

**STATE OF OREGON  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
INFORMATION RESOURCES MANAGEMENT DIVISION  
TELECOMMUNICATIONS SECTION**

**CONTRACT FOR INMATE AND PAYPHONE EQUIPMENT AND SERVICES AND  
ASSOCIATED INMATE MONITORING & RECORDING EQUIPMENT AND  
SERVICES**

**July 1, 2000**

**INTERAGENCY AGREEMENT BETWEEN  
THE OREGON STATE DEPARTMENT OF ADMINISTRATIVE SERVICES  
AND THE OREGON UNIVERSITY SYSTEM INTELCOM**

**AUTHORITY AND INTENT:**

Pursuant to OAR 125-022-0100 and the relevant requirements of ORS 190.110, the parties identified below desire to enter into an Interagency Agreement as further described herein.

This Interagency Agreement is between the Oregon Department of Administrative Services, Information Resources Management Division (DAS IRMD), and the Oregon University System Interinstitutional Telecommunications Committee (OUS INTELCOM). This Agreement identifies and describes mutually agreeable terms and conditions under which DAS IRMD shall grant OUS INTELCOM the delegated authority necessary to allow OUS INTELCOM to effectively and efficiently manage and administer its stake in the US West Communications (USWC) Payphone and M-88 contracts, centrally executed and administered by DAS IRMD, and under which OUS INTELCOM must procure certain telecommunications services. This delegation does not relieve DAS IRMD of its duties and responsibilities under ORS 283.500 (SB 994) nor does it grant OUS INTELCOM the authority to pursue its own separate contracts for said telecommunications services outside of DAS IRMD's central contracting authority, unless granted by DAS IRMD under separate delegation, but instead is intended to relieve the parties of unnecessary, inefficient contract administration, order processing and related procedural activities, while maintaining the benefit of leveraged purchasing and affording the parties increased efficiency and accountability during the terms of the respective USWC contracts.

**BACKGROUND:**

Senate Bill 994, passed by the 1995 Oregon Legislature and now incorporated into Oregon statute under ORS 283.500, provided DAS with the central purchasing and contracting authority to enter into contracts for telecommunications services on behalf of all State agencies including OUS. The USWC services currently in use by DAS and OUS are either covered by an existing Master Agreement (referred to as the M-88 contract) administered by DAS IRMD, or shall be included prior to such delegation to OUS.

The current M-88 contract is due to expire July 17, 2000. DAS IRMD has negotiations underway with USWC to renew the M-88 contract through December 31, 2002. Additionally, DAS IRMD has completed negotiations with USWC for statewide payphone services, which has resulted in a contract separate from the M-88 contract. The Payphone contract covers all OUS locations including those not currently in USWC territory. OUS INTELCOM is participating and has participated in these negotiations for the particular USWC telecommunications services in place at each of the OUS campuses. Under the current M-88 contract and contract administration processes used to date, all OUS requests or orders to USWC for new service, removal of service or other changes in service must route through DAS IRMD for review and approval. Additionally, the existing M-88 contracting process includes a set of Master Terms and Conditions (the Master Contract); a subset of Schedules identifying and describing specific types of service and the associated terms, conditions, and pricing applicable to the specific service; and a further subset of Site Agreements for each Schedule that identify the quantity and location of the services installed. All of these contract documents, and the related procedures and processes to establish and maintain them, require review, approval and administrative oversight by DAS IRMD.

DAS IRMD, OUS INTELCOM and USWC desire to revise these cumbersome and inefficient contract administration processes and procedures. For both the new Payphone and M-88 contracts, it is the intent of all parties to reduce the paperwork and the administrative processes and procedures associated with the administration of these contracts. This Interagency Agreement is intended to accomplish those objectives.

**AGREEMENTS:**

**AGREEMENTS:**

Regarding the administration and execution of the new USWC Payphone and M-88 contracts with DAS, DAS IRMD and OUS INTELCOM agree to the following:

1. OUS entities may place service orders or requests directly with USWC without having to submit said orders or requests to DAS IRMD for review and approval. Such orders or requests include repair or maintenance requests and orders for new service, removal of existing service or any other change in service. Additionally, OUS representatives will continue to interact directly with USWC on all billing or system administration issues as USWC will continue to bill each campus directly for services installed at the respective campus.



# STATE OF OREGON - CONTACTS HIGHER ED -

DAS IRMD & OUS INTELCOM  
INTERAGENCY AGREEMENT  
USWC PAYPHONE & MASTER AGREEMENT

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## ATTACHMENT I: OUS CAMPUS CONTACT LIST

The following are the primary contacts at each of the OUS campuses for purposes of service order, repair or other direct contact between the respective campus and USWC.

INSTITUTION	CONTACT PERSON	TITLE	PHONE	E-MAIL
UO	Dave Barta	Director, Telecom Services	541/346-1012	<a href="mailto:Dbarta@oregon.uoregon.edu">Dbarta@oregon.uoregon.edu</a>
PSU	Tim Johnston	Director, Telecommunications	503/725-2776	<a href="mailto:Johnstont@pdx.edu">Johnstont@pdx.edu</a>
OSU	Shay Dakan	Director, Telecom/Network Engineering	541/713-3500	<a href="mailto:Shay.dakan@orst.edu">Shay.dakan@orst.edu</a>
WOU	Darin Silbernagel	VP, Finance & Administration	503/838-8175	<a href="mailto:Silbernd@wou.edu">Silbernd@wou.edu</a>
OIT	Ron Wiegel	Interim Director, Computing Services	541/885-1747	<a href="mailto:Wiegelr@oit.edu">Wiegelr@oit.edu</a>
SOU	Kevin Talbert	Chief Information Officer	541/552-6448	<a href="mailto:Talbert@sou.edu">Talbert@sou.edu</a>
EOU	Marvin Taylor	Director, Computer Center	541/962-3606	<a href="mailto:Mtaylor@eou.edu">Mtaylor@eou.edu</a>

OUS INTELCOM Single Point of Contact: Tim Johnston, PSU

DAS IRMD Single Point of Contact: Randy Wells, Contract Administrator  
503/378-4705  
[Randolph.C.WELLS@state.or.us](mailto:Randolph.C.WELLS@state.or.us)

ATTACHMENT I

APR-22-03 TUE 11:57 FAX 503 4882

PSU TELECOMMUNICATIONS

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This **CONTRACT FOR INMATE AND PAYPHONE EQUIPMENT AND SERVICES AND ASSOCIATED INMATE MONITORING AND RECORDING EQUIPMENT AND SERVICES** (this "Contract") is made as of July 1, 2000, by and between **U S WEST COMMUNICATIONS, INC.**, a Colorado corporation ("Contractor") and the **STATE OF OREGON**, acting by and through its **DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS" or "DAS IRMD")**. Throughout this Contract, DAS or Contractor may individually be referred to as "Party" or together as "Parties."

## RECITALS

**A.** Pursuant to Exemption Order 338 dated June 20, 1997, State issued a Solicitation Number 10704001-98 dated June 25, 1998, amended by Addendum No. 1 dated June 25, 1998 and Addendum No. 2 dated July 14, 1998 (the "Solicitation") whereby State sought proposals for contracts for telephone services for all Pay Phones located on facilities owned or operated by State and all Inmate Phones located at facilities operated by the Oregon Department of Corrections (prison and Correctional Facilities), Oregon Mental Health Division (State Hospitals and Treatment Facilities), and Oregon Youth Authority (Oregon Youth Correctional/Educational Facilities), including, but not limited to, Pay Phones at Emergency Roadside and Public Access Areas owned or operated by various State Entities.

**B.** Contractor is in the business of providing payphone service within the meaning of Section 276 of the Telecommunications Act of 1996. In response to the Solicitation, Contractor submitted its Proposal to provide certain payphone services to State.

**C.** This Contract embodies the terms and conditions mutually acceptable to the Parties for the provision of the Services defined below.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the covenants and agreements set forth herein, the Parties hereby agree as follows:

### PART I DEFINITIONS

#### 1.1 DEFINITIONS

As used in this Contract, the capitalized terms contained in **Appendix 1.1** shall have the respective meanings set forth therein.

#### 1.2 CERTAIN RULES OF INTERPRETATION

The name assigned to this Contract and the part and section captions used herein are for convenience of reference only and shall not affect the interpretation or construction hereof.

Unless otherwise specified, (a) the terms "hereof," "herein" and similar terms refer to this Contract as a whole and (b) references herein to "Parts" or "Sections" refer to parts or sections of this Contract. The use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Contract to such Person or Persons or circumstances as the context otherwise permits. Time is of the essence in the performance of the Parties' respective obligations. Unless otherwise specified, all references to money amounts are to U.S. currency. All references, if any, to generally accepted accounting principles means to GAAP and all accounting terms, if any, not otherwise defined in this Contract have the meanings assigned to them in accordance with GAAP.

### 1.3 APPENDICES, EXHIBITS AND ATTACHMENTS

The appendices, exhibits and schedules to this Contract attached to this Contract are incorporated by this reference into this Contract.

### 1.4 CONTRACTOR AND SUBCONTRACTORS

State agrees that portions of the Services performed under this Contract will be performed by Contractor (local phone service) and portions will be performed by approved Subcontractors. State and all applicable State Entities hereby grant to Contractor, subject to the regulations of the FCC, the authority to act on behalf of the State and all applicable State Entities to select and contract with the carriers that provide interLATA calls from the Pay Phones and Inmate Phones, subject to the approval of State. As of the date hereof, the Subcontractors under this Contract are as follows: (i) Century Tel (intraLATA and local phone service); (ii) Sprint-United (intraLATA and local phone service); (iii) GTE (intraLATA and local phone service); (iv) AT&T (international, interLATA, 0+ and 1+phone service); (v) Dictaphone, Inc. (Monitoring and Recording Systems, inmate call recording and "Track Down" call detail management system); and (vi) T-NETIX, Inc. (hardware and software for inmate call control system). The foregoing notwithstanding, Contractor may provide any of the Services currently contemplated to be subcontracted to the Subcontractors described above, provided that the rates, prices and charges for such Services are no higher than those permitted under Section 3.1 below and that Contractor satisfies all of its other obligations under this Contract with respect to the provision of the Services. Any substitute or additional Subcontractors will be listed on the attached **Appendix 6.13** in accordance with the provisions of Section 6.13 below.

## PART II SERVICES

### 2.1 SERVICES

Contractor agrees to provide to State and all State Entities, and State agrees to purchase from Contractor for State and all State Entities, the services described in **Appendix 2.1** attached hereto (individually, a "Service", and collectively, the "Services"); provided, however, that this **Contract shall not apply to phone service provided to OYA facilities in Burns, Oregon (Eastern Oregon Youth Correctional Facility), Prineville, Oregon (Ochoco Youth Correctional Facility),**

Grants Pass, Oregon (Rogue Valley Youth Correctional Facility), and Albany, Oregon (Oak Creek Youth Correctional Facility), under contract between OYA and Alpha Telecom, Inc. unless and until the same are determined to be not valid or are otherwise terminated.

Without limiting any of the requirements contained in **Appendix 2.1**, Contractor agrees to: (a) provide local and long distance (intrastate intraLATA, intrastate interLATA, interstate, and international) telephone service for all Pay Phones and Inmate Phones at Contractor's expense; (b) install, maintain, and keep in operation all Pay Phones and Inmate Phones, associated equipment, station wiring, hardware, and enclosures, as specified in **Appendix 2.1**, at Contractor's expense; (c) install as required and maintain Monitoring and Recording Systems at all State correctional facilities (excluding OYA) at no cost to DOC or State; (d) provide initial new product and refresher training to DOC personnel as reasonably requested by DOC on the operation of Monitoring and Recording Systems at Contractor's expense; (e) service and repair all Pay Phones and Inmate Phones and associated equipment at Contractor's expense; (f) collect and count revenue from each Pay Phone installed; (g) provide alphabetical and classified directories, when appropriate; (h) retain ownership of all Pay Phones and Inmate Phones, Monitoring and Recording Systems, associated equipment, station wiring, hardware, software and enclosures provided by Contractor; (i) provide such personal background data as is required by DOC on any Contractor personnel intending to enter a correctional facility; (j) promptly report to State any manufacturer price reductions, model changes, and product substitution where substitution price is a factor; (k) provide, within sixty (60) days of the close of Contractor's fiscal year, an annual inventory of telephone numbers and locations of all Pay Phones; (l) provide, within sixty (60) days of the close of Contractor's fiscal year, an annual inventory of telephone numbers of all Inmate Phones and the DOC facility in which each such Inmate Phone is located; and (m) update all software and hardware used in connection with the Services rendered to DOC facilities, including, but not limited to, the Monitoring and Recording Systems, to be compatible with the most current version of Microsoft Windows operating system, provided the same after such upgrades is compatible with the existing systems utilized by DOC, including but not limited to, all existing data storage, and provide on-site training to all DOC personnel regarding such upgraded software and hardware.

During the Term of this Contract, Contractor shall keep in operation and maintain (i) all of the Inmate Phones and Pay Phones currently located in DOC facilities, and (ii) all of the Pay Phones currently located in facilities owned, leased, rented, or operated by any State Entity (other than DOC), regardless of whether such Inmate Phones or Pay Phones are uneconomical to Contractor. Contractor shall install, keep in operation and maintain all new Inmate Phones beyond those currently installed, which are requested to be installed by DOC in DOC facilities, without any cost to State or any State Entity, regardless of whether such Inmate Phones are uneconomical to Contractor. Contractor shall install, operate and maintain all new Pay Phones, beyond those currently installed, which are requested to be installed by State at any facility, without any cost to State or any State Entity, regardless of whether such Pay Phones are uneconomical to Contractor (subject to Section 2.1.1(b) of Appendix 2.1). Contractor shall have no right to remove or fail to keep in operation or maintain any Inmate Phone or Pay Phone that is either (i) currently located on any facility owned, leased, rented, or operated by any State Entity on the date hereof, or (ii) installed after the execution of this Contract by Contractor or one of its Subcontractors under this Contract, because any such Inmate Phone or Pay Phone is or becomes

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uneconomical to Contractor. The foregoing notwithstanding, Contractor shall (i) remove any Inmate Phone requested to be removed by DOC, and (ii) remove any Pay Phone requested to be removed by State. Before Contractor is required to install any new Pay Phone or Inmate Phone, Contractor must first receive written authorization from State.

Contractor may request that State consider allowing Contractor to remove certain Pay Phones that Contractor claims to be uneconomical to Contractor; provided, however, that this provision does not create any right in Contractor to have any such Pay Phone removed, and the decision of whether to remove such Pay Phones shall be made by State in its sole discretion.

Unless a longer period of time is mutually agreed to by the Parties, Contractor shall install any new Inmate Phone or new Pay Phone within thirty (30) days of the delivery to Contractor of a Written Authorization (as defined below) directing Contractor to install such new Inmate Phone or new Pay Phone. The foregoing notwithstanding, subject to the prior written consent of State, which shall not be unreasonably withheld, Contractor may request a period of time longer than thirty (30) days to install a particular new Inmate Phone or new Pay Phone that Contractor cannot reasonably install within such thirty (30) day period.

All Equipment, including, but not limited to, all Inmate Phones and Pay Phones, shall be new or "Like-New", except for Equipment already in place and previously installed under prior contracts between State and Contractor (provided such previously installed equipment is in Y2K Compliance). Contractor agrees that all of the Equipment used by Contractor or its Subcontractors shall be identical, equivalent or better to that equipment described in the Proposal, unless State consents in writing to any different equipment, which consent will not be unreasonably withheld.

Contractor shall list on all Pay Phones and Inmate Phones the written information (e.g., coin rate, prescribed long distance carrier, option for caller to use other long distance carrier, free access to dial tone, emergency services, directory assistance, and hearing impaired services) which is normal and customary in the industry to be listed on such Pay Phones and Inmate Phones, provided, however, that any information listed on any Inmate Phone is subject to DOC's prior written approval. Parties agree that certain written information is not applicable on Inmate Phones.

The T-NETIX Inmate Calling System and the Monitoring and Recording Services are more fully described in Sections 2.1.2.2 and 2.1.2.3 of Appendix 2.1, which shall be delivered to DOC and held by it as information or records of DOC entitled to confidential treatment under ORS 192.502(5). Unless required by law to do so, Contractor agrees to not disclose the information contained in Sections 2.1.2.2 and 2.1.2.3 of Appendix 2.1 without the prior written consent of DOC. State or any State Entity may disclose the information for any purpose, including, but not limited to, establishing the foundation for the admissibility of evidence.

Contractor agrees that all of the Services shall be Turn Key.



State may cancel, by written notice mailed not fewer than sixty (60) days prior to scheduled delivery, any purchase or orders for any new Inmate Phones or new Pay Phones placed under this Contract without penalty.

## **2.2 ORDERS FOR ADDITIONAL SERVICES**

A written authorization to implement Additional Services (a "Written Authorization"), delivered by State to the Contractor, shall be used to order Additional Services beyond the Initial Service, and to request any changes or additions to the Services. Such Written Authorization shall specify the quantity, service dates, and other operational parameters of the requested Services. State may require Contractor to assist in the preparation of such Written Authorizations by providing necessary Services description, operating parameters, and/or interface information to the extent that Contractor and Subcontractors can provide such assistance. This assistance shall be provided by Contractor at no added cost to State. Each such Written Authorization shall be approved and issued only by State.

## **2.3 SCOPE OF WORK**

The work contemplated under this Contract shall include all labor, materials, station wiring, transportation, equipment and other activities for, and reasonably incidental to, making the Services operational. It also includes furnishing, installing, interfacing, operating, maintaining, and billing (if applicable) the Services described in this Contract and the appendices, exhibits and other attachments hereto. Silence of the Contract regarding delivery of Services normally offered with respect to the deliverables requested in the Contract does not constitute any waiver of Services by State. It is understood by the Parties that State is responsible for providing and supplying conduit and cable to its own buildings.

## **2.4 NEW TECHNOLOGY**

When new technology, either equipment or services related to the Services, becomes available, Contractor agrees to notify State within a reasonable time after such availability so that State can consider whether such new technology should be utilized by Contractor in rendering the Services. State shall have the option, in State's sole discretion, to have such new technology utilized by Contractor to render the Services as soon as practical or at such later time as State shall determine; provided that the Parties mutually agree that such new technology does not materially increase Contractor's costs of rendering the Services to be affected by such technology. For purposes of the Section, a material increase is an aggregate of \$500 or more.

In considering whether or not to extend the term of this Contract after the Initial Term, State may consider the need for utilizing new technology during any such Extended Term. If the use of such new technology would materially increase the costs of Contractor rendering the Services, and State wishes to utilize the same and State elects, in its sole discretion, to pursue the same, the Parties will attempt in good faith to negotiate changes to this Contract to allow the use of such new technology. The foregoing notwithstanding, any such new technology provided at DOC facilities must be compatible with any existing Recording Media or other information related to the Services and must result in any Recording Media related to Inmate Phone Services

being admissible in any legal proceeding involving State or any State Entity. In addition, any change to this Contract requiring the use of new technology at DOC facilities must provide for initial new product and refresher training for DOC personnel in the use of the technology, at Contractor's expense. The Contract change must also provide for the installation and maintenance of any new equipment and for any specialized environmental requirements related thereto. Responsibility for such specialized environmental requirements shall be agreed upon by the Parties.

## **2.5 AVAILABILITY OF SERVICES**

The Services to be provided under this Contract will be made available by Contractor to State and all State Entities as directed by State.

## **PART III RATES AND FEES**

### **3.1 RATES**

The users of the Pay Phones and the Inmate Phones (which in the case of collect calls, shall be the recipients of the calls) shall be responsible for all costs and expenses of the use of Pay Phones or Inmate Phones, and neither State nor any State Entity shall have any liability for the same. ~~Neither State nor any State Entity shall be liable for any costs or expenses in connection with the Services hereunder, it being understood that all compensation to Contractor for rendering the Services hereunder shall be from the amounts charged by Contractor to the users of the Pay Phones and the Inmate Phones.~~ The rates and prices for the Services described in **Appendix 3.1** shall be the total costs to users of the Pay Phones or the Inmate Phones, such Services shall be complete (i.e., Turn Key), and any unspecified costs or expense for such Services shall be borne by Contractor.

The rates, prices and charges for the Services as described in **Appendix 3.1** shall be the maximum rates, prices and charges that may apply during the Initial Term of this Contract. Upon mutual agreement of the Parties and at the end of the Initial Term of this Contract, such rates, prices and charges shall be reviewed by State and Contractor to determine if they should be modified based upon, among other factors, technology changes, fees payable under the next section, capital investment by Contractor, and revenues and profitability to Contractor of the operation of the Pay Phones and Inmate Phones.

### **3.2 FEES**

In consideration of Contractor being given the opportunity under this Contract to render the Services and State's agreements contained in this Contract, Contractor shall pay to DOC the fees described in **Appendix 3.2** (the "Fees"). Except for the Fees payable by Contractor to DOC, Contractor shall not be liable to State or any State Entity for any commissions or fees with respect to the Services rendered by Contractor under this Contract.

Contractor will pay the Fees directly to DOC, and shall notify DAS IRMD in writing of the amount and date of each such payment when the same is paid by Contractor. The address for DOC to which the Fees shall be paid will be provided to Contractor by DAS IRMD. The Fees owed by Contractor hereunder shall be paid by Contractor to DOC on a quarterly basis, payable on or before the last day of each calendar quarter during the Term. Any Fees not paid to DOC when due shall bear interest at the rate of one and one-half percent (1½ %) per month or, if less, the maximum rate allowed by law, until the same is paid in full.

### 3.3 TAXES - FEDERAL AND LOCAL

Neither State nor any State Entity will be liable for any taxes accruing or coming due as a result of this Contract, whether federal, state, or local, and Contractor shall be responsible for any such taxes.

## PART IV TERM

### 4.1 TERM

The initial term of this Contract is for three (3) years beginning on July 1, 2000 ("Initial Term"). Unless terminated earlier, at the end of the Initial Term and each one (1) year period thereafter until June 30, 2010, the term of this Contract shall automatically renew for an additional one (1) year term, on the same terms and conditions contained in this Contract (or as contained in the Contract as it exists immediately before the end of the then current term) for up to seven (7) successive one (1) year renewals (all such renewal terms are referred to collectively as the "Extended Term"), unless either Party delivers, via certified mail, RETURN RECEIPT REQUESTED, written notice to the other Party of its desire to terminate the Contract, sent at least one hundred eighty (180) days prior to the last day of the then current Term of this Contract. If either Party delivers any such notice of its desire to terminate, the Term of this Contract shall automatically terminate on the last day of the then current Term of this Contract. The foregoing notwithstanding, the Term of this Contract cannot be extended beyond June 30, 2010 without the written agreement by both State and Contractor.

## PART V REPRESENTATIONS AND WARRANTIES

### 5.1 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor makes the following representations and warranties for the benefit of State:

(a) Contractor is a corporation, duly organized, validly existing and in good standing under the laws of the State of Colorado, and has the corporate power to carry on its business as it is now being conducted and currently proposed to be conducted. Contractor is qualified as a

foreign corporation to do business, and is in good standing, in the State of Oregon. Contractor is fully licensed and authorized by the PUC to provide the Services. Contractor's registered agent for service of process in the State of Oregon is C T Corporation, Inc.

(b) Contractor has the right, power and authority to enter into, and perform its obligations under this Contract. This Contract has been executed by a representative of Contractor who is authorized to make a commitment on behalf of Contractor.

(c) Contractor has delivered to DAS IRMD: (i) certifications issued by the applicable governmental authorities evidencing Contractor's authorization to conduct business and render the services in the State of Oregon; and (ii) a certificate signed by an officer of the Contractor who is the Secretary or Assistant Secretary of Contractor certifying the incumbency and specimen signature of the Person that executed this Contract on behalf of Contractor, that all corporate action necessary to authorize Contractor's execution, delivery and performance of this Contract has been taken, and that this Contract has been duly executed and delivered by Contractor.

(d) Contractor has taken all requisite corporate action to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon Contractor, enforceable against Contractor in accordance with its terms and conditions. The fulfillment of Contractor's obligations hereunder will not constitute a material violation of any existing applicable law, rule, regulation or order of any governmental authority. All necessary or appropriate public or private consents, approvals, permissions, agreements, licenses or authorizations have been obtained in a timely manner which are necessary for Contractor to enter into and to perform its obligations under this Contract.

(e) There is no outstanding, pending or to the best of Contractor's knowledge, threatened, litigation, order, judgment, or Proceeding, involving or affecting this Contract, the Services, or Contractor's ability to perform its obligations under this Contract.

(f) To the best of Contractor's knowledge, no representation or warranty made by Contractor contained in this Contract and no statement by Contractor contained in, or information or documents delivered to DAS IRMD by Contractor in connection with, the Solicitation, the Proposal, or this Contract or otherwise supplied by Contractor to DAS IRMD contains any untrue statement of a material fact or omits to state a material fact necessary to make such statements, information or documents, in light of the circumstance under which they were made, not misleading, except for the description of the CRT touch screen function contained in the outdated Dictaphone brochures submitted as part of the Proposal.

(g) This Contract is for the sale by Contractor of services, and not hardware, software or other equipment or goods. In order to deliver the Services and perform its obligations under this Contract, neither State nor any State Entity must purchase any hardware, software, or other equipment or goods, and Contractor is not selling any of the same under this Contract. All equipment shall be owned by Contractor. State shall have no ownership of the Contractor's and its Subcontractor's Equipment. All data on the Recording Media shall be owned and controlled by State.

## 5.2 STATE'S REPRESENTATIONS AND WARRANTIES

State makes the following representations and warranties for the benefit of Contractor:

(a) State has the right, power and authority to enter into, and perform its obligations under this Contract.

(b) State has taken all requisite administrative action to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon State, enforceable against State in accordance with its terms and conditions.

(c) The fulfillment of State's obligations hereunder will not constitute a material violation of any existing applicable law, rule, regulation or order of any governmental authority.

(d) There is no outstanding or pending litigation, order, judgment, or Proceeding, involving or affecting State's ability to perform its obligations under this Contract.

## PART VI COVENANTS

### 6.1 CONTRACTOR'S PERSONNEL

**6.1.1 General:** Contractor shall exercise due care to choose and manage its personnel so that only suitably responsible, professionally competent, and disciplined representatives shall be operating in State facilities, many of which have sensitive and critical activities. Neither State nor any State Entity shall be responsible for any injury or other Loss suffered by Contractor or Subcontractor personnel in a State facility arising out of a riot or hostage situation unless it is due to the gross negligence or willful acts or omissions of State or any State Entity, its employees or agents. In certain sensitive work areas, Contractor personnel requiring access may be subject to background checks by State or other law enforcement agencies. Contractor will meet all requirements of Part 68, FCC Rules and Regulations (47 CFR 68) regarding affidavits and manufacturer's authority requirements for installer personnel. Contractor personnel seeking access to DOC facilities shall be subject to DOC policies and requirements regarding background investigations, criminal convictions, and entrance to DOC facilities. The Parties acknowledge that it is DOC policy to require advance notice and advance clearance for entry into all DOC facilities.

**6.1.2 Key Personnel:** Contractor acknowledges and agrees that State and Contractor are entering into this Contract for critical services because of the Contractor's stated ability to provide the Services to State. Because of the need for State to be assured of Contractor's personnel to be highly qualified and skilled in the special qualification areas pertaining to the Services, and the ability to understand and be responsive to State needs, the Contractor in good faith will make every effort to meet State's needs in this Section.

As of the commencement of this Contract, Key Personnel are identified in **Appendix 6.1.2** attached hereto.

Key Personnel shall not delegate performance of the management powers and responsibilities he/she is required to provide under this Contract to another (other) Contractor employee(s) without first obtaining the written consent of State.

Further, Contractor shall make every attempt to not re-assign or transfer any Key Personnel to other duties or positions such that the Key Personnel is (are) no longer available to provide State with his/her (their) expertise, experience, judgment, and personal attention, and will make every attempt to notify State prior to such re-assignment or transfer. In the event Contractor requests that State approve a re-assignment or transfer of any Key Personnel, State may, at Contractor's discretion, interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for such Key Personnel. State approval of changes in Key Personnel, when requested, will not be unreasonably withheld.

**6.1.3 Personnel Background Checks:** Contractor warrants that it has appropriate procedures for screening employee criminal history and for addressing employee off-duty misconduct, including a criminal history screening process for all its employees, and has a process for reviewing employee off-duty misconduct. Contractor further warrants that any such screening procedures or processes are and shall be in compliance with all State and federal laws, including, but not limited to, the Fair Credit Reporting Act (15 U.S.C. Section 1681), and with Contractor's and its Subcontractors' union contracts. Contractor's personnel who work on the Services will be subject to this screening and review process. Before beginning such work, Contractor shall submit to all of Contractor's personnel who are proposed to have access to critical State facilities written requests for permission to conduct background checks, including criminal history verification. If any such personnel refuses permission or elects to avoid participation in any such background check, at the option of State, Contractor will replace such Person with a qualified employee who is willing to participate in these background checks. In addition, State or other law enforcement agencies may, but are not obligated to, do background checks, including criminal history verification, on some or all of the Contractor's personnel proposed to have access to the critical State facilities. Without limiting the foregoing, any of Contractor's personnel proposing to enter a DOC facility may be subject to a Law Enforcement Data Systems check, the results of which are acceptable to DOC in its sole discretion. If DOC conducts any such Law Enforcement Data Systems check, DOC shall comply with the requirements of the Fair Credit Reporting Act, if applicable. Personnel with backgrounds deemed unsuitable by State will not be acceptable for support of these critical systems, and Contractor will be requested to provide alternatives.

**6.1.4 Criminal Convictions:** If during the term of the Contract, it becomes known to Contractor that any of Contractor's personnel or applicant for employment by Contractor in connection with rendering the Services hereunder has had a criminal arrest or a criminal conviction, that information, with as much supporting detail as is reasonably available, will be submitted to State for review, and the personnel involved will be suspended from working on State critical systems or, in the case of an applicant, will not be assigned by Contractor to work on State critical systems. Such personnel may only resume work on State

critical systems or, in the case of an applicant, may only be assigned by Contractor to work on State critical systems, if State grants express written permission.

**6.1.5 Contractor Personnel:** Should State expressly approve Contractor personnel with criminal records, and it becomes known to Contractor that a status change, such as violation of parole or probation term has taken place, it is the responsibility of Contractor to immediately notify State and seek written permission to continue use of subject personnel.

**6.1.6 Failure to Notify:** Without limiting the other remedies available to State for this or any other breach by Contractor under this Contract, should Contractor fail to notify State, when Contractor learns of the same, of personnel with criminal arrest or conviction records, or any status change, or be unable to provide suitable personnel, with respect to personnel working on DOC systems, State may terminate the Contract for cause under Section 10.1

**6.1.7 Unacceptable Personnel Notification:** State may notify Contractor when it finds any Key Personnel or other Contractor personnel, or proposed replacement therefore, unacceptable for any lawful reason relating to the provision of the Services, including but not limited to State's reasonable determination that he or she is not qualified to perform the work to which he or she is assigned. Upon receipt of such notice, Contractor shall within ten (10) business days review the matter with State and, unless otherwise agreed upon by the Parties, promptly transfer or otherwise remove such Contractor's personnel from working (or if a proposed replacement, not assign such Contractor's personnel to work) on the Services. Upon receipt of a notice from DOC that any Contractor personnel do not meet DOC requirements regarding entrance into any facilities of any correctional institution, such personnel shall be removed immediately from such facilities.

**6.1.8 Subcontractor Personnel:** The provisions of this Section, including but not limited to, Contractor's obligations hereunder, shall also apply to personnel of any Subcontractor in the same manner as applicable to Contractor.

## **6.2 REGULATORY APPROVAL**

If this Contract is now or in the future subject to the approval of applicable state or federal regulatory bodies, the Parties shall be relieved of their obligations thereunder if regulatory approval is denied; or, at the sole discretion of State, those parts of the Contract upon which the denial was based may be renegotiated and the Contract amended to reflect the result of that renegotiation. Without limiting the other remedies available to State for this or any other breach by Contractor under this Contract, if any regulatory approval required to allow Contractor to provide the Services and otherwise satisfy its obligations under this Contract (other than the requested rate changes described in Contractor's Oregon Rate Case (Docket No. UT-125)) is not received which causes Contractor to breach any obligation under this Contract, State may, at its sole discretion, terminate immediately this Contract and obtain service from another party. A decision to terminate the Contract under these conditions shall bear no penalty for State or any obligation by State to Contractor.

Where needed, Contractor must make every reasonable effort to obtain any required regulatory approval, including promptly responding to information and data requests from the regulatory body. Contractor shall fully cooperate with the PUC. Contractor must promptly notify DAS IRMD of all actions taken to obtain such regulatory approval, including all formal filings or informal contacts with the applicable regulatory bodies related to this Contract. To the extent that it reasonably could assist Contractor in obtaining required regulatory approval, if any, of the Services to be rendered under this Contract, DAS IRMD shall make a good faith effort to cooperate with Contractor in making filings with applicable regulatory bodies. So long as Contractor uses all reasonable efforts to obtain any required regulatory approval, its failure to obtain such approval shall not be deemed a breach of this Contract.

### **6.3 COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall comply with, and shall cause all Subcontractors to comply with, all federal, state and local laws, regulations, rules, executive orders and ordinances, whether now existing or hereinafter enacted, as the same may be amended or modified, in connection with the Services under this Contract or the performance of Contractor's obligations under this Contract. Without limiting the generality of the foregoing, Contractor agrees to comply with, and shall cause all Subcontractors to comply with: (i) the constitution of the State of Oregon; (ii) all federal and state civil rights and rehabilitation statutes, rules and regulations, the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of the Department of Health and Human Services issued according to that Act, and provisions of Executive Order 11246, Equal Employment Opportunity, dated September 24, 1965, as amended; (iii) Section V of the Rehabilitation Act of 1973; (iv) the Americans with Disabilities Act of 1990 and ORS 659.425; (v) the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555; (vi) all applicable state and federal laws, local rules, regulations, and ordinances of cities, counties, municipalities, and local taxing districts, the National Electrical Code, Parts 15 and 68 of the FCC's Rules, and the rules, regulations, and tariffs of all authorities having jurisdiction over the Services to be installed and provided under this Contract (provided, however, that this does not relieve Contractor of the responsibility to comply with the Specifications if the Specifications exceed the laws, regulations, and ordinances); (vii) the provisions of any federal, state, or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the provision of the Services under this Contract; (viii) the provision of ORS 279.350 through 279.354 relative to prevailing wage rates; and (ix) all regulations and administrative rules established pursuant to the foregoing laws. Contractor shall certify the existence of the Contractor's own equal employment opportunity programs in all non-exempt contracts between Contractor and State as provided in Title 1, Part 60 of the Code of Federal Regulations.

No claims for additional payment to Contractor will be approved for changes required to comply with codes, ordinances, laws, tariffs, and regulations in effect on the date hereof or enacted in the future, as the same may be amended or modified, which apply to the Services provided under this Contract. Contractor will not be responsible for changes required by existing or future codes, ordinances, laws, tariffs, or regulations which apply to the facilities at which the Services are provided (i.e., building, fire, safety and electrical codes).



Without limiting all other remedies available to State in connection with such breach, Contractor's or any Subcontractor's failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Contract by State for cause. In addition to and without limiting all other remedies available to State in connection with such breach, Contractor shall be liable for any Loss resulting to State or any State Entity from such noncompliance.

The Parties agree that this Contract is intended to be in full compliance with all laws, including the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act"), and the Parties will perform their respective obligations under this Contract in compliance with all of said applicable federal, state and local laws, including without limitation the Act, and the rules, regulations and policies of any entity having jurisdiction of the subject matter of this Contract and the Parties, including but not limited to the FCC, the OPUC and courts of law. Neither Party intends its actions or relationship under this Contract to impose upon Contractor any obligation to change its method of conducting business so as to require or trigger a requirement for Contractor to be or become or to establish a "separate affiliate" under the Act.

#### **6.4 PERMITS**

Contractor shall obtain and pay for all necessary permits, official licenses and inspections, certificates of authority, and other official approvals necessary for the provision of the Services under this Contract.

#### **6.5 TAX CERTIFICATION LAWS**

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury:

Contractor's correct taxpayer identification number is 84-0273800;

Contractor is not subject to backup withholding because:

- a. Contractor is exempt from backup withholding,
- b. Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or
- b. The IRS has notified Contractor that Contractor is no longer subject to backup withholding;

S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including, without limitation, the following pursuant to OAR 150-305.385(6)-(B): For purposes of this certificate, "Oregon tax laws" means the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes,

amusement device tax, timber taxes, cigarette tax, other tobacco tax, 911 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self-Employment Tax);

Contractor is an independent contractor as defined in ORS 670.600; and

The data supplied by Contractor to State in connection with this Contract and the Solicitation is true and accurate.

## **6.6 ORS 279.316 - HOURS OF LABOR**

Contractor agrees that no Person shall be employed by Contractor or any Subcontractor in violation of the requirements described in Section 2.10 (Hours of Labor) of the Solicitation.

## **6.7 RELEASE OF OPINIONS**

Contractor acknowledges and agrees that State and its representatives reserve the right to provide their opinions publicly and privately to third parties regarding Contractor's performance under this Contract.

## **6.8 INTELLECTUAL PROPERTY RIGHTS**

**6.8.1 Contractor warrants that the Services, and all products, Equipment and support related thereto, do not infringe upon, violate or result in the misappropriation of any United States or foreign patent, copyright or trademark, any trade secret, utility model, industrial design or mask work, or any other proprietary or intellectual property right of any third party. Provided that Contractor fully performs its obligations under Sections 6.8.2 and 6.8.3, the exclusive remedy for a breach of the foregoing warranty shall be the indemnification, defense and hold harmless provided in Sections 6.8.2 and 6.8.3 below; provided, however, that this sentence shall not limit State's right to terminate this Contract and recover damages as described in Section 6.8.4 below.**

**6.8.2 Contractor shall indemnify, defend and hold harmless each and every Indemnified Party from any claim that the Services, or any product, Equipment or support related thereto, infringes upon, violates or results in the misappropriation of any United States or foreign patent, copyright or trademark, any trade secret, utility model, industrial design or mask work, or any other proprietary or intellectual property right. All of the terms of Section 9.2 below shall apply to any such claim, including but not limited to, the obligation to notify Contractor of such claim.**

**6.8.3 Contractor shall be responsible for, and shall indemnify each Indemnified Party from, any and all Losses suffered or incurred by State or any State Entity from any claim that the Services, or any product, Equipment or support related thereto, infringes upon, violates or results in the misappropriation of any United States or foreign patent, copyright or trademark, any trade**

secret, utility model, industrial design or mask work, or any other proprietary or intellectual property right. Without limiting the foregoing, Contractor shall pay all costs and expenses of the defense of any such claim, any settlement, and any costs, expenses and damages awarded by any court, arbitrator or other forum against any Indemnified Party.

6.8.4 If the use of any of the Services by State shall be prevented by preliminary or permanent injunction, State shall have the right to immediately terminate this Contract and to recover from Contractor all actual or general damages and costs suffered or incurred by State or any State Entity in connection with such matter, including, but not limited to, all costs and expenses of State in obtaining replacement services for such Service and all attorney's fees and costs.

6.8.5 Contractor has no obligation for any claim of infringement arising from:  
(i) Contractor's compliance with any designs, specifications or instructions of State; or  
(ii) modification of the Services by someone other than Contractor or as called for by **Appendix 2.1** by State.

## **6.9 STATE DATA; WORK PRODUCT**

**6.9.1 State Data:** During the Term of this Contract, all Equipment, including the Recording Media, shall be owned by Contractor and State shall have no ownership of Contractor's or any Subcontractor's Equipment. To the extent that any Recording Media is in the possession of Contractor or any Subcontractor, State personnel shall have sufficient access to the data thereon to enable them to retrieve information for security and investigative purposes. Both before and after installation of Contractor's and any Subcontractor's Equipment, all risk of loss, or damage to, the Equipment shall be on Contractor and State shall bear no risk of loss regarding the Equipment, unless such loss is due to the negligent or willful acts or omissions of State, its employees, customers or agents.

State shall own and hold all rights with respect to the data contained on the Recording Media. State shall provide a secure environment for the Recording Media in its possession and shall use due care in processing and handling the Recording Media in State's possession. All risk of loss, or damage to, the Recording Media and the data contained thereon (including any information that is corrupted, lost, damaged, or cannot be accessed) shall be on State and Contractor shall bear no risk of loss regarding the Recording Media and the data thereon, unless such loss is due (i) to the negligent or willful act of omission by Contractor, a Subcontractor, or their employees or agents, (ii) to a defect in the Recording Media not caused by State (e.g., DAT tape not properly formatted), or (iii) to a malfunction or defect in the Monitoring and Recording Systems equipment or software.

## **6.10 INSURANCE**

Except as otherwise set forth herein or agreed to in writing by State and Contractor, Contractor and State agree to comply with the terms of Sections 2.31.1.1 (Proposers Note), 2.31.1.2 (Workers' Compensation), 2.31.1.3 (Commercial General Liability), 2.31.1.4 (Automobile Liability), 2.31.1.5 (Additional Insured), 2.31.2 (Notice of Cancellation or Change),

2.31.3 (Certificate(s) of Insurance) and 2.31.4 (Self Insurance) of the Solicitation, which sections are incorporated herein and made a part of this Contract by reference; provided, however, that (i) the Additional Insureds under Section 2.31.1.5 shall include State, the State of Oregon, Department of Administrative Services, the other State Entities, and their respective divisions, officers, and employees, (ii) the Certificates of Insurance required under Section 2.31.3 shall be in form and substance satisfactory to DAS IRMD, and (iii) any self insurance under Section 2.31.4 shall be subject to DAS IRMD's prior written approval. Contractor shall cause all Subcontractors to maintain insurance which is typically maintained by companies engaged in such business as providing the Services, provided further that such insurance shall be of such types, in such amounts, with such terms and conditions and with such insurers as are acceptable to DAS IRMD. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, property insurance covering all risks, including fire, covering the Equipment, insuring at least the replacement value of the Equipment. All insurance policies called for by this section shall contain waivers of subrogation clauses acceptable to DAS IRMD.

## **6.11 PROJECT MANAGEMENT**

By prior written notice to DAS IRMD, Contractor shall name and make responsible for the provision of Pay Phone Services, a competent manager, and with such other qualifications as State may request ("Manager"), who shall represent Contractor in connection with the scheduling, delivery and general provision of the Services to be rendered under this Contract. A separate Manager shall be named and made responsible for the provision of Inmate Phone Services. The Manager(s) may be changed by Contractor by written notice to State of such change. State may reject or request a replacement for the Manager(s) for cause upon mutual agreement between the Parties, and Contractor may comply with State's request.

## **6.12 INDEPENDENT STATUS OF CONTRACTOR/NO PARTNERSHIP**

Any statements to the contrary contained in this Contract, the Solicitation or the Proposal notwithstanding, (i) the Services to be rendered under this Contract are those of an independent contractor, (ii) Contractor is not an officer, employee or agent of State as those terms are used in ORS 30.265, (iii) the Parties will be acting in their individual capacities and not as agents, employees, partners, joint venturers, or associates of one another, (iv) no partnership or joint venture between Contractor and State, DAS IRMD or any other State Entity is created by this Contract, and (v) 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.

## **6.13 SUBCONTRACTOR'S AUTHORITY**

Contractor shall be responsible to State for the acts and omissions of all Subcontractors and of Persons directly or indirectly employed by them, including, but not limited to, the quality and quantity of all work performed by all Subcontractors and all persons directly or indirectly employed by them, and for the acts and omissions of Persons employed directly by Contractor for satisfactory performance under this Contract.

On the date hereof, the Subcontractors under this Contract are those Persons listed on **Appendix 6.13** attached hereto. Contractor shall provide to DAS IRMD at least thirty (30) days written notice prior to the effective date of start of work for a new Subcontractor or the addition of any new Subcontractor or change in any Subcontractor from those listed on **Appendix 6.13**. DAS IRMD shall not unreasonably or without cause withhold approval of the requested change. DAS IRMD shall have the right to request that Contractor use some other Subcontractor. DAS IRMD may, but is not required to, request reasonable information, similar to that required of Contractor, to assess the acceptability of any new Subcontractor or change in Subcontractor. Such information shall include, without limitation, complete and accurate copies of all proposed subcontracts between Contractor and any new Subcontractor. Request by DAS IRMD for removal of a Subcontractor shall not be grounds for changing Contract pricing. Any obligation of Contractor, including, but not limited to, obligations of Contractor to its employees, independent contractors or personnel, contained in this Contract shall be deemed to include an obligation by Contractor to cause all Subcontractors to comply with the same obligation as if the Subcontractors were named as "Contractor" under this Contract.

#### **6.14 CONFORMITY TO SPECIFICATIONS**

The Services provided shall be in strict conformity with the Specifications and with such instructions as shall from time to time be given by State and mutual agreement between the Parties. If the instructions and Specifications contained in this Contract, all Written Authorizations, and all exhibits and attachments hereto and thereto are not sufficiently clear to permit Contractor to proceed with installing or providing the Services, State will, either upon its own motion or upon request from Contractor, furnish additional instructions, together with such additional Specifications as may be necessary. When such request is made by Contractor, it must be made in ample time to permit the preparation of the instructions and Specifications before the information is required by Contractor to meet the implementation schedule. Such additional instructions and Specifications shall be consistent with this Contract, all Written Authorizations, and all exhibits and attachments hereto and thereto, and shall have the same force and effect as if contained in this Contract, all Written Authorizations, and all exhibits and attachments hereto and thereto.

#### **6.15 COORDINATION WITH OTHERS**

Contractor shall coordinate the installation, testing, and acceptance of the Services with State and its other contractors, and they shall coordinate their work with Contractor's work so as to facilitate the installation, testing, cutover, and provision of the Services. Contractor shall be responsible for all means, methods, techniques, sequences, and procedures, and for coordinating all portions of the work under this Contract. Contractor shall work cooperatively and professionally with State and its other telecommunications contractors, including consultants, with regard to interfacing, installing, testing, cutover, fault isolation, and repair of operating deficiencies in the Services.

#### **6.16 BUILDING AND FACILITY ACCESS**

Contractor will be responsible for keys, provided by State, and Contractor and its personnel shall have access to State buildings and facilities. In order to be furnished keys and other necessary access arrangements, Contractor personnel will be required to comply with any reasonable access requirements. Contractor personnel seeking access to DOC facilities shall comply with all DOC requirements regarding entrance to those facilities, including but not limited to requirements that such personnel make advance arrangements with the DOC institution to be visited and be escorted by DOC personnel while in DOC facilities. Based on safety considerations and security of DOC staff and personnel of Contractor, DOC shall have the right to deny access in its sole discretion. For purposes of determining Contractor's performance under this Contract, such denial of access shall be considered a Force Majeure Event (as discussed in Section 11.12), except if such denial of access is caused by a failure by Contractor to provide reasonable advance notice to DOC seeking access or to comply with any other reasonable access requirements.

### **6.17 CONTRACT ADMINISTRATOR AND EXECUTIVE REVIEW**

**6.17.1 Contract Administrator:** State shall assign a Contract Administrator to be the first point of contact regarding any and all issues pertaining to this Contract. Contractor shall assign a singular management Person as the Contract Administrator to be the first point of contact regarding any and all issues pertaining to this Contract (except for those areas under the Manager(s)' responsibility described in Section 6.11). The initial Contract Administrators are as follows:

State Contract Administrator: Randy Wells.

~~Contractor's Contract Administrator: Joanna Sissons~~

Each Party may change its Contract Administrator by written notice to the other Party of such change.

**6.17.2 Dispute Resolution Panel:** Should a dispute regarding this Contract arise, it shall first have been addressed at the Contract Administrator level, and if found to be unresolvable, it must then be submitted to a panel composed of two executive level principals from each Party (the "Dispute Resolution Panel"). At least one principal from each Party shall be of senior management level, neither principal shall be the Contract Administrator, and one or more will have the authority to enter into an agreement resolving the dispute. The principals shall meet within ten (10) days of receipt of a written request by either Party in an effort to settle the dispute. The Parties may agree to include any third parties in these negotiations and to implement any other procedures or rules that they mutually agree will benefit the resolution process. Should this step of dispute resolution be unsuccessful, the Parties shall submit the dispute to mediation as set forth in Part 11.

State's Dispute Resolution Panel members: Don Mazziotti, Chief Information Officer, Ralph D. Cox, Telecommunications Manager and State's designated legal representative.

Contractor's Dispute Resolution Panel members: Vice President/General Manager of Contractor's Business and Government Services division, Sales Director of Contractor's Public Access Solutions division and Account Partner Attorney of Contractor's Public Access Solutions division or Contractor's other authorized representatives of Contractor's senior management level.

## **6.18 EQUIPMENT**

All Equipment and Recording Media shall be owned by Contractor. State shall have no ownership of the Contractor's and its Subcontractor's Equipment. All data on the Recording Media shall be owned and controlled by State.

## **6.19 STATE PROVIDED EQUIPMENT AND FACILITIES**

State will be obligated to, provide at its own expense certain equipment and facilities to support the Services covered by this Contract, e.g., adequate floor space, electricity (in the proper voltage), wall space, support structures and a clean, environmentally climate-controlled area; provided, however, that such State-provided equipment and facilities shall be limited to those items of equipment and facilities, if any, identified in the Proposal and mutually agreed in writing to be the responsibility of State before execution of this Contract, or as agreed to herein. If State, in its sole discretion, elects in writing to provide such equipment and facilities, State will assume responsibility for providing same unless otherwise agreed. Should additional requirements for State-provided equipment and facilities for the Services arise beyond that which State elects in writing to be responsible for, the Parties will negotiate how the additional costs will be handled.

## **6.20 STATE COVENANTS**

State agrees to cause the applicable State Entities to:

(a) Provide to Contractor, a Written Authorization, prepared by the requesting DAS-authorized State Entity for each Additional Service required or change to an existing Service.

(b) Provide appropriate cable support infrastructure, electric power (proper voltage, as required) and adequate space for Inmate Phones and Pay Phones. Provide adequate space for Equipment (other than Inmate Phones and Pay Phones) in a clean, environmentally climate-controlled area. Access to Pay Phones by the general public shall be available during the normal operating hours of State. In the event State is not the owner of the premises, State will, where necessary, obtain permission from the building owner or owner's agent for the placement of Pay Phones, and shall be responsible for any fees for use of required riser cable and electrical power. Access to Inmate Phones by inmates shall be available at such times as DOC shall determine in its sole discretion.

(c) Maintain the area around the Pay Phones and Inmate Phones and enclosures and ensure safe and ready access by the general public, inmates or Contractor's personnel.

(d) Allow Contractor access to collect revenues or perform maintenance during the established business hours of accessibility agreed to by State and Contractor, except where accessibility must be denied to ensure the safety of Contractor personnel and/or to maintain institutional control.

(e) Exercise reasonable care to prevent the loss through theft of monies from the collecting device and any damage to the Equipment from any source.

(f) Upon proper prior notification from Contractor following DOC guidelines, DOC shall provide adequate and timely escort service for Contractor and Subcontractors for DOC facilities.

## **6.21 EMERGENCIES**

In an Emergency where there is potential loss of life or danger of destruction of property, Contractor shall immediately contact the State Entity responsible for the facility related to the affected Service, via telephone, paging and confirmatory email or fax. In an Emergency where there is a potential danger of destruction of a material portion of Contractor's Equipment, the State Entity responsible for the facility where the Equipment is located shall notify Contractor, as soon as reasonably possible, of such Emergency, if such State Entity is aware of such Emergency, via telephone, paging and confirmatory email or fax. In the event of an Emergency, Contractor will make every attempt to fix the problem within four (4) hours or sooner of the problem being reported to Contractor as an Emergency. If a Pay Phone has no dial tone or is missing a directory, this would not be classified as an Emergency, since the Pay Phone is not threatening anyone's security or well being.

## **6.22 RECORDS MAINTENANCE; ACCESS**

Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that State, the Oregon Secretary of State's Office, the Federal Government, and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract for the purpose of performing examinations and audits, and making excerpts and transcripts. All such fiscal records, books, documents, papers, plans, and writings shall be retained by Contractor and kept accessible for a minimum of three (3) years following final expiration of the term of this Contract and all extensions, except as required by law to be held longer, following final payment and termination of this Contract and all extensions, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Contractor shall make these records available to State, the Oregon Secretary of State's Office, the Federal Government, and their duly authorized representatives for inspection at Contractor's designated facility upon thirty (30) days written notice to Contractor of such intention, provided, however, that Contractor shall deliver to



requesting entities or persons, within such thirty (30) days, those records that are necessary to determine compliance with Contractor's obligations under this Contract.

## **6.23 ASBESTOS AND HAZARDOUS SUBSTANCES**

State shall, in good faith, disclose to Contractor any known asbestos or other hazardous substance at any location where Contractor is providing Services under this Contract. If Contractor discovers hazardous substances at any State facility, Contractor may suspend the performance of the related Services at such facility until removal or containment of such hazardous substances has been completed and approved by the appropriate governmental agency, or until such agency has confirmed that no such removal or containment is necessary. Contractor's performance obligation shall be extended to the extent any delay is caused by clean up or removal of hazardous substances. In no event shall Contractor be responsible for the removal of hazardous substances found on any site where Contractor shall be required to perform Services. As between Contractor and State, any such removal shall be the responsibility of State or such State Entity operating the applicable facility.

## **6.24 DOC ACCESS TO INMATE CALL RETRIEVAL AND PLAYBACK EQUIPMENT AFTER EXPIRATION OR TERMINATION OF CONTRACT**

For two (2) years following the expiration of the Term of this Contract, DOC shall have the right to access and use, at no cost to DOC or State, three (3) reproducers and associated "Track Down"/Call Watch software (1 reproducer with associated software at each Inspections office in Salem, Ontario, and Pendleton, Oregon) for handling, retrieving, playing back, and recording preexisting Inmate call message activity. However, if any maintenance or repair costs occur during the first two (2) years after termination, State or DOC is responsible for such maintenance or repair costs, provided that DOC shall select and engage the vendor(s) to conduct any such maintenance or make any such repairs. Upon expiration of such two (2) year period, DOC will return all Dictaphone components, at its expense, to Contractor in the same condition in which those components were provided at the beginning of such two (2) year period, normal wear and tear excepted. If State or DOC terminates this Contract prior to the expiration of the Term, Contractor will provide DOC or State with the above described three (3) reproducers and associated software at Contractor's cost.

Within ninety (90) days following the expiration of the Term of this Contract, State shall take possession and control of the Recording Media and shall be solely responsible for the handling, transportation and storage thereof.

## **PART VII WARRANTIES AND PERFORMANCE GUARANTEES**

### **7.1 GENERAL WARRANTY**

Contractor warrants that the Services, the Equipment and all software used in rendering the Services shall conform to the requirements contained in this Contract and the Solicitation, including, but not limited to, the Specifications, the relevant Written Authorization(s), and all exhibits and attachments hereto and thereto, and shall be performed in a professionally diligent manner by qualified personnel ("Satisfactory Work"). In addition to and without limiting any other warranty contained in this Contract, the Services shall conform to the Specifications described in the Proposal and all attachments thereto. Contractor warrants that the Services and the use of the Equipment shall meet the manufacturer's and vendor's specifications. All warranties from manufacturers or vendors providing the Equipment or other components of the Services shall run to DAS IRMD. Contractor also warrants that (i) the Services, the Equipment, and all software used in the rendering of Services, contains no computer instructions, circuitry or other technological means whose purpose is to disrupt, damage or interfere with State's or any State Entity's use of its computer or telecommunications systems or facilities, and (ii) the Services, the Equipment and all software used in rendering of the Services will be installed and will perform in a manner that will not disrupt, damage or interfere with State's or any State Entity's use of its computer or telecommunications systems or facilities.

## **7.2 EQUIPMENT**

In addition to and without limiting the other warranties contained in this Contract, (i) the Equipment shall be in good working order and will conform to Contractor's official published specifications and the Specifications, and (ii) all Equipment shall be new or "Like-New", except for Equipment already in place and previously installed under prior contracts between State and Contractor.

In addition to and without limiting any other warranty contained in this Contract, the Equipment shall conform to the Specifications described in the Solicitation, the Proposal and this Contract (including, but not limited to, the Specifications contained in **Appendix 2.1** to this Contract). The foregoing notwithstanding, if there exists any conflict among the Specifications contained in (i) the Proposal, (ii) the Solicitation, or (iii) this Contract (including, but not limited to, the Specifications contained in **Appendix 2.1** to this Contract), in addition to and without limiting any other warranty contained in this Contract, the order of precedence to resolve such conflict shall be the following: (1) this Contract (including, but not limited to, the Specifications contained in **Appendix 2.1**); (2) the Solicitation; then (3) the Proposal.

## **7.3 GRADE OF SERVICE WARRANTY**

In addition to and without limiting the other warranties described in this Contract, Contractor warrants that the Services provided under this Contract will be at a minimum of P.01 Busy Hour grade of service and otherwise will be provided and performed in accordance with all applicable standards of performance established by the Specifications, this Contract, the Solicitation, the PUC, and the FCC.

## **7.4 YEAR 2000 WARRANTY**

In addition to and without limiting the other warranties described in this Contract, for all Services performed under this Contract, Contractor warrants Y2K Compliance of all Services, the Equipment, all data produced or used by the Monitoring and Recording Systems and otherwise produced or used in connection with the Services, and all other hardware, software, equipment and systems, individually or in combination, provided by Contractor or its Subcontractors, used in support of this Contract or the Services. Without limiting the forgoing, Contractor warrants that all software to be used in rendering the Services has been updated to Y2K Compliance.

## **7.5 ISO 9000/QUALITY ASSURANCE PROGRAM**

Contractor shall within eighteen (18) months of the date hereof provide DAS IRMD evidence of Contractor's certification and compliance with ISO 9000 standards. If Contractor is not ISO 9000 compliant by the end of such eighteen (18) month period, State shall have the right to terminate this Contract for cause. As an alternative to ISO 9000 certification, within eighteen (18) months of the date hereof, Contractor may present to DAS IRMD for its approval, which approval shall not be unreasonably withheld, a formal quality of service plan. Such plan shall be comprehensive and shall cover all aspects of service and the steps required to assure that service is subject to a uniform and responsive quality assurance process. Contractor shall be compliant with the provisions of this Section, and shall maintain that compliance for the term of the Contract.

## **PART VIII REMEDIES**

### **8.1 LIQUIDATED DAMAGES AND OTHER REMEDIES**

Contractor and State agree that, upon notification by DAS to Contractor of the occurrence of any breach by Contractor described in Sections 8.1(i) through (v), State shall be entitled to collect from Contractor, and Contractor shall be obligated to pay to State certain dollar amounts described below (the "Liquidated Damages"), and State shall be entitled to the other remedies described below. Contractor and State recognize that it would be difficult to prove damages in the event of such breaches. Contractor and State agree that (a) the Liquidated Damages are reasonable in light of the difficulties of proof of loss, the anticipated harm caused by such breaches, and the inconvenience and infeasibility of State or any State Entity otherwise obtaining an adequate remedy, (b) the Liquidated Damages represent an estimated amount of the projected loss or damages that will be suffered by State and the State Entities in connection with such breaches and are not a penalty, and (c) they have reviewed this section with their respective legal counsel, understand its significance, and have specifically negotiated its terms.

(i) Excluding Force Majeure Events, in the event that Contractor breaches its obligation to install any Pay Phone within the time period required under Section 2.1, and Contractor does not cure such breach within one (1) day of such breach, Contractor shall pay to State the sum of \$50 per day per affected Pay Phone for the first ten Pay Phones, \$75 per day per affected phone for the eleventh through fiftieth affected Pay Phone and

\$200 per day per affected Pay Phone for any Pay Phones above fifty, for each day that such breach is not cured. In the event that Contractor breaches its obligation to repair, or restore working telephone service for, any Pay Phone, and Contractor does not cure the same within three (3) business days of such breach, Contractor shall pay to State the sum of \$75 per day per affected Pay Phone for the first ten affected Pay Phones, \$150 per day per affected Pay Phone for the eleventh through fiftieth affected Pay Phone and \$200 per day per affected Pay Phone for any Pay Phones above fifty, for each day that such breach is not cured. Without limiting the foregoing, if Contractor does not cure any such breach within thirty (30) days of such occurrence, State shall have the right, in addition to the right to collect the amounts described in the prior sentence, to immediately terminate this Contract.

(ii) Excluding Force Majeure Events, in the event that Contractor breaches its obligation to install within the time period required under Section 2.1 or repair, or restore working telephone service for, any Inmate Phone or install, repair or restore three-way call detection and call disconnection or call blocking capability, and Contractor does not cure such breach within one day of such breach, Contractor shall pay to DOC the sum of \$75 per day per affected Inmate Phone for the first ten affected Inmate Phones, \$150 per day per affected Inmate Phone for the eleventh through fiftieth affected Inmate Phone and \$200 per day per affected Inmate Phone for any Inmate Phones above fifty, for each day that such breach is not cured. Without limiting the foregoing, if Contractor does not cure any such breach within five (5) days of such occurrence, State shall have the right, in addition to the right to collect the amounts described in the prior sentence, to immediately terminate this Contract.

(iii) Excluding Force Majeure Events, in the event that Contractor breaches its obligation to provide (a) Monitoring and Recording Services with respect to Inmate Phones, or (b) call information retrieval and search capabilities at each institution, the entire Monitoring and Recording System at that location will be deemed to be inoperative. If Contractor does not cure such breach within four (4) hours after the subject problem is reported to Contractor, Contractor shall pay DOC the sum of \$2,500 per day for each day that the breach is not cured. Without limiting the foregoing, if Contractor does not cure any such breach within five (5) days of such occurrence, State shall have the right, in addition to the right to collect the amounts described in the prior sentence, to immediately terminate this Contract.

(iv) Excluding Force Majeure Events, in the event that Contractor breaches its obligation to provide remote access to the Monitoring and Recording System at an institution, the entire Monitoring and Recording System at that location will be deemed to be inoperative. If Contractor does not cure such breach within five (5) days of such breach, Contractor shall pay DOC the sum of \$2,500 per day for each day that the breach is not cured. Without limiting the foregoing, if Contractor does not cure any such breach within ten (10) days of such occurrence, State shall have the right, in addition to the right to collect the amounts described in the prior sentence, to immediately terminate this Contract.

(v) If for any reason, Contractor breaches any of its obligations for Y2K compliance described in Section 7.4, and Contractor does not cure any such breach within one (1) day of such occurrence, Contractor shall pay to State the sum of \$5,000 for each day that the same is not cured. Without limiting the foregoing, if Contractor does not cure the same within five (5) days of such occurrence, State shall have the right, in addition to the right to collect the amounts described in the prior sentence, to immediately terminate this Contract.

The time periods after a breach before which Liquidated Damages or termination rights apply as described in this Section 8.1 shall control, regardless of any other due dates contained in this Contract or the appendices hereto.

For any other breach of any of Contractor's obligations under this Contract not described in Subsections 8.1(i) through (v) above, State shall be entitled to all remedies available under applicable law or in equity, including, but not limited to, the right to terminate this Contract and to recover from Contractor all actual damages and costs suffered or incurred by State and any State Entity in connection with such matter, including, but not limited to, all costs and expenses of State in obtaining replacement services for the Services and all attorney's fees and costs. Such liability shall include damages or harm to any State Entity, even if State, when taken as a whole, is not harmed.

Notwithstanding the foregoing, nothing contained herein shall limit Contractor's liability for personal injury and damage to property caused by Contractor's negligence or tortious act.

## **8.2 ADDITIONAL REMEDIES**

The remedies described in Section 8.1(i) through (v) above are the exclusive remedies of State with respect to the specific breaches described in such subsections, provided, however that (i) if State or DOC is entitled to recover any Liquidated Damages, and Contractor does not pay the same to State or DOC, and in connection with State's or DOC's enforcement of its rights, a court or other forum determines that such Liquidated Damages are unenforceable (other than a finding that the breach underlying the obligation to pay such Liquidated Damages did not occur), Contractor agrees that State or DOC, as applicable, shall be entitled to recover any and all actual and consequential damages (including lost profits) suffered or incurred by State, DOC and any other State Entity in connection with such underlying breach, (ii) State shall be entitled to set off from any amounts State owes under this Contract any undisputed Liquidated Damages, other damages or other amounts owed by Contractor under this Contract, and (iii) State shall be entitled to all equitable remedies available, including, but not limited to, specific performance.

## **8.3 CONSEQUENTIAL DAMAGES**

Except as provided in Section 8.2, neither State nor any State Entity shall be entitled to recover consequential damages (including, but not limited to, lost profits) from Contractor for any breach under this Contract, and Contractor shall not be liable for any lost revenues, lost profits, lost savings or other consequential damages, arising out of any failure to perform its obligations under this Contract. Contractor shall not be entitled to recover consequential

damages (including, but not limited to, lost profits) from State or any State Entity for any breach under this Contract, and neither State nor any State Entity shall be liable for any lost revenues, lost profits, lost savings or other consequential damages, arising out of any failure to perform its obligations under this Contract.

## **PART IX INDEMNITY, LIABILITIES AND RESPONSIBILITIES**

### **9.1 INDEMNITY**

Contractor shall indemnify, defend, and hold harmless each and every Indemnified Party from, against and in respect of any and all Loss suffered or incurred by reason of or arising out of (1) any negligent act or omission, or willful misconduct, by Contractor, any Subcontractor, any of their officers, agents or employees, or (2) any breach of any representation or warranty, or nonfulfillment of any covenant or agreement, by Contractor contained in this Contract.

### **9.2 INDEMNIFICATION NOTICE**

Each Indemnified Party shall give notice to Contractor within twenty (20) days after such Indemnified Party has actual knowledge of any third-party claim as to which indemnity may be sought, and shall permit Contractor (at its expense) to assume the defense of any such claim or any litigation resulting therefrom; provided that the Indemnified Party may participate in such defense at such party's expense although Contractor's counsel shall have decision making authority as to how such defense is to be conducted; provided, further, that the failure by any Indemnified Party to give notice as provided herein shall not relieve Contractor of its obligations under this Part 9, except to the extent that the failure results in an omission of actual notice to Contractor and Contractor is damaged solely as a result of the failure to give notice. The foregoing notwithstanding, State or any State Entity may enter any suit or action (1) at Contractor's expense if State or any State Entity reasonably determines that its own interests are not being protected, or (2) at State's or any State Entity's expense if principles of government or public law are involved. In the defense of any such claim or litigation, Contractor shall not, except with the consent of each Indemnified Party, consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term a release by the claimant or plaintiff of each Indemnified Party from all liability in respect to such claim or litigation. If Contractor does not assume the defense of any such claim or fails to comply with its obligations under this Part 9, an Indemnified Party may defend such claim in a manner as it may deem appropriate, including, but not limited to, settling such claim, after giving twenty (20) days prior written notice of such settlement to Contractor, on such terms as the Indemnified Party may deem appropriate, and Contractor shall be responsible for and shall indemnify and hold harmless such Indemnified Party with respect to any Loss suffered by such Indemnified Party in connection with such defense, including, but not limited to any Loss in connection with any settlement of such claim.

### **9.3 PERSONAL LIABILITIES OF PUBLIC OFFICIALS**

In carrying out the provisions of this Contract or authority granted by this Contract, Contractor understands and agrees there will be no liability upon the employees or officers of State or any State Entity, either personally or as officials of State or any State Entity, it being always understood that in such matters they act as the agents and representatives of State or the applicable State Entity.

#### **9.4 SURVIVAL**

Contractor's obligations under Sections 6.1.2 (Key Personnel), 6.1.3 (Personnel Background Checks), Part VIII (Remedies), Part IX (Indemnity, Liabilities and Responsibilities), and Part XI (Miscellaneous) shall survive the termination (regardless of the cause of termination) or expiration of this Contract.

### **PART X**

#### **TERMINATION**

##### **10.1 STATE RIGHT TO TERMINATE FOR CAUSE**

State may terminate this Contract immediately upon notice to Contractor, or at such later date as State may establish in such notice or as required under subsection 10.1(i), without any liability of State to Contractor, upon the occurrence of any of the following events:

- a) State or the benefitting State Entity fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the entire amount of Contractor's work;
- b) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that State's performance under this Contract or any Written Authorization is prohibited, or State is prohibited from paying for any obligation under this Contract from the planned funding source;
- c) Contractor's failure to make any necessary FCC, PUC or other regulatory filing within ten (10) days of the date hereof or obtain any necessary FCC, PUC or other regulatory approval within thirty (30) days of the date hereof;
- d) Contractor no longer holds any license or certificate that is required to perform the Services;
- e) Any Proceeding is commenced which challenges this Contract or the Services hereunder, or an injunction or other order is issued which prohibits, limits, or modifies the performance of this Contract or the Services under this Contract;
- f) Any Change of Control of Contractor occurs, for which State has not given its prior written consent, which consent shall not be unreasonably withheld by State (provided, however, that the limitations contained in this subparagraph (f) shall not apply in connection with Contractor's planned merger with Qwest Communications, Inc.);

g) Any event occurs for which any section of this Contract, including but not limited to, Section 8.1, permits State or any State Entity to terminate this Contract;

h) At any time during the term of this Contract, any of the Services deteriorates or does not meet the Specifications; or

i) Contractor commits any material breach or default of any representation, warranty, covenant, indemnity or other obligation or agreement under this Contract (including, but not limited to, failure to provide the Services under this Contract within the time specified herein or any extension thereof), or fails to pursue a Written Authorization as to endanger Contractor's performance under this Contract in accordance with its terms and conditions, which breach, default or failure is not covered by any of clauses (a) through (h) above, and such breach, default or failure is not cured within thirty (30) calendar days after delivery to Contractor of notice of the same by State or any State Entity, or such longer period as State or any State Entity may specify in such notice.

State may also terminate this Contract according to OAR 125-030-0002 and the Oregon Attorney General Opinion Model Public Contract Rules, dated January 1995, Section 137-30-155.

In addition to, and cumulative of, any other remedy available to State at law or in equity, ~~(i) If State terminates this Contract under this section and is required to install the same or similar Services from another source, Contractor shall be liable to State for all costs and expenses to State of obtaining and installing the replacement Services, including, but not limited to, administrative and legal costs and expenses, and (ii) Contractor shall be liable for any and all actual damages suffered by State as the result of Contractor's breach of this Contract. In addition to the above provisions, should Contractor repeatedly breach any of the provisions of this Contract, Contractor shall be subject to disqualification as a bidder on State or Oregon contracts.~~

This subsection shall not authorize DAS IRMD to terminate this Contract in order to acquire functionally equivalent equipment from a third party.

## 10.2 CONTRACTOR'S RIGHT TO TERMINATE FOR CAUSE

Contractor may terminate this Contract upon thirty (30) calendar days notice to DAS IRMD, without liability of Contractor to State, if State fails to pay Contractor for any undisputed amount pursuant to the terms and conditions of this Contract and State fails to cure such non-payment within thirty (30) calendar days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.

## 10.3 STATE RIGHT TO CANCEL SERVICES

~~In addition to and without limiting State's rights to terminate this Contract in full under any other section of this Contract, if Contractor fails to perform any material obligation under~~



this Contract, and thirty (30) calendar days after receipt of written notice describing with reasonable particularity the character of the default Contractor has not cured the failure, then State may cancel Services under this Contract which relate to the performance, without penalty, until such failure to perform is cured or finally adjudicated. This remedy shall be in addition to, and cumulative of, any other remedy available to State, and the exercise of this remedy by State shall not prejudice or impair the availability to State of any other remedy at law or in equity for breach of this Contract.

#### **10.4 TERMINATION FOR INSOLVENCY**

Either Party may terminate this Contract immediately if the other Party: (i) institutes or has instituted against it insolvency, receivership, or bankruptcy proceedings; (ii) is adjudged bankrupt, or makes an assignment for the benefit of creditors, or a receiver is appointed on account of such Party's insolvency; or (iii) ceases doing business on a regular basis.

#### **10.5 TERMINATION FOR CONVENIENCE**

State reserves the right to cancel in writing this Contract, or any of the Services included in this Contract or subsequently ordered, at any time prior to initiation of any of the Services, without cause, and to pay Contractor for reasonable, actual, non-recoverable installation costs and reasonable, actual, non-recoverable costs of equipment ordered by Contractor or any Subcontractor for the purpose of performing this Contract, incurred up to the date of cancellation; provided, however, that (i) Contractor and Subcontractors shall make reasonable business efforts to reduce such costs, including attempting to return or resell such equipment or use such equipment for some other purpose, and the amount owed by State to Contractor under this section shall be reduced accordingly, and (ii) if Contractor or its Subcontractors cannot return, resell or use such equipment for some other purpose, at State's election, such equipment will be transferred and delivered to State. Upon receipt of such written notice, Contractor shall stop performance under this Contract, as directed by State.

After initiation of any of the Services, State may terminate this Contract, in whole or in part, for its convenience by providing notice of such termination to Contractor, specifying the extent and effective date of such termination. On the specified termination date, Contractor shall (i) stop work under this Contract to the extent specified in the termination notice, and (ii) cease shipment and delivery of all Services, goods, Equipment, and software covered by the termination notice, other than those already delivered and accepted in accordance with this Contract as of the termination date specified in the termination notice. Contractor shall continue to perform those obligations under this Contract to the extent not terminated. In the event State terminates this Contract in whole under this section during the Initial Term, DOC shall pay to Contractor the following termination fee: (i) if such termination occurs on or before the first anniversary of the date hereof, \$550,000; (ii) if such termination occurs during the period starting on the day after the first anniversary of the date hereof and ending on the second anniversary of the date hereof, \$369,500; and (iii) if such termination occurs during the period starting on the day after the second anniversary of the date hereof and ending on the day before third anniversary of the date hereof, \$181,500. If State terminates this Contract in part, DOC shall pay to Contractor a pro rata portion of such termination fee in proportion to the portion of the entire

Services under this Contract which are terminated. Except for the termination fee payable by DOC to Contractor as described above, neither State nor any State Entity shall have any liability for State's termination of this Contract in whole or in part under this section. The foregoing notwithstanding, no termination fee shall be payable under this section to Contractor if State delivers a notice to Contractor of State's desire to terminate this Contract as described in Section 4.1.

Notwithstanding the foregoing, no termination fee payable by DOC shall be so large as to constitute a penalty.

Contractor shall give State written notice of its intent to submit any claims for compensation under this section within thirty (30) calendar days after the effective date of termination, and shall submit all such claims within sixty (60) calendar days after the effective date of termination. Contractor hereby waives, releases, and renounces any claim for compensation not made within this period.

#### **10.6 NOTICE OF TERMINATION**

In the event either Party elects to terminate this Contract, termination shall be effected by delivery via Certified mail, RETURN RECEIPT REQUESTED, to the other Party of a Notice of Termination specifying the extent to which the Contract is terminated, the reasons for such termination and the date upon which such termination becomes effective.

#### **10.7 EFFECT OF TERMINATION**

Within ninety (90) days following the termination of this Contract for any reason whatsoever, State shall take possession and control of the Recording Media and shall be solely responsible for the handling, transportation and storage thereof.

#### **10.8 NON-PREJUDICE FOR TERMINATION**

State's termination of this Contract shall be without waiver of or prejudice to any other remedy available to State in connection with this Contract.

### **PART XI MISCELLANEOUS**

#### **11.1 GOVERNING LAW, JURISDICTION, VENUE**

This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any Proceeding between State and/or any State Entity and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, however, if a Proceeding must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District

Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **11.2 RESOLUTION OF DISPUTES**

**11.2.1 Mediation:** Each Party agrees not to institute any Proceeding in connection with this Contract until the Parties shall have attempted in good faith to submit the matters in dispute to a non-binding mediation process. Submission of the dispute to mediation shall not be a precondition to any action or proceeding involving temporary or emergency relief, or the enforcement of this clause itself.

**11.2.2 Choosing a Mediator:** If a dispute arises under this Contract, the Parties shall discuss the desired qualifications of the mediator. Either Party may suggest one or more candidates, or may recommend that the mediator be chosen from a roster. The mediator must be selected by agreement of both Parties. Each Party shall promptly disclose to the other Party any circumstances which would cause reasonable doubt regarding the impartiality of the individual under consideration or appointed as mediator. Any such individual shall promptly disclose any such circumstances to the Parties. If any circumstances have been disclosed, before or after the individual's appointment as mediator, the individual shall not serve, unless the Parties agree.

**11.2.3 Mediator Compensation:** The mediator's compensation rate will be determined at or before his or her appointment. Such compensation, and any other costs of the process, will be shared equally by the Parties, unless otherwise agreed.

**11.2.4 Mediation Ground Rules:** The ground rules for the mediation shall be:

- a) The process is voluntary and non-binding. Either Party may withdraw at any time by notifying the mediator and the other Party in writing of its intent to withdraw.
- b) The mediator shall be neutral and impartial.
- c) The mediator controls the procedural aspects of the mediation. The Parties will cooperate fully with the mediator.
- d) There will be no direct communication between the Parties or between their attorneys regarding the matter in dispute without the concurrence of the mediator.
- e) The mediator is free to meet and communicate separately with each Party.
- f) The mediator will decide when to hold separate meetings with the Parties and when to hold joint meetings. The mediator will fix the time and place of each session and the agenda, in consultation with the Parties.
- g) Each Party may be represented by more than one Person, e.g., a staff member and an attorney. To the fullest extent possible under the law, at least one representative of each Party will be authorized to negotiate a settlement of the dispute.

h) The process will be conducted expeditiously. Each representative will make every effort to be available for meetings.

i) The mediator will not transmit information given to him or her by either Party to another party, unless authorized to do so.

j) To the fullest extent authorized or permitted by the law, the entire process will be confidential. The Parties and the mediator will not disclose information regarding the process, including settlement terms, to third parties, unless the Parties otherwise agree or unless required by law to do so. The process shall be treated as a compromise negotiation for the purposes of the Federal Rules of Evidence and Oregon Evidence Code. The mediator will not be disqualified as a witness, consultant or expert in any pending or future action relating to the subject matter of the mediation, including those between Persons not parties to the mediation.

k) The mediator, if a lawyer, may freely express his or her views to the Parties on the legal issues of the dispute, unless a Party objects to him or her so doing.

l) The mediator may obtain assistance and independent expert advice with the agreement of and at the expense of the Parties.

m) The mediator will not be liable for any act or omission in connection with his or her role as a mediator.

n) The Parties will refrain from court proceedings during the mediation process, insofar as they can do so without prejudicing their legal rights. If litigation is pending between the Parties regarding the subject matter of the mediation, the Parties may agree to inform the court of the mediation process and the name of the mediator, and they may request a stay of court proceedings. Insofar as possible, discovery will be suspended while mediation is ongoing.

**11.2.5 Preliminary Meetings:** Once a mediator is selected, the Parties will meet jointly with the mediator to discuss the above ground rules and any different or additional ground rules the mediator or either Party wishes to propose. The Parties and the mediator may agree on whether the Parties will be the first to make settlement proposals, or whether they wish the mediator to make such a proposal once he or she has familiarized herself with the dispute.

**11.2.6 Submission of Material:** Upon entering into mediation each Party shall submit to the mediator such material and information as it deems necessary to familiarize the mediator with the dispute. The mediator may request any Party to provide clarification and additional information. The mediator may request each Party, separately or at a joint meeting, to present its case informally to the mediator.

**11.2.7 Negotiation of Settlement Terms:** Once the mediator has familiarized himself or herself with the case, he or she will hold discussions with the representatives of the Parties. The mediator will decide when to meet or confer separately with each Party, and when

to hold joint meetings. The mediator may assist the Parties in arriving at a settlement in a variety of ways.

If the Parties fail to develop mutually acceptable settlement terms, the mediator, before terminating the procedure, may submit to the parties a final settlement proposal which he or she considers equitable to all Parties. The Parties will carefully consider such proposal, and at the request of the mediator will discuss the proposal with him or her.

Efforts to reach a settlement will continue until (a) a settlement is reached, or (b) one of the Parties withdraws from the process, or (c) the mediator concludes and informs the Parties that further efforts would not be useful.

If a settlement is reached, the mediator, or one of the Parties at the mediator's request, will draft a written settlement document incorporating all settlement terms. The draft will be circulated among the Parties, edited as necessary, and if acceptable, formally executed.

### **11.3 SEVERABILITY**

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected; and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

### **11.4 TIME**

Time is of the essence in this Contract.

### **11.5 ASSIGNMENT**

Except as otherwise provided herein, without the prior written consent of DAS IRMD (which shall not be unreasonably withheld), Contractor shall not assign, delegate or Transfer its rights, duties, or obligations under this Contract to any Person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise. Notwithstanding the foregoing or the provisions of Part X (Termination) above, Contractor may assign its rights hereunder to a parent, subsidiary or affiliated company (including a company formed as part of Contractor's planned merger with Qwest Communications, Inc. or any other company with whom Contractor merges or consolidates) without DAS IRMD's consent; provided that (i) the assignment does not increase the obligations of State under this Contract, (ii) such assignee or transferee shall be subject to all defenses of State under this Contract, (iii) such assignee or transferee shall be responsible for all of Contractor's obligations under this Contract, and (iv) Contractor shall not be released from its obligations under this Contract and Contractor shall remain primarily liable for all of its obligations under this Contract as if no assignment had occurred. Any attempt by Contractor, except as provided herein, to assign or in any way Transfer its interest in the Contract without such prior written consent of DAS IRMD shall be deemed a material breach of this Contract. Written requests for DAS IRMD's consent to an assignment, delegation or Transfer shall be provided to State at least ninety (90) calendar days

prior to the proposed effective date of the assignment. If DAS IRMD consents to such assignment, delegation or Transfer, the assignee or transferee shall be entitled to all of Contractor's rights under this Contract, provided that (i) the assignment does not increase the obligations of State under this Contract, (ii) such assignee or transferee shall be subject to all defenses of State under this Contract, (iii) such assignee or transferee shall be responsible for all of Contractor's obligations under this Contract, and (iv) Contractor shall not be released from its obligations under this Contract and Contractor shall remain primarily liable for all of its obligations under this Contract as if no assignment had occurred.

The foregoing notwithstanding, Contractor may assign, delegate or Transfer its rights, duties or obligations under this Contract to an Affiliate of Contractor, provided that (i) the assignment, delegation or Transfer does not increase the obligations of State under this Contract, (ii) such assignee or transferee shall be subject to all defenses of State under this Contract, (iii) no Change of Control of Contractor shall have occurred, and (iv) Contractor shall not be released from its obligations under this Contract and Contractor shall remain primarily liable for its obligations under this Contract as if no assignment had occurred.

#### **11.6 SUCCESSORS IN INTEREST**

The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties to this Contract and their respective permitted successors and assigns.

#### **11.7 ENTIRE AGREEMENT**

This Contract, together with the Solicitation, the Proposal, all written clarification materials, all supplementary documents incorporated by reference, all Written Authorizations, and all exhibits and attachments hereto and thereto, constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, whether oral, written, implied or expressed, relating to the subject matter hereof.

#### **11.8 INTERPRETATION OF DOCUMENTS**

The documents forming this Contract (the "Contract Documents") consist of: (i) this Contract; (ii) the Exhibits and/or Appendices to this Contract, which describe the specific Service to be provided, the fees to be paid, the rates to be charged users of Pay Phones and Inmate Phones, and other information as may be necessary regarding the Service; (iii) the other Exhibits and/or Appendices and/or Attachments to this Contract; (iv) the Solicitation and all materials provided as part of or adjunct to the Solicitation, and written requests for clarification or additional information; and (v) Contractor's Proposal, including all its submittals, pricing information, reference materials, and any other documentation submitted with the Proposal and accepted by State, or in response to a written request for clarifications to the Proposal which may arise. The Contract Documents are complementary and what is called for by one shall be as binding as if it were called for by all. The Contract Documents are intended to include all details of the Services to be provided and the manner of provision. In case of conflict among any of the Contract Documents, the order of precedence to resolve such conflict shall be the following:

(1) this Contract and its Appendices, Exhibits, and Attachments; (2) the Solicitation; (3) the Proposal; (4) written clarifications; (5) written submittals; then (6) Certificates of Insurance. Without limiting the foregoing, any comments by Contractor contained in the Proposal or any attachments to the Proposal (including, but not limited to, the copies of the Tariffs attached to the Proposal) which limit the requirements contained in this Contract or the Solicitation or which contain descriptive language or items which are not as favorable to State as the language or items contained in this Contract or the Solicitation shall not be deemed to be accepted and agreed to by State unless such comments are specifically written into this Contract or the Appendices to this Contract.

## **11.9 AMENDMENTS, WAIVERS**

This Contract may not be amended except by an instrument in writing signed on behalf of each of the Parties hereto. No term or condition of this Contract may be waived except by an instrument in writing signed by the Party against whom such waiver is sought to be enforced.

## **11.10 CAPTIONS**

The captions or headings in this Contract are for convenience only, and in no way define, limit, or amend the scope or intent of any provision of this Contract. Any cross-references provided are for convenience only, and in no way limit all references to a particular subject.

## **11.11 WAIVER**

Failure of State to enforce any provision of this Contract shall not constitute a waiver or relinquishment by State of the right to such performance in the future nor of the right to enforce that or any other provision of this Contract, nor bar State from enforcing strict performance of such provision in any subsequent instance.

## **11.12 FORCE MAJEURE**

Except with respect to defaults of Subcontractors for which Contractor shall be responsible, neither Party shall be held responsible for any delay in performance or failure to perform caused by fires, strikes, embargoes, computer failures resulting from situations out of Contractor's control (provided, however, that this does not include computer failures caused by failure of Contractor or any of its Subcontractors to be in Y2K Compliance), power outage, civil or military authorities, acts of God, or other conditions beyond the reasonable control and not caused or contributed to by fault or negligence of the Party (each a "Force Majeure Event"). This provision as it relates to strikes shall apply only to failure to perform or delay in installation of the Services, and does not relieve Contractor from making every reasonable effort to maintain, repair, or restore the Services. With respect to Contractor's obligations under Section 7.4 or other section regarding any Y2K Compliance, such Y2K issues shall not be considered a Force Majeure Event excusing Contractor's performance. If the delays are caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both Contractor and its Subcontractor, and without the fault or negligence of any of them, Contractor will not be liable for damages for delays, unless the supplies or services to be furnished by their

Subcontractors were obtainable from other sources in sufficient time to permit Contractor to meet the required schedule.

In the event of a reduction or interruption of Services subject to this Section, Contractor shall employ its best efforts to restore the Services to State and the applicable State Entities on the highest priority basis consistent with applicable statutes, rules, regulations, or other valid law. Contractor acknowledges that Services outages may affect users with public security and safety, law enforcement, and military missions. Without limiting the foregoing, Contractor will make all possible efforts to restore Mission Critical Services on an expedited basis. "Mission Critical Services" are defined to include all of the Inmate Phone Services and Monitoring and Recording Services, and those Pay Phone Services the loss of which may affect users with public security and safety, law enforcement and military issues.

### 11.13 NOTICES

All notices, requests, demands or other communications required by or otherwise with respect to this Contract shall be in writing and shall be deemed to have been duly given to any Party when delivered personally (by courier service or otherwise), when delivered by facsimile and confirmed by return facsimile, or seven days after being mailed by first-class mail, postage prepaid and return receipt requested in each case to the applicable addresses set forth below:

**IF TO CONTRACTOR:**

Joanna Sissons  
Account Manager-Corrections  
U S WEST Communications, Inc.  
1600 7<sup>th</sup> Avenue, Room 2604  
Seattle, WA 98191

Telephone: (206)345-2343  
Facsimile: (206)345-2255

**IF TO STATE:**

Ralph D. Cox  
Voice Services Manager  
Oregon Department of  
Administrative Services  
Network Communications Section  
955 Center St. NE, 5th Floor  
Salem, OR 97310

Telephone: (503)373-7211  
Facsimile: (503)378-8333

**WITH A COPY TO:**

U S WEST, Inc.  
Law Department  
1801 California St., Suite 5100  
Denver, CO 80207  
Attn: Attorney for Public Access Solutions

Telephone: (303)672-2700  
Facsimile: (303)308-9456

**WITH A COPY TO:**

Randy C. Wells  
Support Service Coordinator  
Oregon Department of  
Administrative Services  
Network Communications Section  
955 Center St. NE, 5th Floor  
Salem, OR 97310

Telephone: (503)373-1814  
Facsimile: (503)378-8333



or to such other address as such Party shall have designated by notice so given to each other Party.

#### **11.14 CONTRACTOR'S INFORMATION AND PROPERTY**

“Confidential Information” shall mean any technical or business information, including third-party information, marked as confidential or proprietary and furnished, disclosed or made available in connection with this Contract, in any form or medium, by one Party to the other, including, without limitation, specifications, prototypes, software, models, drawings, marketing plans, financial data and personnel statistics. Confidential Information does not include information which (1) the recipient knew or had in its possession prior to disclosure, without confidential limitation; (2) is independently developed by the recipient without breach of this Contract; (3) becomes publicly available without breach of this Contract; (4) is received rightfully from a third party and without obligation of confidentiality; or (5) is disclosed without restriction by the disclosing party.

Except as may be required by applicable law (including without limitation Oregon's Public Records law, ORS 192.410 et seq.), regulations, legal or agency order, demand or process, neither Party shall disclose to a third party any Confidential Information or the contents of this Contract without the prior written consent of the other Party.

All information relating to AT&T's Non-Sent Paid Calls such as usage information, including, but not limited to, call tracking and call records (hereinafter “Information”), shall remain the property of AT&T and when in tangible form shall be returned upon request. All Information shall be kept confidential by State and shall be used only in State's performance hereunder, subject to the requirements of Oregon's Public Records law and provided that the obligation to keep confidential the Confidential Information referred to in this subsection does not apply to information which (1) the recipient knew or had in its possession prior to disclosure, without confidential limitation; (2) is independently developed by the recipient without breach of this Contract; (3) becomes publicly available without breach of this Contract; (4) is received rightfully from a third party and without obligation of confidentiality; or (5) is disclosed without restriction by the disclosing party.

#### **11.15 THIRD PARTY BENEFICIARIES**

Each of State and any State Entity that receives any of the Services shall be deemed a third party beneficiary of this Contract. In addition to State, DAS IRMD or any other State Entity is entitled to enforce the terms of this Contract and the remedies available due to any breach of this Contract by Contractor.

#### **11.16 INCORPORATION BY REFERENCE**

All of the provisions of the Solicitation, including, but not limited to, Part II, Contract Terms and Conditions, are incorporated herein and made a part of this Contract, except to the extent specifically modified by the terms of this Contract, in which event the terms of this Contract shall control. If there should exist a conflict between the express requirements of terms of this Contract or the Appendices or other Attachments hereto and the provisions of the

Solicitation, such conflict shall be resolved according to the order of precedence described in Section 11.8. Any reference in the Solicitation to the term "Service" shall be deemed to be a reference to the term "Services" as defined in this Contract. To the extent not in conflict with the obligations under this Contract, the Parties hereto agree (and Contractor agrees to cause all Subcontractors) to comply with the obligations contained in Part II, Terms and Conditions, of the Solicitation.

**11.17 EXECUTION AND COUNTERPARTS**

This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument. Any counterpart may be executed and delivered by means of a telecopy or other facsimile transmission.

**STATE:**

**STATE OF OREGON**

**BY: DEPT. OF ADMINISTRATIVE  
SERVICES**

By \_\_\_\_\_  
Donald F. Mazziotti  
Chief Information Officer

**STATE OF OREGON**

**BY: DEPT. OF ADMINISTRATIVE  
SERVICES  
PURCHASING SECTION**

By \_\_\_\_\_  
Robin J. Rickard  
State of Oregon Purchasing Manager

**BY: DEPT. OF ADMINISTRATIVE  
SERVICES  
PURCHASING SECTION**

By \_\_\_\_\_  
Marsceea Stone  
DAS Contracts Coordinator

APPROVED AND ACCEPTED:

**STATE OF OREGON  
DEPT. OF CORRECTIONS**

By \_\_\_\_\_  
Les S. Dolecal  
Assistant Director and Inspector General

**CONTRACTOR:**

**U S WEST COMMUNICATIONS, INC.**

By \_\_\_\_\_  
Susan B. Parks  
Vice President - General Manager  
Business & Government Services Division

FORM APPROVED FOR LEGAL SUFFICIENCY

By \_\_\_\_\_  
Special Assistant Attorney General

## APPENDIX 1.1 DEFINITIONS

**Additional Services:** Any Services initiated or installed under this Contract beyond the Initial Services, including, but not limited to, (i) any installation of new Inmate Phones or new Pay Phones requested to be installed by State, or (ii) any removal of Inmate Phones or Pay Phones requested to be removed by State.

**Affiliate:** As to any Person, any other Person which, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. As used in this definition "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interest, by contract or otherwise).

**Change of Control:** Any Transfer of more than fifty percent (50%) of the voting securities of a Person or Transfer of the power to direct or cause the direction of management policies (whether through ownership of securities or partnership or other ownership interest, by contract, operation of law or otherwise).

**DAS IRMD:** State of Oregon, Department of Administrative Services, Information Resources Management Division, Telecommunications Section.

**DOC:** State of Oregon, Department of Corrections.

**Emergency:** A problem or outage that could potentially result in injury (broken glass, exposed wires), loss of life, or is security threatening.

**Equipment:** All equipment installed or made available by Contractor in connection with the delivery of the Services, including, but not limited to, the Inmate Phones, the Monitoring and Recording Systems equipment, the Pay Phones, and all equipment previously installed by Contractor under other contracts between State and Contractor which is permitted to be used by Contractor under this Contract.

**Extended Term:** Is as defined in Section 4.

**FCC:** The Federal Communications Commission.

**GAAP or generally accepted accounting principles:** United States generally accepted accounting principles recommended from time to time by the Financial Accounting Standards Board.

**Indemnified Parties or Indemnified Party:** State, all State Entities, their officers, divisions, agents, employees, and representatives.

**Initial Services:** Any Services required under **Appendix 2.1** to be installed and operational as soon as possible after the date of execution of this Contract without the need for any Written Authorization.

**Initial Term:** Is as defined in Section 4.

**Inmate Phone Services:** That portion of the Services related to the Inmate Phones.

**Inmate Phones:** All telephones located on DOC owned or operated facilities which are available for use by DOC inmates, except Pay Phones.

**IRS:** Internal Revenue Service.

**Key Personnel:** Specific personnel of Contractor deemed by State to be key personnel to the support of this Contract.

**“Like-New”:** Equipment that is refurbished, at a minimum, to all original factory specifications. Refurbishing shall be done by Contractor or its contracted representatives at an ISO 9000 qualified refurbishment facility. Appearance and operation of the Equipment shall be the same as new.

**Loss:** Any and all loss, damage, claim, obligation, liability, cost and expense (including, but not limited to, reasonable attorney and other professional fees and costs and expenses incurred in investigating, preparing, defending against or prosecuting any Proceeding).

**OAR:** The Oregon Administrative Rules.

**OPUC also PUC:** The Oregon Public Utility Commission.

**ORS:** Oregon Revised Statutes.

**OYA:** State of Oregon, Oregon Youth Authority.

**Pay Phone Services:** That portion of the Services related to the Pay Phones.

**Pay Phones:** All public payphones (including, but not limited to, coin telephones) located on State owned or operated properties.

**Person:** Any individual or corporation, company, general partnership, limited partnership, limited liability company, limited liability partnership, trust, incorporated or unincorporated association, joint venture, governmental authority or other entity of any kind.

**Proceeding or proceeding:** Any claim, suit, action, arbitration, investigation, protest or proceeding.

**Proposal:** Contractor's written Response to Solicitation #10704001 98 for State of Oregon Pay and Inmate Telephones Presented by US WEST, Joanna Sissons, Account Manager, 1-800-275-0616, including all pricing information, attachments, reference materials, and written clarification's submitted as part of the response to the Solicitation, and additional information provided in response to subsequent requests or inquiries from DAS IRMD. The term Proposal includes Alternate (Multiple) Proposals submitted by Contractor.

**Monitoring and Recording Services:** The monitoring and recording services for the Inmate Phones described more fully in **Appendix 2.1**.

**Monitoring and Recording Systems:** The Equipment, software and other products utilized by DOC and Contractor to provide the Monitoring and Recording Services, as more fully described in **Appendix 2.1**.

**Recording Media:** The DAT tapes, CD's, diskettes and other recording media used in connection with the Inmate Phones and the Monitoring and Recording Systems.

**Specifications:** All requirements and specifications set forth in this Contract, the Solicitation, the Proposal and all appendices and other attachments to this Contract, the Solicitation and the Proposal, including, but not limited to, the performance requirements and specifications for the Service set forth in **Appendix 2.1** to this Contract.

**State:** State of Oregon, acting by and through DAS, and, on and after the date of this Contract, any designee of DAS authorized to act under this Contract, for a particular purpose, pursuant to a Written Designation.

**State Entity (collectively referred to as "State Entities"):** State, DAS IRMD, DOC or any State of Oregon Institution, Board, Commission, Agency or Department of the State of Oregon which may be the direct or indirect recipient of the Service provided herein; provided, however that this shall not include the Oregon State Lottery, the Oregon State Lottery Commission, the SAIF Corporation or Oregon Health Sciences University (OHSU).

**Station Wiring:** The wiring from the phone closet to the instrument.

**Subcontractor:** The individual, firm, corporation, or organization having a direct contract with Contractor to furnish Service, either wholly as described in the Contract, or in support of or as part of Service, which is the responsibility of Contractor.

**Term:** The Initial Term together with any Extended Term.

**Transfer:** To grant, sell, assign, encumber, permit the utilization of, license, lease, sublease or otherwise convey, directly or indirectly, in whole or in part.

**Turn Key:** Complete installation including all craft work, training, etc., as necessary to fully implement or operate a system. All that remains is for the end user customer to turn the key.



**Y2K Compliance:** The term "Y2K Compliance" shall include but not be limited to: (i) accurately processing and reporting on (including but not limited to calculating, comparing and sequencing, moving backward and forward in time, including leap-year calculations), without human intervention, date/time data with respect to dates and data prior to, through and beyond January 1, 2000; (ii) performance of the Services without interruption, damage and/or interference due to the transition from the 20th to the 21st Centuries and/or due to ongoing operation in the 21st Century; (iii) correctly differentiating between years in different centuries that end in the same two digits; and (iv) ensuring that all data inputs, outputs and results with respect to the Services, the Equipment and systems used in support of the Services include a century indicator.

**Written Designation:** A letter from DAS to Contractor advising Contractor that a specific State Entity designated by DAS in such letter is authorized to act, on behalf of the State under this Contract, for the purpose described in such letter.

## APPENDIX 2.1 SERVICE

Contractor agrees to provide to State and all applicable State Entities, and State agrees to purchase from Contractor, the following Services (individually, a "Service", and collectively, the "Services") pertaining to Inmate Phones and Pay Phones currently installed and which may be installed in the future during the Term of this Contract.

The representations about the Services to be provided contained in the Proposal are incorporated herein by this reference to the extent they are not inconsistent with or less protective to State. If there is any conflict or inconsistency between the Proposal and this Appendix, the terms of this Appendix shall control.

### 2.1.1 PAY PHONE SERVICES

#### 2.1.1.1

(a) Contractor, at its expense, shall provide, maintain and keep in operation Pay Phones, including line activation and all required station wiring and enclosures, at all locations owned, leased, rented, or operated by State or any State Entity where Pay Phones are currently installed, regardless of whether such Pay Phones are uneconomical to Contractor.

(b) Contractor, at its expense, also shall provide, install, maintain, and keep in operation all new Pay Phones requested by State, including line activation and all required station wiring and enclosures, at any location owned, leased, rented, or operated by State or any State Entity designated by DAS IRMD (except DOC) now or in the future, regardless of whether such new Pay Phone is uneconomical to Contractor, unless the total customary and reasonable costs to install a requested new Pay Phone, including all labor and required equipment, exceeds (i) \$1,500 for installation at a location indoors, or (ii) \$3,000 for installation at a location outdoors. In the event such

*Install  
reference*

installation costs exceed the applicable amount described in the prior sentence, if the applicable State Entity pays for the amount of the installation costs above the \$1,500 or \$3,000 amount described above, as applicable, Contractor shall provide, install, maintain and keep in operation such new Pay Phone. Factors that determine the cost of installation include but are not limited to location feasibility, cable pair availability, distance to service area, means of providing dial tone, maintenance, distance to service and repair. The foregoing notwithstanding, except with respect to DOC facilities, unless otherwise agreed to by Contractor, the number of new Pay Phones which Contractor shall be required to install shall not exceed (i) during the Initial Term, thirty (30) Pay Phones, and (ii) during the Extended Term, if any, ten (10) Pay Phones per each twelve (12) month period during the Extended Term. Contractor, at its expense, also shall provide, install, maintain and keep in operation all new Pay Phones requested by DOC, including line activation and all required station wiring and enclosures, at any location owned, leased, rented, or operated by DOC now or in the future, regardless of whether such new Pay Phone is uneconomical to Contractor.

**2.1.1.2** All new Pay Phones provided under this Contract shall be installed in compliance with current ADA (Americans with Disabilities Act) requirements, contain no removable parts, and be designed, constructed, and installed in such a manner as to minimize vandalism and destruction of property and to present no safety hazard to the user.

**2.1.1.3** The Parties agree that Contractor will install at each Pay Phone location a Classic Payphone (Western Electric 1D2), an Automatic Electric 120B, a Nortel Millennium Advanced Payphone, an Elcotel Series 5 or a Fortec 31K,, or a mutually agreed to replacement phone and/or equivalent. Calling cards and coins shall be useable with any model of payphone listed above. To the extent not inconsistent with the requirements set forth in this Appendix and elsewhere in the Contract, these payphones shall be constructed and configured, and shall perform, as represented in the brochures attached to Contractor's Proposal.

**2.1.1.4** The Pay Phones provided under this Contract shall be programmed, either via the set or the line class-of-service, to deny or allow incoming calls, as determined by State. Unless specifically designated otherwise by DAS IRMD, all Pay Phones shall be programmed to deny incoming calls.

**2.1.1.5** Contractor shall provide statewide installation, maintenance, and service to all Pay Phone locations determined by State, in its sole discretion.

**2.1.1.6** Contractor shall have emergency support personnel available by pager 24 hours per day, seven days per week to respond to Pay Phone outages. For normal repair and maintenance work, field technicians and their supervisors shall be available five (5) days a week, between 7:00 a.m. and 4:00 p.m. The repair interval for a minor repair fix or maintenance shall be 24 hours or less, five (5) days a week. A major repair fix shall be completed within four (4) hours after the outage is reported. A major failure is an outage that may cause injury or a life threatening situation .

**2.1.1.7** Contractor shall provide the following for all Pay Phones:

(1) 24 hour per day, seven days per week operator service for call handling, domestic and international directory service, complaint reports, and credit adjustments for cutoffs and poor transmission quality;

(2) A 24 hour per day, seven days per week toll-free number for reporting telephone set troubles;

(3) A minimum of two alternate language voice prompts for Nortel Millennium Advanced Payphones only (provided, however, that for currently installed Pay Phones and all new Pay Phones, including all Nortel Millennium Advanced Payphones, the operator services provider utilized by Contractor for such Pay Phones shall offer numerous foreign languages accessible through live operators);

(4) Multilingual operator service;

(5) The ability to place calls to all domestic and international locations within the North American Dialing Plan;

(6) P.01 Busy Hour grade of service;

(7) Less than one percent of phone calls shall be lost due to hardware/software failure;

(8) Short call setup time (industry standard) from last digit dialed to credit card tone dial signals, operator answer, and first ring at destination;

(9) Easy to understand charge records for users of Pay Phones;

- (10) Methods to control fraud using Pay Phones;
- (11) Alphabetical and classified directories; and
- (12) All signage and notices required by the FCC and the OPUC.

**2.1.1.8** Within 60 days of the close of Contractor's fiscal year, an annual report containing an inventory of the telephone numbers and locations for each Pay Phone covered by this Contract shall be provided to DAS IRMD.

**2.1.1.9** Contractor or its Subcontractors shall provide, at its expense, local and long distance (intraLATA, interLATA, intrastate, interstate, and international) calling service for all of the Pay Phones located on properties owned or operated by State or any State Entity, including those currently installed and those yet to be identified or installed in the future during the term of this Contract.

**2.1.1.10** All local and long distance services, whether provided with Contractor's resources and over its network, or with the resources and networks of other telecommunications companies shall integrate with one another and operate seamlessly. Full reporting of all usage for all calling services shall be provided. Contractor shall also provide access to seven days per week, 24 hour per day professional security and fraud monitoring, and fully interactive call trace capability that will immediately report the addresses of call origins where technology permits.

**2.1.1.11** Contractor shall be able to utilize the long distance carrier selected by DAS IRMD and Contractor without degradation of service, loss of fees to State or any of its entities, or loss of monitoring capability where required by DAS IRMD.

**2.1.1.12** Contractor shall meet with State personnel, on a quarterly basis, during the Term of this Contract, to review and discuss Contractor's performance under this Contract.

## **2.1.2 INMATE PHONE SERVICES**

### **2.1.2.1 Inmate Phones**

**2.1.2.1.1** Contractor, at its expense, shall provide, install, maintain and keep in operation Inmate Phones, which shall be industry standard US

WEST 10A coinless telephone station equipment and/or equivalent (including line activation and all required station wiring) designed for and capable of providing service to prison inmates at all locations within DOC facilities where Inmate Phones are currently installed and may be requested by DOC to be installed in the future in existing facilities, in expansion of existing facilities, or in new construction under way or yet to be initiated, regardless of whether such Inmate Phones are uneconomical to Contractor. To the extent not inconsistent with the requirements set forth in this Appendix and elsewhere in the Contract, these Inmate Phones shall be constructed and configured, and shall perform, as represented in the brochures attached to Contractor's Proposal, and/or equivalent. Installation shall include line activation, all required station wiring, and interconnection with Monitoring and Recording Systems equipment where equipped.

**2.1.2.1.2** All Inmate Phones shall be installed with a cutoff switch located in a controlled area that, when activated, can physically disable the telephone to prevent any incoming or outgoing calls and disrupt any call in progress. A call deactivation capability shall also be provided that will allow DOC personnel to disable any Inmate Phone from a local control center or area designated by DOC where station wire can be installed and cable provided by the State.

**2.1.2.1.3** All Inmate Phones provided under this Contract shall be installed in compliance with current ADA (Americans with Disabilities Act) requirements, contain no removable parts, and be designed, constructed, and installed in such a manner as to minimize vandalism and destruction of property and to present no safety hazard to the user. Telephone Devices for the Deaf (TDD)(acoustic couplers) shall be provided where required at each DOC facility.

**2.1.2.1.4** Except with respect to features required by law or regulations, upon request from State and upon mutual agreement of the Parties, Contractor will provide additional features for the standard Inmate Phones, including hands-free speaker phones and amplified volume control.

**2.1.2.1.5** Contractor or its Subcontractors, at its expense, shall provide local and long distance (intraLATA, interLATA, intrastate, and interstate) calling service and equipment for all of the Inmate Phones located within all DOC facilities both currently installed and as may be installed in the future during the Term of this Contract, in expansion of existing facilities or in new construction under way or yet to be initiated. Contractor or its Subcontractors, at its expense, shall provide international calling service and equipment for designated Inmate Phones both currently installed and as may be installed in the future during the Term of this

Contract, in expansion of existing facilities or in new construction under way or yet to be initiated, at each DOC facility (such phones to be designated by DOC).

**2.1.2.1.6** All local and long distance services, whether provided with Contractor's resources and over its network, or with the resources and networks of other telecommunications companies shall integrate with one another and operate seamlessly.

**2.1.2.1.7** Contractor shall be able to utilize the long distance carrier selected by Contractor and agreed to by DAS IRMD without degradation of service, loss of fees to DOC, or loss of monitoring capability where required by DOC.

**2.1.2.1.8** Contractor shall provide P.01 Busy Hour grade of service to all Inmate Phones.

**2.1.2.1.9** Except to the extent in conflict with any of the provisions contained in this Section 2.1.2 of **Appendix 2.1**, the obligations of Contractor applicable for Pay Phone Services described in Section 2.1.1 of **Appendix 2.1** shall also apply to Inmate Phone Services.

### APPENDIX 3.1

The following rates and surcharges shall be charged to users of Pay Phones and Inmate Phones (which in the case of collect calls, shall be the recipients of the calls) for local calls; intrastate, intraLATA calls; intrastate, interLATA calls; interstate calls; and international calls. These rates and surcharges shall constitute the total costs to users of the Pay Phones or Inmate Phones; no additional rates or charges per call, per minute, per mileage band may be imposed, and no additional rate periods applied without the written consent of DAS IRMD.

1. For users of Inmate Phones, for interLATA, intrastate calls within the State of Oregon, Contractor and its applicable Subcontractor will charge only (i) a set-up fee per call which shall not exceed \$2.75, and (ii) a per minute charge which shall not exceed \$0.59. In the event Contractor or its applicable Subcontractor introduces an inmate calling plan for interLATA, intrastate calls within the State of Oregon, Contractor and its Subcontractor will charge for inmate phone calls either (a) for users who choose to utilize such inmate calling plan, the set-up fee and per minute charge applicable under such inmate calling plan, or (b) for users who choose not to subscribe to such inmate calling plan, the rates published by Contractor or its applicable Subcontractor in their respective tariffs, general catalogue rates, or price lists; provided that the inmate calling plan offers to subscribers a rate that is lower than the rate available to non-subscribers pursuant to Contractor's or its applicable Subcontractor's tariffs, general catalogue rates or price lists.

2. For users of Pay Phones, for interLATA, intrastate calls within the State of Oregon, Contractor and its applicable Subcontractor will charge only the applicable rates and other charges published by Contractor and its Subcontractors in their respective tariffs, general catalogue rates, or price lists.

3. For users of Inmate Phones and Pay Phones, for interstate and international calls, Contractor and its Subcontractors will charge only the applicable rates and other charges published by Contractor and its Subcontractors in their respective tariffs, general catalogue rates, or price lists.

4. For users of Inmate Phones and Pay Phones, for local and intraLATA, intrastate calls, Contractor and its Subcontractors will charge only the normal and customary prices, rates and other charges published by Contractor and its Subcontractors in their respective tariffs, general catalogue rates, or price lists.

**APPENDIX 3.2**

Contractor shall pay to DOC each quarter during the Initial Term, payable on the final day of each calendar quarter, the following fees:

	<b>AMOUNT</b>
Each quarter during first year of Initial Term of Contract:	\$625,000
Each quarter during second year of Initial Term of Contract:	\$681,250
Each quarter during third year of Initial Term of Contract:	\$750,000



**APPENDIX 6.1.2**

**KEY PERSONNEL**

<u>Name</u>	<u>Title</u>
Teresa O'Keefe	Sales Manager

*TLOKEEF@USU.CST.COM*

**Inmate**

<u>Name</u>	<u>Title</u>
* Joanna Sissons	Account Manager - Corrections
Jim Crouch	Senior Account Manager - Corrections
Dale Cherrington	Account Manager - Corrections
Linda Aronson	Account Manager - Corrections
Sydney Carrick	Regional Account Manager - Corrections/Pay Phones
Denitrice Jenkins	Account Consultant - Corrections

**Pay Phone**

Lance Lorenz - <i>503-425-3365</i>	Regional Account Manager
Myrna Victoriano <i>206-345-1240</i>	Account Consultant
Jim Brandt	Retail Services Product Manager
Dean Lagrave	Regional Account Manager
Dianna Isom	Regional Account Manager
Sydney Carrick	Regional Account manager



**U S WEST**  
1801 California Street, Suite 5200  
Denver, Colorado 80202  
(303) 896-8608 (phone)  
(303) 965-2484 (fax)  
e-mail: [sparks@uswest.com](mailto:sparks@uswest.com)



**Susan B. Parks**  
Vice President and General Manager-  
Business & Government Solutions

May 30, 2000


State of Oregon, Department of Administrative Services  
955 Center St., NE, 5<sup>th</sup> Floor  
Salem, Oregon 97310

Re: Fees Payable to State of Oregon, Department of Corrections

Dear Sir or Madam:

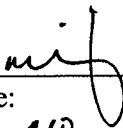
In consideration of the State of Oregon permitting U S WEST Communications, Inc. ("Contractor") to render telecommunications services to the State of Oregon, Department of Corrections ("DOC") during the period from May 16, 2000, to June 30, 2000, whereby Contractor earns revenue from, among other things, telephone calls made by inmates at DOC facilities, Contractor agrees to pay to DOC an amount equal to Three Hundred Fifteen Thousand Nine Hundred Thirty Four Dollars (\$315,934), payable in cash on June 30, 2000, less any amounts of commissions actually paid to DOC by Contractor before June 30, 2000, with respect to such telecommunications services for the period May 16, 2000, to June 30, 2000, under the existing contractual relationship between DOC and Contractor or paid directly to DOC by GTE, Sprint, AT&T and Century-Tel for that same period under their existing contractual relationships with DOC.

**U S WEST COMMUNICATIONS, INC.**

By:   
Susan B. Parks  
Vice President and General Manager-  
Business & Government Solutions

AGREED AND ACCEPTED:

**STATE OF OREGON**  
**DEPARTMENT OF ADMINISTRATIVE SERVICES**

By:   
Name:  
Title: CID



**CONFIDENTIAL PURSUANT TO ORS 192.502(5)**

Reference is made to the Contract for Inmate and Payphone Equipment and Services and Associated Inmate Monitoring & Recording Equipment and Services dated as of July 1, 2000 (the "Contract") between US WEST COMMUNICATIONS, INC. and the STATE OF OREGON, acting by and through its DEPARTMENT OF ADMINISTRATIVE SERVICES (hereafter "DAS"), and to Amendment No. 2 to Contract dated *in* January 29, 2004, between QWEST COMMUNICATIONS, INC., successor in interest to US WEST COMMUNICATIONS, INC. (hereafter "Contractor") and State.


Pursuant to Section 2.1 of Contract, Contractor and DAS hereby confirm and agree that the attached are Sections 2.1.2.2 and 2.1.2.3 of **Appendix 2.1** of Contract, that the attached are part of Contract and are incorporated by reference into Contract, and that the attached shall be held by the State of Oregon, Department of Corrections ("DOC") as information or records of DOC entitled to confidential treatment under ORS 192.502(5) and otherwise in accordance with Section 2.1 of Contract.

*C* Dated as of January 29, 2004.

STATE:

STATE OF OREGON

BY: DEPT. OF ADMINISTRATIVE  
SERVICES IRMD

By: 


STATE OF OREGON

BY: DEPT. OF ADMINISTRATIVE  
SERVICES  
PURCHASING SECTION

By: N/A - Delegated per JS-SPB

State of Oregon Purchasing Manager

BY: DEPT. OF ADMINISTRATIVE  
SERVICES  
PURCHASING SECTION

By:   
DAS Contracts Coordinator