

**CONTRACT FOR CORRECTIONAL AND NON CORRECTIONAL PUBLIC PAYPHONES
FOR THE STATE OF SOUTH CAROLINA**

BETWEEN

SOUTH CAROLINA BUDGET AND CONTROL BOARD

AND

SPRINT PAYPHONES SERVICES, INC.

CONTRACT NO. OIR.2000.07CONTR

MARCH 2000

STATE OF SOUTH CAROLINA)
))
COUNTY OF RICHLAND) **CONTRACT FOR CORRECTIONAL AND**
) **NON-CORRECTIONAL PUBLIC PAYPHONES**
) **FOR THE STATE OF SOUTH CAROLINA**

THIS AGREEMENT is entered into this 27th day of March, 2000, by and between Sprint Payphone Services, Inc. (CONTRACTOR), with its principal offices located 6440 Sprint Parkway, Overland Park, KS 66251, Mailstop KSOPHM0316, and the South Carolina Budget and Control Board, by and through the Office of Information Resources (STATE or OIR), with its principal offices located at 4430 Broad River Road, Columbia, South Carolina 29210.

WHEREAS, in May, 1999, the STATE issued Request for Proposals Number 2000-07 (RFP) soliciting competitive sealed proposals for Public Payphone Equipment and Services for the State of South Carolina which is attached hereto as Exhibit 1 and incorporated verbatim in this contract; and

WHEREAS, this solicitation was for the purposes of replacing all payphone equipment and services under existing contracts with BellSouth, AT&T, GTE, Sprint United Telephone Company, Rock Hill Telephone Company and Farmers Telephone Company; and

WHEREAS, this solicitation also requires that, as new locations are identified, payphones can be added at these locations by the STATE at the then current commission rate or at whatever higher commission rate may be agreed to by the parties; and

WHEREAS, the STATE issued the First Amendment to the RFP on July 6, 1999 consisting of an initial set of questions numbered 1 to 101 and additional questions numbered 1 to 13 plus a portion entitled Additional Changes by the State containing 7 items and five (5) attachments together attached hereto as Exhibit 2 and incorporated verbatim in this contract; and

WHEREAS, the STATE issued the Second Amendment to the RFP on July 15, 1999 consisting of questions numbered 1 to 3 and Additional Changes by the State containing two items which are attached hereto as Exhibit 3 and incorporated verbatim in this contract; and

WHEREAS, on July 26, 1999, the CONTRACTOR submitted to OIR both its technical proposal (consisting of a large, white, three ring binder) which is attached as Exhibit 4 and a separate business proposal (consisting of a completed Attachment 4 to the RFP for all lots and the RFP Term and Certification form), which is attached as Exhibit 5 and both are incorporated verbatim in this contract, in which CONTRACTOR agreed among other things to be bound by the terms and conditions of the RFP during the term of the contract as fully set forth in the RFP; and

WHEREAS, the STATE wrote to CONTRACTOR on September 8, 1999 and the CONTRACTOR responded on September 9, 1999, which response is attached as Exhibit 6 and incorporated verbatim in this contract; and

WHEREAS, the STATE informed CONTRACTOR by letter dated September 17, 1999 that it had been selected to provide public payphone equipment and services for both correctional and non-correctional locations, and to pay the STATE a commission on all calls made from these locations. This letter is attached as Exhibit 7 and incorporated verbatim in this contract; and

WHEREAS, based upon and in reliance of the CONTRACTOR'S proposal, the STATE awarded the proposal to the CONTRACTOR pursuant to Section 1-11-430 of the South Carolina Code of Laws, as amended.

NOW, THEREFORE, BY THESE PRESENTS, and upon the consideration of the mutual promises, covenants, and other consideration herein set forth, the adequacy and sufficiency of which is hereby acknowledged between the parties, it is agreed as follows:

1. AS TO BOTH PARTIES

1.1 DURATION/OPTION TO EXTEND

The term of the contract shall be for a period of five (5) years from the date of final acceptance by the STATE of the payphone equipment and services requested herein. In the absence of the completion of acquisition process for a new contract following expiration of this contract, or for any other reason a new contract has not been executed, the STATE reserves the right to continue with this contract on a month to month basis by written notice to the CONTRACTOR at same commission rate and other terms and conditions as herein set forth.

1.2 WAIVERS/BREACH

No term or provision hereof shall be deemed waived unless breach hereof is waived in writing and signed by the party claimed to have waived and consented. No consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall constitute a consent to, or waiver of, or excuse for, any different or subsequent breach.

1.3 CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The contract between the parties shall consist of this contract document executed by the parties and all Exhibits including items 1 to 7 set forth in the Recitals above. In the event there is a conflict between the documents comprising the contract between the parties, the order of priority shall be: (1) this contract document including the negotiated changes to the RFP and Proposal, attached hereto as Exhibit 8; (2) the amendments to the RFP listed in items 2 and 3 of the Recitals above; (3) the STATE's letter to the CONTRACTOR dated September 17, 1999; (4) CONTRACTOR'S Letter to the STATE dated September 9, 1999; (5) the RFP; and (6) the CONTRACTOR'S Proposal (Exhibits 4 and 5), so that the lower numbered item herein would take precedence over the higher numbered item. This contract is subject to all of the provisions of the Procurement Code, S.C. Code Section 11-35-10 *et seq.*

1.4 CHANGE IN LAW

In the event and to the extent that a change in the laws, regulations or rules governing the performance of this contract adversely affect either party, that party may be entitled to an adjustment in the terms of the contract to compensate for such change. The parties agree to negotiate such adjustments in good faith.

2. AS TO CONTRACTOR

2.1 SCOPE OF WORK

The CONTRACTOR hereby agrees to, in total and complete satisfaction of the requirements of the RFP and this contract, and in a first class manner, to fully and completely perform all services and supply all materials in the RFP, any amendments thereto including the responses to questions and the letter to Mike Jewell, as Vice President of CONTRACTOR from OIR's Director dated September 17, 1999. The CONTRACTOR warrants that it has met all the requirements of the STATE in its RFP and will continue to meet all the requirements of the STATE throughout the performance of its duties hereunder and until final acceptance and through the warranty and throughout the term of the contract. In the event that there are any disagreements between the parties with regards to the requirements of the STATE, arising from any interpretation of the RFP, this contract, or otherwise, CONTRACTOR agrees to defer to the reasonable interpretations of the STATE as, from time to time, may be made by the STATE. If the CONTRACTOR does not agree with the interpretation of the STATE, the CONTRACTOR will notify the STATE in writing within fifteen calendar (15) days of receipt of the interpretation. The parties will meet promptly to discuss the issue. If the parties are unable to negotiate a solution, the issue shall be submitted and resolved pursuant to South Carolina Code Section 11-35-4230.

2.1.1 The CONTRACTOR will fully, completely and satisfactorily perform all services and supply all materials in the RFP including, but not limited to, those items set forth in

Part 3, "Technical Specifications," appearing at pages 25 to 84 of the RFP, and as set out in the CONTRACTOR'S response to these specifications. The CONTRACTOR understands and agrees that it has the duty to perform and, in all respects, conduct itself under this contract in good faith and with fair dealing pursuant to S.C. Code Section 11-35-30 (1976). The CONTRACTOR agrees to pay the STATE forty eight and eighty four hundreds percent (48.84%) commission on all billed, collected or not collected, amounts including all elements (e.g. usage, surcharges, etc.), and further the CONTRACTOR agrees that the STATE, or any agency thereof, will pay no funds to the CONTRACTOR under this contract.

- 2.1.2 The CONTRACTOR agrees that it will impose charges on all calls from non-correctional payphones at rates not to exceed those for an identical call charged by BellSouth for local calls, BellSouth for intraLATA calls, and AT&T for interLATA, interstate, and international calls. For this purpose, rates include both usage and surcharge.
- 2.1.3 The CONTRACTOR further agrees that it will impose charges on all calls originating from correctional facilities at rates not to exceed those set forth in the RFP at Section 3.28 as follows:

| <u>DESCRIPTION</u> | <u>LOCAL</u> | <u>INTRA-LATA</u> | <u>INTER-LATA</u> <u>INTERSTATE</u> |
|---------------------------|--------------|-------------------|--|
| <u>INITIAL MINUTE</u> | .35 | .50 | .35 |
| <u>SURCHARGE</u> | .84 | 1.50 | 2.95 |
| <u>ADDITIONAL MINUTES</u> | N/A | .35 | .35 |

- 2.1.4 As set forth in the RFP, all commissions on calls made from payphone located on state-owned or state-leased property are to be paid directly to OIR. The CONTRACTOR agrees that in the event so instructed by OIR, and at no additional cost, the CONTRACTOR will calculate and distribute commissions to the individual agencies rather than to OIR. The only exception to making payments directly to OIR is when a local or regional government participates under this contract. If so instructed by OIR, commission payments will be made directly ^{to} that local or regional government agency. *cf*
- 2.1.5 The only other exception to the implementation schedule and commission rates set forth above are the payphones located at the Department of Juvenile Justice's detention centers. The parties agree to negotiate a separate implementation schedule and commission rate for these locations upon installation of all other correctional and non-correctional payphones.

2.2 FINAL IMPLEMENTATION PLAN

The CONTRACTOR shall be responsible for the preparation and implementation of final implementation and installation plans for payphone equipment and service at both correctional and non-correctional location. These final plans shall be coordinated through and developed in conjunction with OIR and South Carolina Department of Corrections (SCDOC) to insure that final installation of all equipment/services is accomplished in a manner to minimize interference with normal operations and to be completed at all correctional facilities by no later than January 31, 2000 and at all non-correctional locations by no later than April 30, 2000. The final plan for correctional facilities has been submitted to OIR prior to the execution of this contract, and for non-correctional locations shall be submitted to OIR no later than February 15, 2000. The CONTRACTOR will only be required to include in this plan an installation date for those locations provided to the CONTRACTOR prior to December 31, 1999. Other locations will be installed in reasonable time after the CONTRACTOR is given notice of such locations by the STATE. The final implementation plans shall address all items listed in the preliminary implementation plan set forth in the CONTRACTOR'S technical proposal at Tab 8 and shall include final completion dates for all implementation steps. Failure to meet the Final Implementation Schedule as finally agreed between the parties will be considered a breach of this contract and the STATE may seek compensation from the CONTRACTOR for the actual damages sustained by the STATE as a result of such failure.

2.3 STATUS AS INDEPENDENT CONTRACTOR

The CONTRACTOR'S status shall be that of an independent contractor and not as an agent or employee of the State of South Carolina.

2.4 DESIGNATION OF SUPPLIER/AVAILABILITY OF AND SUPPLIERS

The CONTRACTOR agrees to use T-NETIX, its technologies and personnel, as its subcontractor as set forth in CONTRACTOR'S letter to the STATE dated September 8, 1999 and further that any equipment and software selected for use by the CONTRACTOR to be used in the performance of this contract must be installed and successfully operating in the U.S. market by September 1, 1999, and must represent the CONTRACTOR latest technology and be capable of a demonstration as may be required. No replacements or substitutions of the individuals designated by the CONTRACTOR or any of its subcontractors shall occur except upon the prior, written, consent of the STATE. It is further agreed that any proposed replacement will have the same or greater knowledge, training, experience and skills as the individual being replaced.

2.5 YEAR 2000 COMPLIANCE

As set forth in Section 2.10 of the RFP, the CONTRACTOR warrants that all the hardware, software and services used, communicated with and/or provided under this contract, including but not limited to, information technology, embedded systems, or any other electro-mechanical or processor based system, when used in accordance with its associated documentation, is capable of accurately processing, providing and/or receiving date data from, into, and between the 20th and 21st centuries, and the years 1999 and 2000, including leap year calculations. The warranty set forth herein, and in Section 2.10 of the RFP, shall survive the expiration or termination of this contract.

2.6 NONASSIGNABILITY

The CONTRACTOR shall not assign any interest in this contract without the prior written consent of OIR.

2.7 INDEMNIFICATION

The CONTRACTOR, as part of its duty of indemnification, is required to defend and hold harmless OIR or the STATE from any costs arising out of the prosecution or defense of any action arising out of the CONTRACTOR'S performance under this contract. The CONTRACTOR shall notify OIR of the filing of any such litigation. OIR shall have the right, but not the obligation, to participate in the litigation and, subject to prior review and discussion, shall also have the right to ultimately decide matters concerning any litigation arising out of the CONTRACTOR'S performance. The CONTRACTOR shall not settle or compromise any claim without notice to and the consent of OIR, which consent shall not be unreasonably withheld. The CONTRACTOR will, in all instances, bear its own attorney's fees and expenses.

2.8 SECURITY FOR PERFORMANCE/DAMAGES

The CONTRACTOR shall supply security, not later than ten (10) days following execution of this contract by the CONTRACTOR, a performance bond as required pursuant to Section 2.6 of the RFP. Failure to supply the bond will constitute a material breach of this contract and will allow the STATE to void the contract and/or seek such remedies as appropriate at its sole discretion.

2.9 MEETING DURING CONTRACT TERM/PURPOSES

2.9.1 The CONTRACTOR shall meet with OIR and/or the STATE's designated representative as necessary, but not less than quarterly to review the quality and level of services being provided and to take corrective action as directed and approved by OIR. The CONTRACTOR shall also advise OIR as to the following during these meetings:

2.9.1.1 Follow-up to and status of any agreed upon corrective action resulting from any preceding meetings;

2.9.1.2 Developments in the payphone equipment or services industry as a whole including, but not limited to, new programs, commission trends, techniques, models, and the like; and

2.9.1.3 Legal developments including, but not limited to, regulatory, administrative, statutory, and judicial developments relating to payphone services administration.

2.9.2 The CONTRACTOR understands and agrees that this contract for payphone services is important and has public safety considerations and implications. In recognition of the importance and size of this contract, the purpose of this provision is to provide to OIR an ongoing, and thorough understanding of developments in these areas nationwide. The CONTRACTOR shall meet with the STATE at least two (2) times a year for the purpose of keeping the STATE abreast of trends, developments, and any other information which may be useful in connection with the payphone activities provided for hereunder, for the purpose, among others, of learning about activities, programs, techniques or similar matters which the STATE may consider adopting for its program. The STATE agrees that the CONTRACTOR shall not be liable to the STATE for any damages of any kind based on any failure, or alleged failure, to comply with this provision.

2.10 NON-DISCRIMINATION

The CONTRACTOR agrees that personnel performing services under this contract will not be discriminated against on the basis of race, sex, age, religion, national origin, or handicap and to comply with the requirements of the Americans with Disability Act or other applicable laws concerning the provisioning of the services hereunder.

2.11 DUTIES UPON TERMINATION

The CONTRACTOR shall provide full cooperation to OIR and any subsequent payphone services contractor so that the transition to a subsequent contractor will be speedily and efficiently accomplished without any interruption or other disruption in call processing, including providing all materials generated during the existence of the contract which would assist with the transition to another contractor. The CONTRACTOR shall provide OIR with a standard magnetic tape file, or other standard magnetically stored record in computer reproducible form within ten (10) working days following notice of termination of the contract for any reason of all data in the possession of the CONTRACTOR generally maintained by the CONTRACTOR or as required by this contract. This shall be provided without cost to the STATE.

2.12 DUTY TO PROVIDE DRUG-FREE WORK PLACE

The CONTRACTOR, pursuant to South Carolina Code 44-107-30, certifies that it provides a drug-free work place and will do so throughout the duration of this contract.

3. AS TO THE STATE

3.1 COOPERATION

The STATE agrees to cooperate with CONTRACTOR, as requested, and to make available from its then existing resources staff, information, access to facilities, and other similar, suitable resources to CONTRACTOR to assure satisfactory performance of its obligations under this contract.

The signatories hereunder warrant and declare that they are duly authorized to execute this contract by virtue of their position and title or are signing on behalf of their respective entity by virtue and strength of a resolution duly considered and passed by a duly authorized and constituted authority or body of their respective entity and that, furthermore, it is stipulated and agreed by the parties that this contract shall be binding upon their respective entity, officers, agents, affiliated organizations, shareholders and the heirs, successors and assigns of each.

SPRINT PAYPHONE SERVICES, INC.

WITNESSES

By: Randy W. Osler

[Signature]

Title: PRESIDENT, CARRIER MARKETS

Date: 03/27/00

**STATE BUDGET AND CONTROL
BOARD OFFICE OF INFORMATION
RESOURCES**

By: [Signature]

[Signature]

Title: DIRECTOR

Date: 3/17/00

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