

**AGREEMENT FOR INMATE TELEPHONE SERVICE  
BETWEEN  
KANSAS DEPARTMENT OF CORRECTIONS  
AND  
T-NETIX, INC.  
CONTRACT NO. 05221**

AND NOW, on this 16th day of December, 2002, this Agreement is made by and between the Kansas Department of Corrections, by and on behalf of the State of Kansas, and as approved by the Kansas Department of Administration Division of Purchases, (hereafter "STATE") and T-NETIX, Inc., a firm incorporated under the laws of the State of Delaware (hereafter, "CONTRACTOR").

WITNESSETH:

WHEREAS, the Kansas Department of Corrections (KDOC) desires to acquire inmate telephone service in order to replace an existing contract for its adult offender facilities, currently eight in number, with five satellite facilities, which may be increased or decreased by the Department during the term of the contract; and

WHEREAS, State duly issued Request for Proposal No. 05221, on date of July 3, 2002, soliciting bids from vendors for inmate telephone service; and

WHEREAS, T-NETIX, Inc., a qualified vendor of telecommunications services for the corrections industry, submitted a proposal in response to the RFP; and

WHEREAS, ensuing negotiations between a Procurement Negotiating Committee representing the Department of Corrections, the Department of Administration, and the State of Kansas, and T-NETIX, Inc. have resulted in a determination by State that it is in the best interests of the Department of Corrections and the State of Kansas to enter into an agreement with T-NETIX, Inc. for acquisition of inmate telephone service.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, it is mutually agreed as follows:

**I. GENERAL TERMS**

**A. Scope**

STATE hereby authorizes CONTRACTOR to provide telephones, equipment and services for local, intraLATA, interLATA, and interstate telephone services from inmate telephones at STATE's designated facilities, as indicated on the "Facilities Receiving Inmate Phone Service" document, attached hereto, incorporated herein, and marked as "Exhibit A." During the term of the contract, CONTRACTOR shall be the exclusive provider of inmate telephone service for STATE. In its

discretion, the Department may increase or decrease the number of facilities served.

## **B. Contract Formation**

1. The contract between the parties consists of:

- (a) Amendments, if any, to the Contract;
- (b) The attached Contractual Provisions Attachment (Form DA 146a), which is hereby identified as "Exhibit C," and incorporated herein;
- (c) This contract;
- (d) Request for Proposal No. 05221, including Addenda 1-4; and
- (e) CONTRACTOR's written proposal.

2. In the event of a conflict among or between provisions of the various documents comprising the contract, the order of priority for resolving any such conflict shall be as indicated in I. B. 1. (a)-(e) above.

## **C. Contract Term and Termination**

1. The contract term shall be three (3) years, commencing on December 16, 2002, and terminating on December 16, 2005. The CONTRACTOR agrees to extend to STATE the option of extending the term of this contract for two (2) additional one-year periods. This renewal or extension shall be upon the same terms and conditions of the original Contract, except as provided by mutual agreement of the parties. If the STATE intends not to exercise its option, it shall specifically notify CONTRACTOR in writing on or before September 16<sup>th</sup> of any year when that option is not to be exercised.

2. This Contract may be terminated under the following conditions:

(a) By STATE, on or before September 16, of the third and any succeeding contract years, through notification to CONTRACTOR of a decision not to extend the contract, or

(b) By the State contracting officer at any time upon thirty (30) days written notice. The CONTRACTOR agrees that no penalty shall be allowed as a result of STATE's termination of this Contract prior to its expiration.

3. This Contract shall, at the sole discretion of STATE, automatically terminate at such time as CONTRACTOR shall become a debtor-in-bankruptcy,

either by voluntary or involuntary petition, and no notice of such termination shall be required.

**D. No Third Party Beneficiaries**

The parties do not enter into this contract for the benefit of any person other than the parties to this contract, nor do they intend that any person be or become a third party beneficiary to this contract.

**E. Assignment and Subcontracting**

This contract and the covenants and agreements contained herein shall be binding upon and inure to the benefit of successors and assigns of the parties hereto and may not be assigned by either party hereto without the prior written consent of the other party. Any attempt to assign this contract in violation of this Paragraph is void and of no effect. CONTRACTOR shall not subcontract with any other entity relative to the provisions and requirements of this Contract without prior written approval from STATE.

**F. Transition Responsibilities of Contractor**

Upon the expiration or termination of this contract, should STATE award any succeeding contract for inmate telephone service to a vendor other than CONTRACTOR, CONTRACTOR agrees to cooperate fully and in all respects with STATE and the new contracted vendor in accomplishing an efficient and effective transfer of responsibilities.

**G. Notices**

All notice or other communications required or permitted to be given under this contract shall be in writing and shall be deemed to have been duly given if delivered personally by hand, via nationally recognized overnight courier, or mailed certified mail, return receipt requested, postage prepaid on the date posted and addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

(a) STATE:

Secretary of Corrections  
900 S.W. Jackson, 4<sup>th</sup> Floor  
Topeka, Kansas 66612-1284  
Attn: Chief Legal Counsel

with a copy to:

John T. Houlihan, Director  
Division of Purchases  
Department of Administration  
900 S.W. Jackson, Room 102  
Topeka, Kansas 66612-1286

(b) CONTRACTOR:

T-NETIX, INC.  
1544 Valwood Parkway, Suite 102  
Carrollton, Texas 75006  
Attn: Vice President Sales

with a copy to:

T-NETIX, INC.  
General Counsel's Office  
2155 Chenault Drive, Suite 410  
Carrollton, Texas 75006

#### **H. Copyrights Reserved to STATE**

No reports or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of CONTRACTOR, with all rights reserved for STATE.

#### **I. Auditors' Access to Records**

Neither party to this Contract shall prohibit or prevent the Legislative Division of Post Audit from having access pursuant to K.S.A. 46-1101, *et seq.* to any records, documents, or other information—confidential or otherwise—regarding or relating to the execution and/or performance of this Contract.

#### **J. Sole and Exclusive Agreement; Modification**

This contract, as defined and set forth in Sec. I, Paragraph C above, represents the sole and exclusive agreement between the parties hereto, and this contract shall not be changed, modified or amended except by a written agreement executed by the parties.

#### **K. Governing Law; Jurisdiction and Venue for Contract Litigation**

This Contract shall be governed and construed under the laws of the State of Kansas, without regard to its conflicts or choice of laws rules. Any litigation of this Contract between the parties shall be commenced and maintained in Federal District Court, District of Kansas, sitting at Topeka, or in Shawnee County District Court, the parties waiving any objection that venue in any such forum is inconvenient or improper, and the parties further consenting to, and waiving any objection to, jurisdiction (subject matter or personal) of such courts.

#### **L. Non-assumption of Liability**

Neither party assumes or accepts any liability for the acts or failures to act, professionally or otherwise, of the other party, its agents, servants, or employees.

#### **M. Indemnification by CONTRACTOR**

CONTRACTOR will indemnify and shall keep, save and hold harmless STATE from and against loss and any and all claims, demands, causes of action, damages, costs or liability arising from or out of any allegation of or actual negligence, gross negligence, willful or wanton conduct, or intentional act or omission on the part of CONTRACTOR's employees, or disregard of proper or lawful instructions from STATE. This provision shall remain in effect after the termination of the contract with respect to any matter arising from CONTRACTOR's activities during the term of the contract. CONTRACTOR further agrees to make its personnel available to assist in the defense of any action arising from or involving CONTRACTOR's activities during the term of the contract, including actions filed after the termination of the contract, without additional cost to STATE.

#### **N. Work Stoppages**

In the event of a strike, slowdown or full or partial work stoppage of any kind by the employees of CONTRACTOR, CONTRACTOR hereby acknowledges its responsibility to continue to perform its obligations under this contract and will indemnify STATE for any reasonable losses it may incur in the event of a strike, slowdown, full or partial work stoppage by CONTRACTOR's employees.

#### **O. Access to Correctional Facilities; Training of CONTRACTOR's Employees; Compliance with Applicable Law by CONTRACTOR and Any Approved Subcontractor**

1. Any civilian employee of CONTRACTOR or approved subcontractor shall be subject to an initial and continuing security clearance by the wardens of the respective correctional facilities. A security clearance is required before entrance into the security perimeter of a Department of Corrections facility. CONTRACTOR shall submit the names of the civilian employees, together with an authorization for the release of information signed by the employee on forms provided by STATE.

2. In recognition of the sensitive nature of correctional facilities, CONTRACTOR agrees that in the event that the warden of a correctional facility, in the warden's discretion, is dissatisfied with any CONTRACTOR employee who is employed, whether full time or part time, at that facility, the Department of Corrections, acting through the warden, may deny access of such employee to the correctional facility. The facility warden shall give written notice to CONTRACTOR of such fact and the reasons therefore, and CONTRACTOR shall promptly remove the individual in question from employment at the facility and shall cover with other appropriate personnel until an approved replacement is found. CONTRACTOR shall include a provision of like effect in its agreement with any subcontractor providing services on the premises of a correctional facility.

3. All civilian personnel employed by CONTRACTOR or any approved subcontractor pursuant to this agreement shall attend an orientation program and annual training designed by the wardens of the respective correctional facilities. CONTRACTOR's employees shall promptly notify facility staff of any security problems that come to their attention.

4. All personnel of CONTRACTOR and any approved subcontractor shall comply with the published and written regulations and policies and procedures of the Department of Corrections, with facility general orders, and the laws of the State of Kansas and the United States of America. CONTRACTOR's personnel shall adhere to the same standards of personal appearance as are applicable to non-uniformed staff of the Kansas Department of Corrections. CONTRACTOR specifically agrees that its employees will comply with Department of Corrections' policy regarding sexual harassment and discrimination.

## **P. Resolution of Problems and Disputes**

In the event of an operational problem occurring at a facility, CONTRACTOR shall notify the warden of the facility and the Department of Corrections Telecommunications Manager of such problem. In the event of an operational problem that is not facility-based, or any other problem concerning contract administration, CONTRACTOR shall notify the Telecommunications Manager. If either party believes the other party has violated the terms of this contract, the party having such belief shall notify the other party, in writing, of the alleged violation. The parties shall then meet and confer on the issue within five (5) days of receipt of the written notice.

## **Q. Non-waiver of Contract Breaches**

The waiver of any breach of this contract by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

## **R. Unenforceability of Portion of Contract and Separation of Other Provisions of Contract**

If any provisions contained in this contract are held to be unenforceable by a court of law or equity, this contract shall be construed as if such provision did not exist, and the unenforceability of such provisions shall not be held to render any other provision or provisions of this contract unenforceable.

## **S. Effect of Headings**

Section and paragraph headings used herein are provided solely for purposes of convenience, and are not intended to limit or define the meaning of the text to which they apply, or to be used in construing or interpreting this contract.

# **II. RESPONSIBILITIES OF CONTRACTOR**

## **A. Security Measures**

The CONTRACTOR must ensure that all security measures currently identified in the Request for Proposal, as well as those identified during negotiations between the parties, will be promptly implemented and then maintained throughout the term of the contract, including any extensions thereof. Specifically, in regard to security measures identified during negotiations, it is the understanding and intent of the parties that CONTRACTOR shall undertake efforts to prevent three-way calling; telephone calls by an inmate from an inmate phone in a facility to a party using a wireless telecommunications device or "cellphone; and inmate telephones in a facility receiving incoming telephone calls.

## **B. Implementation and Development of Pre-paid Calling Plans**

1. CONTRACTOR shall immediately, and throughout the term of the contract, including any extensions thereof, offer a pre-paid calling plan to parties listed on the inmate calling list who are duly approved to receive calls from an inmate, as an alternative calling and billing procedure to the ordinary collect-call procedure. The rates for consumer charges, and the commissions owed to the STATE under this plan, shall be as indicated and set forth more fully in Section III below.

2. CONTRACTOR shall also develop a pre-paid calling plan that may be funded by individual inmates, through accounts established in facility canteens, or otherwise as may be determined by STATE. This plan shall be offered as a voluntary alternative to the ordinary collect-call procedure. The inmate pre-paid calling plan shall not be offered to inmates or implemented by CONTRACTOR until reviewed and approved by the Secretary of Corrections, and shall be made available on a facility-by-facility basis, or otherwise as determined by the Secretary. CONTRACTOR shall be responsible for providing staffing and any other resources necessary to implement an inmate pre-paid calling plan.

## **III. CALLING RATES; BASIS, GUARANTEE, AND PAYMENT OF COMMISSIONS**

### **A. Calling Rates**

1. Rates to be charged to consumers under the collect-call procedure and the pre-paid plan for consumers on approved inmate phone call lists during the initial term (first three years) of the contract shall be as indicated and set forth on the "Inmate Phone Service Call Rates" chart, which is identified as "Exhibit B," attached hereto and incorporated herein. Rates to be charged to consumers under said procedures or plan during any extension of the contract shall be as mutually negotiated and agreed between the parties. Any rate increases proposed during the term of a contract extension are likewise subject to approval by STATE, and shall be proposed to STATE at least sixty (60) days in advance of the date the increase is proposed to take effect.

2. Rates to be charged to inmate consumers in the event that an inmate-funded pre-paid calling plan is approved by the Secretary of Corrections shall be as mutually negotiated and agreed between the parties, but such rates, in any event, shall not exceed those charged to consumers participating in the pre-paid calling plan for individuals on approved inmate phone call lists.

3. All rates, regardless of the procedure or plan under which they are assessed and billed, are subject to immediate and automatic reduction in the event that the charges that CONTRACTOR pays for lease of its land lines are reduced by its



lessor. Any such reduction in lease charges shall be passed on to the consumer undiminished.

4. Any program under which CONTRACTOR denies or blocks calls for the purpose of limiting abuse of credit or to limit consumer debt is subject to approval by STATE, and shall be proposed to STATE at least sixty (60) days in advance of the date the program is proposed to take effect.

## **B. Basis and Guarantee for Commissions Paid to STATE**

1. The STATE shall receive as a commission 48.25% of the amount billed for all accepted calls. In the case of calls made under a pre-paid calling plan, amounts debited against the account shall represent accepted calls.

2. The STATE shall receive annually a nonrefundable advance payment of TWO MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$2,750,000.00) as its minimum commission, regardless of whether that amount is greater than 48.25% of the amount billed for all accepted calls actually made during that year. If the cumulative amount of commissions derived by applying the commission rate of 48.25% to the total amount billed for all accepted calls actually made during that year exceeds the advance payment amount, then the STATE shall receive an additional payment, as set forth in Paragraph C below. If the cumulative amount of commissions derived by applying the commission rate of 48.25% of the total amount billed for all accepted calls actually made during that year falls below the amount of the advance payment, the STATE shall not reimburse CONTRACTOR for the amount of the deficit.

3. CONTRACTOR shall provide a monthly report to the Department of Corrections indicating the total number of accepted calls, including amounts debited against pre-paid calling accounts, number of attempted calls, and number of minutes billed for local, IntraLATA, InterLATA, and any other tariff schedule used as a basis for payment of STATE's commission. The report shall reflect such numbers and amounts on both a facility level and in aggregate totals for the Department, and shall be submitted to the Department no later than the 15<sup>th</sup> day of the following month.

4. Upon an award of a succeeding contract for inmate telephone service to a vendor other than CONTRACTOR, occurring during a contract year and in an instance in which the termination of the contract herein is not due to a material breach of the contract by CONTRACTOR, if, as of the transition date, the cumulative amount of commissions derived by applying the commission rate of 48.25% of the total amount billed for all accepted calls actually made during the transition year falls below the amount of the advance payment made by CONTRACTOR pursuant to Paragraph III B. (2), the State shall require the new vendor to reimburse CONTRACTOR for the amount of the deficit as a condition to the transitioning of the service. Reimbursement of a commission deficit shall

not be required if the contract is terminated for any reason effective on a contract anniversary date, and in no event shall the State be liable for any commission reimbursement.

**C. Payment of Commissions**

1. The first advance payment of \$2,750,000.00 shall be made to the Department of Corrections no later than December 30, 2002, and thereafter on the anniversary date of the contract's implementation, i.e., December 16<sup>th</sup>, in subsequent years.

2. Any additional commission payment due to STATE shall be remitted to the Department of Corrections on or before January 15<sup>th</sup> of the succeeding contract year (the first additional commission payment, if any, shall be due on January 15, 2004).

3. All commission payments shall be made payable to "The Kansas Department of Corrections," and shall be directed to: Kansas Department of Corrections, Fiscal Division, 900 S.W. Jackson, 4<sup>th</sup> Floor, Topeka, KS 66612-1284, Attn: Jim Rowe.

IN WITNESS WHEREOF, the parties have caused this contract to be executed on the day and year first above mentioned.

STATE OF KANSAS  
DEPARTMENT OF CORRECTIONS:

CONTRACTOR:  
T-NETIX, INC.

By: \_\_\_\_\_  
Roger Werholtz  
Acting Secretary of Corrections

By: \_\_\_\_\_  
Richard E. Cree  
Chief Executive Officer

Approved:

DEPARTMENT OF ADMINISTRATION  
DIVISION OF PURCHASES:

By: \_\_\_\_\_  
John T. Houlihan  
Director, Division of Purchases