telephone operations, or to any parent, subsidiary or affiliate corporation. Additionally, the Contractor may assign its right to receive payments to such third parties as the Contractor may desire 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. Such assignment of its right to receive payments shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

16. Audits

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, and audit guidelines specified by the State.

17. Authority to Bind Contractor

Notwithstanding anything in the contract to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor designated above and has obtained all necessary or applicable approvals from the home office of the Contractor to make this Contract fully binding upon the Contractor when his/her signature is affixed and is not subject to home office acceptance hereto when accepted by the State of Indiana.

18. Changes in Work

In the event the State requires a major change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its honest and reasonable judgment. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

19. Compliance with Laws

The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of the contract require formal modification.

20. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition

A. The Contractor agrees that all of the State's proprietary information, which may include specifications, designs, plans, data, findings, recommendations, proposals, software, computer systems or other Confidential Information which may be disclosed to the Contractor in furtherance of this Contract shall be the property of the State. 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.

B. Any and all inventions, improvements, developments or innovations made, conceived or devised by Contractor in the course of providing Payphone Services hereunder, are and shall be the sole and exclusive property of Contractor, including all rights to patent, copyrights, trademarks and trade secrets inherent therein and appurtenant thereto. Neither ownership of, nor title to any invention, improvement, development or innovation (including all rights to patents, copyrights, trademarks and trade secrets inherent therein and appurtenant thereto) provided or made available to the State by the Contractor in the course of providing Payphone Services hereunder shall thereby pass to the State. Subject to the foregoing, if, in the course of providing Payphone Services hereunder, the Contractor shall develop content or materials that are specific and unique to the State, and which content or materials are not applicable to other customers of the Contractor, then the Contractor shall assign all rights to such content or materials to the State.

C. The Contractor hereby grants to the State the non-exclusive, personal and non-transferable limited right (including patent and copyright licenses) to use all Payphone Services delivered to the State under this Contract solely for the internal business purposes of the State, or for such other purposes as may be mutually agreed in writing by the parties. Except as otherwise specified herein, no other right or license to any of Contractor's intellectual property rights is either granted or implied under this Contract.

D. The deliverables to be provided by the Contractor to the State under this Contractor may be in the form of an original document, or document(s), in paper or similar form, representing the professional advice of the Contractor. All originals and copies of the document(s) shall be the property of the State. Upon delivery of the document(s) to the State, the Contractor shall have no ownership right or interest in the document.

E. Nothing contained in this Contract shall restrict either party from the use of any ideas, concepts, know-how, or techniques relating to the Payphone Services outlined in this Contract, which either party, individually or jointly, develops or discloses under this Contract, except to the extent such use infringes any of either party's patent rights or copyrights or would result in a breach of the confidentiality provisions of this Contract. However, except for the licenses expressly granted hereunder, neither this Contract nor any disclosure made hereunder grants any license to either party under any patents or copyrights of the other party.

21. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, 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.

22. Conflict of Interest

A. As used in this section:

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

“Interested Party,” means (i) the individual executing this Contract; (ii) an individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or (iii) 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 the 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 that the Contractor knows or reasonably could know.**

23. Continuity of Services

A. The Contractor recognizes that the services under this Contract are vital to the State and must be continued without interruption and that, upon contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to (i)Furnish phase-in training, and (ii)Exercise its commercially reasonable efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice (i) furnish phase-in, phase-out services for up to six (6) months after this Contract expires, and (ii) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow a reasonable number of personnel to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

24. Debarment and Suspension

Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.

25. Default by State

If the State, sixty (60) days after 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.

26. Disputes

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

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute then the following procedure shall apply:

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

D. The State or Contractor may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State or Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for either party to terminate this Contract, and the unpaid party may bring suit to collect these amounts without following the disputes procedure contained herein.

27. Drug-Free Workplace Certification

A. 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 the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the Contractor's workplace. This policy is limited to Contractor's employees within the State of Indiana and employees located outside the State of Indiana who perform services pertaining to the Contract.

B. 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 of Indiana for up to three (3) years.

C. In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this Contract 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 \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents. This certification is limited to Contractor's employees within the State of Indiana and employees located outside the State of Indiana who perform services pertaining to the Contract.

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

(i) 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;

(ii) Establishing a drug-free awareness program to inform employees of (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;

(iii) 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 Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(iv) Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

(v) 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

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

28. Force Majeure

Neither party shall be liable for delays or performance failures resulting from and caused by

acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, acts or war, epidemics, act of Federal or State agencies or other disasters or events. But, in every case, the delays must be beyond the control and without the fault or negligence of the nonperforming party.

29. Funding Cancellation

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

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, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses for bodily injury (including death) and damage to real and tangible personal property to the extent that such loss was proximately caused by the negligence, gross negligence, or willful misconduct of the Contractor or any person for whose conduct the Contractor is responsible and which arises from the performance or receipt of work under this Contract, if any.

32. Independent Contractor

A. Both parties hereto, in the performance of this Contract, shall act 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 purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

B. The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

33. Information Technology Accessibility

The contractor acknowledges and agrees that all hardware, software and services provided to or purchased by the State must be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 749d), as amended.

34. Key Person(s)

The parties agree that no individual or individuals are essential to the Payphone Services.

35. Licensing Standards

The parties agree that Contractor and its employees and subcontractors will comply with all applicable licensing standards, certification standards, accrediting standards and any other laws or regulations governing services to be provided by the Contractor pursuant to this Contract. State shall not be required to reimburse Contractor for any services performed when Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, or regulations. If licensure, certification or accreditation expires or is revoked, Contractor agrees to notify State immediately thereof.

36. Nondiscrimination

A. Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

B. The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the Contractor employs fifty (50) or more employees and does at least \$50,000.00 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. The Contractor 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. Breach of this covenant may be regarded as a material breach of contract.

37. Notice to Parties

Notices to either party shall be in writing to the address indicated below 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.

Notices to the State shall be sent to:

Product Service Manager,
DoIT
Room N551
100 North Senate Ave.
Indianapolis, IN 46204

Notices to the Contractor shall be sent to:

AT&T Corp.
Public Communications
100 Baylis Road
Melville, N.Y. 11747
Attention: John Hyland

38. Order of Precedence

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the order set forth in Section 6.D above.

39. Ownership of Documents and Materials

All reports to be developed and delivered to the State under the Contract, which are unique to the State, shall be the exclusive property of the State. Use of the reports other than related to Contract performance by the Contractor, without the prior written consent of the State is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss or damage to the reports while they are in the possession of the Contractor. This provision shall in no way grant any property rights to any proprietary software program, or any part thereof, licensed and used by Contractor or its subcontractor, if any, in provisioning reports hereunder to the State.

40. Commission Payments and Rates

State has selected Contractor's rate and commission option number two(2) as stated in its RFP Response. Accordingly, Contractor shall provide to the State an eighteen percent (18%) rate of commission for billed revenues that are generated for the Contractor from all public pay telephone stations and inmate pay telephone stations used to provide the Payphone Services.

41. Contractor Personnel

A. 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.

B. 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.

42. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder 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, IC 34-54-8, and IC 34-13-1.

43. Progress Reports

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

44. Renewal Option

This contract may be renewed as stated in Section 2.

45. Severability

The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.

46. Substantial Performance

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

47. Successors and Assignees

The Contractor binds its successors, executors, administrators, and assignees to all covenants of this Contract.

48. Taxes

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

49. Termination for Convenience

This contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

50. Termination for Default

A. The State may terminate this Contract in whole or in part, if, after receiving at least thirty (30) days advance written notice of an alleged default, the Contractor fails, within that thirty day period, or such longer period as may be reasonably required to remedy the default using due diligence, to: (i) correct or cure any material breach of this Contract; (ii) perform material services within the time specified in this Contract or any extension; (iii) make progress in providing the Payphone Services so as to endanger Contractor's reasonable ability to perform this Contract; or (iv) perform any of the other material provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract.

51. Travel

Expenditures made by the Contractor for travel will not be reimbursed by the State.

52. 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.

53. Work Standards

The Contractor agrees to execute its responsibilities by following and applying commercially reasonably professional and technical guidelines and standards, as are typically applied in the industry in the provision of such services. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant such request.

54. Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she 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.

55. Termination due to Regulatory Changes.

Either party may terminate or renegotiate this Contract if the Federal Communications Commission, a State Public Utility Commission or a Court of competent jurisdiction issues an order or ruling which materially and adversely affects this Contract, or the party's ability to perform its responsibilities as set forth herein. Such termination shall not give rise to any claims for damages, provided, however, that the parties shall comply with their obligations hereunder up to the date of termination. Any order requiring AT&T to reduce its rates for the services provided to the public

using the Payphone Services shall be deemed to be a material and adverse ruling for purposes of this Section.

56. Limitation of Liability.

EXCEPT IN CASES INVOLVING WILLFUL OR WANTON MISCONDUCT, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, AT&T'S LIABILITY TO THE STATE IS LIMITED TO ITS OBLIGATIONS TO PAY COMMISSIONS AS SET FORTH HEREIN. AT&T SHALL NOT BE LIABLE FOR INTERRUPTION OF SERVICE FOR ANY CAUSE OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, INCLUDING LOST PROFITS (WHETHER OR NOT AT&T HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE), BY REASON OF ANY ACT OR OMISSION IN ITS PERFORMANCE UNDER THIS AGREEMENT. AT&T'S RIGHTS AND OBLIGATIONS REGARDING ITS PROVISION OF COMMUNICATIONS SERVICES TO END USER CALLERS IS AS SET FORTH IN ITS APPLICABLE TARIFFS. ADDITIONALLY, THERE ARE NO AGREEMENTS, WARRANTIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

57. No Third Party Beneficiaries

This Contract shall not provide any person not a party to this Contract with any remedy, claim, liability, reimbursement, commission, cause of action or other right in excess of those existing without reference to this Contract.

58. Subcontractors.

A. Contractor must obtain the approval of the State before subcontracting all or any portion of this Contract. Notwithstanding the foregoing, the parties agree that AT&T may subcontract portions of the Payphone Services work under this Contract to Cooper Communications Group and Publicall without further authorization or approval from the State. Additionally, Contractor may freely subcontract the purchase of standard commercial supplies, raw materials, or general telecommunications services.

B. The Contractor will be responsible for Contract performance, compliance with terms and conditions of the Contract and the requirements of Federal and State equal opportunity and affirmative action statutes, rules and regulations in all subcontracts, if subcontractors are used.

59. Blocking; Fraud.

State acknowledges and agrees that calls to certain numbers, countries or locations may be blocked by AT&T for security reasons or to reduce fraud or theft of service. AT&T will also block access to numbers as reasonably requested by State.

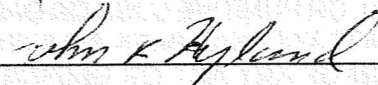
60. Regulatory Tariffs

Any regulated telecommunications services provided pursuant to this Contract are, as to intrastate services, subject to the Contractor's tariffs on file with the Indiana Utility Regulatory Commission, and, as to interstate services, subject to the Contractor's service guide as published on its web site at att.com. In the event of any conflict between the terms and conditions of this Contract and such tariff(s) with respect to such services, the provisions of the tariff(s) or service guide will control. Contractor reasonably believes at the time of entering into this Contract that no conflict


exists between the tariff(s) and service guides and this Contract.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.


Contractor:

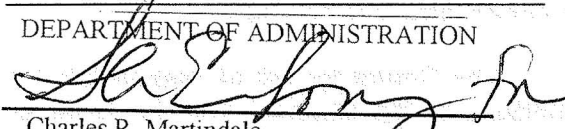
By: 
Printed Name: JOHN K. HYLANT
Title: VICE PRESIDENT
Date: 1/16/2004

Division of Information Technology:

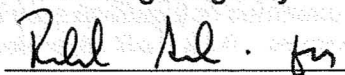
By: 
Printed Name: LAURA J. LARIMER
Title: CHIEF INFORMATION OFFICER
Date: 1/23/04

**Information Technology Oversight Department of Administration
Commission**

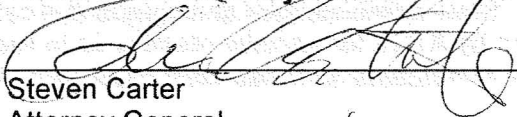
By: 
Printed Name: Wm Pierce
Title: Systems Consultant
Date: 28-Jan-2004

DEPARTMENT OF ADMINISTRATION

Charles R. Martindale,
Commissioner
DATE 1/30/04

State Budget Agency


Marilyn F. Schultz
Director
Date: 2-5-04

Office of the Attorney General


Steven Carter
Attorney General
Date: 2/16/04