

**NON-EXCLUSIVE STATE TERM CONTRACT
FOR
LOCAL TELECOMMUNICATIONS SERVICES**

JUNE 2001

Contract # 2000.17.02

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STATE OF SOUTH CAROLINA) NON-EXCLUSIVE STATE TERM
) CONTRACT FOR LOCAL
RICHLAND COUNTY) TELECOMMUNICATIONS SERVICES

THIS AGREEMENT is made by and between HTC Communications (herein referred to as "HTC" or "CONTRACTOR") with its principal offices located at 3480 Highway 701 North, Conway, South Carolina 29526 and the South Carolina Budget and Control Board, through the Office of Information Resources (herein referred to as "State" or "OIR"), with its principal offices located at 4430 Broad River Road, Columbia, South Carolina 29210.

WHEREAS, in November, 2000, the State issued Request for Proposals (RFP) Number OIR2000.17 to establish a multi-vendor, state term contract for various types of local telecommunication services including local business lines (1FBs), centrex services, DID, DOD/combo trunks, channelized T-1 access circuits, DSL access to ATM (excluding access to ISPs), and ISDN BRI and PRI lines (along with associated features and options); and

WHEREAS, the State issued two (2) amendments to this RFP consisting of vendor questions and the State's responses thereto numbering from 1 to 59, and six (6) "additional comments" by the State, such amendments being incorporated into this Agreement by reference, and

WHEREAS, on December 12, 2000, the CONTRACTOR submitted both a technical proposal and a separate business proposal, which are incorporated by reference into this Agreement, in which CONTRACTOR agreed among other things to be bound by the terms and conditions of the RFP during the entire term of this Agreement; and

WHEREAS, the CONTRACTOR has the legal authority and the technical expertise to provide the proposed local telecommunication services; and

WHEREAS, the State has evaluated all responses to the RFP and has determined that the CONTRACTOR'S proposal meets the State's technical and price requirements; and

WHEREAS, the parties have since met and conferred and have agreed to the additional prices, terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of, the mutual promises and other considerations herein contained, the parties agree, and the Agreement is hereby as follows:

1. DURATION/OPTION TO RENEW

This Agreement, which shall commence on the last date signed below, is for a non-exclusive, state term contract for the local telecommunication services as further described herein and shall be for an initial term of five (5) years. This Agreement may be renewed by the State, at its sole option, annually or in any combination as long as the term of the Agreement does not exceed a total of seven (7) years.

1.1 Term Contract - This Agreement is a non-exclusive, state term contract for local telecommunication services for a specified time period, and from which state governmental bodies must procure their requirements for such services during its term. If the State is offered a price that is ten percent (10%) less than the contract price for the same services, the State may establish a contract with the vendor offering the lower price, unless the CONTRACTOR agrees to meet those price. In all such instances, the CONTRACTOR shall be offered an opportunity to meet the offered price.

2. ORDERING LIMITATIONS

The CONTRACTOR shall accept purchase orders from no source except OIR, or a representative of another agency designated by OIR by written notice. A copy of any proposal made to a State agency must also be provided to OIR. In order to minimize disruption of agencies with multiple locations, the CONTRACTOR will not contact individual locations unless directed by OIR. Any orders entered by contract in violation hereof will be null and void ab initio without liability for payment or otherwise against either the State or the individual entity involved.

3. ACCEPTANCE

The State has the right, for thirty (30) days after the time of installation and/or replacement of any services requested herein, to terminate services, without termination charges or other liability, for any reason constituting a material breach hereof. In the event of such notification, the CONTRACTOR must immediately correct the basis for the problem and complete any correction in not more than thirty (30) calendar days followed by a second and final full thirty (30) day acceptance period. If services are terminated by the State due to CONTRACTOR'S material breach of this Agreement, then CONTRACTOR shall waive all installation charges. At the end of thirty (30) days, the services herein provided for shall be deemed accepted by the State, unless notice is provided by the State to CONTRACTOR in writing that a material breach of this Agreement has occurred.

4. WARRANTY

The CONTRACTOR warrants that the services it provides under this Agreement will be provided, and will be performed, in accordance with all applicable standards of performance established by the Public Service Commission of

South Carolina and/or the Federal Communications Commission. Any failure to comply with such standards which interferes with the State's ability to communicate via the services provided by the CONTRACTOR under any given purchase order will be regarded as a material breach entitling the State to terminate this Agreement after notice by the State and a reasonable opportunity to cure by the CONTRACTOR whose service is in breach of this Agreement without termination charges or other liability except for services already provided. The State reserves the right to negotiate for such services with any other vendor of its choice and to charge the CONTRACTOR for any conversion costs and additional actual costs over the expected cost of services under the purchase order but for the material breach of CONTRACTOR relating thereto. The warranties contained in this Section are exclusive and in lieu of all other warranties, whether express, implied or statutory, including, but not limited to, implied warranties of merchantability, infringement, completeness, quality or fitness for a particular purpose. CONTRACTOR hereby specifically disclaims any liability to State or OIR for interruptions affecting the services furnished under this Agreement that are attributable to interconnection facilities of State or OIR or to State or OIR's equipment failures, or to breach of this Agreement by State or OIR.

5. RESTORATION OF WORK AREAS

Upon completion of the work, the CONTRACTOR shall re-connect any utilities, equipment or appliances disconnected in the course of its work and replace all furnishings moved for the performance of the work. All debris and rubbish generated by the work shall be removed, and all premises left clean and restored to original condition.

6. INVOICE AND PAYMENT PROCESS FOR CHARGE BILLED TO OIR

6.1 The State agrees to pay the amount due and owing to the CONTRACTOR in accordance with the rate schedule established/negotiated under this Agreement. Additionally, the State agrees to pay the CONTRACTOR late payment charges, if such charges occur, pursuant to the provisions of the South Carolina Procurement Code, Section 11-35-45, and the instructions issued from time to time by the Comptroller General. All such times shall commence from the date of receipt of invoice by the State. In the event of any dispute as to the date of receipt, the burden shall be on the CONTRACTOR to establish such date by a return receipt or like documentation. Otherwise, the date asserted by the State shall prevail.

6.2 Additionally, the State shall hold the CONTRACTOR accountable for the accuracy and timeliness of all invoices, payments, credits and reports. If the CONTRACTOR consistently submits inaccurate invoices, or fails to submit invoices, reports, credits and/or payments to OIR in a timely manner, then OIR may, at its sole discretion, assess the CONTRACTOR a

penalty of four hundred (\$400.00) and 00/100 dollars per day per occurrence. If an invoice, payment, credit or report contains obvious and grievous errors or is consistently past due, OIR will provide the CONTRACTOR with a written warning notice defining the problem and setting forth the desired resolution. If within ninety (90) days from the date of the written warning notice, the CONTRACTOR has not resolved the problem, then OIR may assess the penalty set forth above.

- 6.3 When available, the CONTRACTOR shall submit monthly charges via magnetic media. This media shall be in a format mutually agreed to by the State and the CONTRACTOR. Once established, the State must be given at least four (4) months notice prior to any modification of this media. If such notice is not provided to the State, the CONTRACTOR shall be fully liable for all costs incurred by the State in modifying programs, billing reports, invoice documents, etc. in order to be able to read and process data in the new format. The State's preferred method for receipt of monthly invoices is client server ready FTP. In lieu of FTP, the State will accept submission via magnetic tape media. Any cost associated with providing invoices, reports, etc. on magnetic media shall be agreed to be the parties and included in an amendment to Exhibit 2.
- 6.4 When available, the CONTRACTOR shall also provide detailed monthly usage and billing reports in electronic format.
- 6.5 The CONTRACTOR agrees to designate a "single point of contact" in its billing department/organization to serve as a contact for State personnel to ask questions, obtain information, request credits/adjustments and resolve issues. The CONTRACTOR shall notify the State in writing of any change in the employee designated to provide these services. This employee shall serve as the State's contact for the following:
 - ◆ Creating a client profile for OIR.
 - ◆ Monitoring completed orders for billing accuracy monthly.
 - ◆ Handling billing inquiries, pricing inquiries, and complaints through resolution.
 - ◆ Handling credit and adjustment requests.
 - ◆ Analyzing financial and performance data against SLA requirements.
 - ◆ Auditing and validating bills each month prior to being sent and notifying OIR of potential discrepancies.
 - ◆ Management of the generation of all invoice and all billing reports.
 - ◆ Maintaining historical billing data and client profile data
 - ◆ Availability to meet in person or via conference call with OIR and/or agencies upon request.

- 6.6 The CONTRACTOR shall make its best effort to provide a billing cycle that begins on the first day of each month and ends on the last day of such month.
- 6.7 The CONTRACTOR shall provide paper invoices and, when available, FTP or magnetic tape invoices by the 8th day of the month following the end of the billing cycle. Failure to provide the State with said invoices and reports in the specified time period shall subject the CONTRACTOR to the penalty charges set forth in this section. The CONTRACTOR shall provide the capability to create one (1) master invoice for multiple locations at the discretion of OIR.
- 6.8 The CONTRACTOR agrees to promptly review requests for adjustments and/or credits, and, where appropriate, to provide the State with said credits and adjustments within two (2) billing cycles of the resolution request. Failure to provide the State with said credit or adjustments in a timely manner shall subject CONTRACTOR to the penalty charges set forth in this Section.
- 6.9 The CONTRACTOR agrees that they will not submit or “turn over” past due invoices of a State government entity to a credit bureau, collection agency or any other group except the State account team without the prior consent of OIR. Such approval may be on a case-by-case basis or as set forth in a procedure approved by OIR. The CONTRACTOR agrees not to suspend or disconnect service of a State government entity without the prior consent of OIR, provided that such consent shall not be required and CONTRACTOR may terminate service upon five (5) days prior notice without liability to OIR or the State if after notice any undisputed invoice becomes over ninety (90) days past due.
- 6.10 All work order numbers issued to the CONTRACTOR by OIR authorizing it to perform work must be included on the CONTRACTOR’S invoice to OIR to receive payment for such work/service. Included in the itemization, the CONTRACTOR must include its service order number, due dates, and service descriptions.

7. DIRECT AGENCY BILLING

The CONTRACTOR may also bill user agencies directly for services provided under this Agreement. Such invoices shall include an OIR administrative charge, the amount of which will be determined by OIR (see Section 8 below) and any regulatory charges or fees incurred by CONTRACTOR pursuant to any federal, state or local telecommunications regulation. Itemized statements must be provided to user agencies for each direct-billed client showing all service details. The statement must include detail for each type of service and area. OIR reserves the right to require summary copies of direct-billed statements that must be

submitted to OIR at the same time they are provided to direct-billed clients. The CONTRACTOR must provide, when available, copies of billing information in electronic format including CD-ROM, MAG Tape or FTP.

7.1 Errors, Discrepancies, And Non-Compliance Penalties

The requirements of Section 6, including late payment charges, accurate billing, timely invoice delivery, and billing dispute resolutions, shall apply to direct agency billing and failure to comply with such requirement may result in penalties that compensate the State as set forth in Section 6.2 above. The CONTRACTOR shall also provide a single point of contact for resolution of billing issues for such billing.

7.2 Meet-Point Billing

The CONTRACTOR shall provide billing on behalf of any other vendors with which the CONTRACTOR must interconnect to complete the provisioning of circuits for a required service.

7.3 Report Management Support

The CONTRACTOR is required to provide monthly reports to OIR indicating all services ordered for State entities. Required information includes the type and quantity of services ordered, cost, order number, TN/Circuit ID, end user agency name, contact name and number, location information including installation address, billing address, billing account number, due date, and date installed.

8. ADMINISTRATIVE CHARGES/FEES

The CONTRACTOR agrees to include surcharges or administrative fees on monthly invoices billed directly to user agencies utilizing an amount or percentage specified by OIR. These fees will be included in the end users' monthly rate and will not be a separate line item on their invoice. These fees may be a percent, a specific amount, or some combination. All rates quoted and billed to agencies and other eligible entities by the CONTRACTOR must include these fees. These fees shall be collected and paid to OIR by the CONTRACTOR within two (2) billing cycles. If the CONTRACTOR fails to submit said fees to the State in a timely manner, it will be subject to the penalties set forth in Section 6.2 above.

9. UNIVERSAL SERVICE FUND

The CONTRACTOR warrants that it is qualified under applicable Federal Communications Commission and South Carolina Public Service Commission rules to apply for and receive Universal Service Fund allocations/disbursements

for services provided pursuant to this Agreement to schools, libraries, rural health care providers, agencies, institutions and consortia thereof, and other entities which are eligible for those allocations/disbursements on behalf, and for the benefit, of those entities, agencies and institutions. The CONTRACTOR also agrees to maintain those qualifications, and to use commercially reasonable efforts to assist schools, institutions and other entities in applying for and receiving these allocations/disbursements.

10. SERVICE AREA

The CONTRACTOR shall make the local telecommunication services available hereunder to State and local government agencies located in its local service areas, as set forth in Exhibit 1. The leased loop environments may prevent every location from having service available.

11. PRICING

The CONTRACTOR agrees that it will provide the local telecommunication services further described herein at the prices set forth in Exhibit 2 of this document. These prices shall be firm for the entire term of this Agreement except as set forth in Section 14 below. The CONTRACTOR is authorized to provide the following local telecommunication services under this Agreement:

- Business Lines and Trunks
- Basic Rate ISDN (BRI)
- Primary Rate ISDN (PRI)
- Centrex Services

12. GENERAL LOCAL TELECOMMUNICATION REQUIREMENTS

The CONTRACTOR shall comply with the following requirements when providing local telecommunication services under this Agreement:

12.1 Directory Assistance Listings

The CONTRACTOR must provide listings for user agencies in all directories within its local services areas. Such listings shall be provided at no cost to the user agencies.

12.2 Directory Assistance Service

The CONTRACTOR must provide directory assistance service to include requests for all domestic locations to the extent that listings are available. Directory Assistance Call Completion Service, where available, must not be allowed unless it is provided without charge. Charges for Directory Assistance are included in Exhibit 2.

12.3 E911 and 911

The CONTRACTOR must carry all 911 and E911 calls and ensure compatibility with all E911 emergency notification networks within its local service areas. The CONTRACTOR will ensure that calls to E911 centers indicate the actual street level address of the calling number. The CONTRACTOR must also work with the State to implement PBX 911 where a PBX provides service to multiple buildings or locations. The CONTRACTOR will collect fees for E911 and 911 from all users and remit to appropriate entities as required by statute. The State acknowledges that in a PBX environment it has sole responsibility to correctly route 911 calls. As such, the CONTRACTOR shall not be liable to the State of any direct, indirect, incidental or consequential damages arising from an incorrect programming of the PBX by the State.

12.4 Demarcation Points

The CONTRACTOR agrees to provide demarcation point placement in accordance with State requirements within any facilities occupied by any State agency, institution, or local government. This includes interface to State equipment located in a collocation agreement space, including but not limited to multiplexers, and access to State provided fiber and alternative access solutions including but not limited to ATM and fiber.

13. SERVICES

13.1 Business Lines and Trunks

The CONTRACTOR agrees to provide business lines, where available. All business lines provided by the CONTRACTOR shall meet industry performance standards.

13.2 ISDN BRI and PRI Lines

The CONTRACTOR agrees to provide ISDN BRI and PRI lines, where available. All BRI and PRI lines provided by the CONTRACTOR shall meet industry performance standards. PRI channels shall be provisioned as inbound, outbound, or data. The State will specify the configurations for each application.

13.3 Centrex Services

The CONTRACTOR shall provide a standard feature package as part of its Centrex offering. User agencies may activate 1 or all features on this

standard feature package. For a list of all features, see Exhibit 3 of this document.

14. RE-EVALUATION/RE-NEGOTIATION PROVISION

The State will require an annual review with the CONTRACTOR to discuss and negotiate price reductions and expansion of services and service areas.

- 14.1 The CONTRACTOR agrees to provide the State with at least the best available prices/costs for its then current quantities and volume of service provided in the State of South Carolina for the duration of this Agreement. If the CONTRACTOR or other members of the CONTRACTOR'S team (subcontractors) provides a lower price for any service to any other similarly situated customer in the State of South Carolina, the State's prices/costs must be lowered to a matching or lower rate.
- 14.2 The CONTRACTOR will provide annually, by the anniversary date of this Agreement, written detail identifying and comparing the State's prices/costs to other pricing that the CONTRACTOR or other members of the CONTRACTOR'S team (subcontractors) offers to similar customers in the State of South Carolina for any and all services.
- 14.3 The CONTRACTOR'S failure to offer lower rates than other contracts in the State of South Carolina with lower or equal revenue volumes will be considered a violation of the terms of this Agreement. The CONTRACTOR will issue credits to the State retroactively from the published or effective date of the reduced rates and appropriately adjust the rates for the remainder of the term of this Agreement.
- 14.4 The CONTRACTOR must agree to come into conformity with general price/cost decreases resulting from law, regulatory decisions, or industry competitive forces (e.g., access reductions). The CONTRACTOR may increase price/cost of the services provided hereunder if such price/cost increase is mandated by law or regulatory decision.
- 14.5 The CONTRACTOR shall meet with OIR annually, by the anniversary date of this Agreement, to discuss new technologies that may impact the services provided in this Agreement and develop mutual plans to address future plans for migration to new technologies. The CONTRACTOR may present other new technologies it plans to implement in its network to OIR at any time

15. INTERFACE TO OTHER SERVICE PROVIDER

The CONTRACTOR shall accept total responsibility for ensuring an operational system including any necessary interfaces between any local exchange carriers and any IXCs. The CONTRACTOR is also responsible for ensuring that all lines are PIC'd to the State's current long distance carrier and are locked to prevent changes. Only OIR may authorize changes. In the event that any calls are billed by any entity other than the State's long distance carrier, the difference in price shall be the responsibility of the CONTRACTOR.

16. REDUNDANCY AND BUSINESS RECOVERY

During the term of this Agreement, the CONTRACTOR shall maintain a plan of redundancy and business recovery. The plan shall include back-up and alternative facilities/resources, plans, procedures, conditions, authorizations, response and recovery times. The CONTRACTOR agrees to restore services as soon as possible, however, if not restored within four (4) hours, the CONTRACTOR shall provide an outage credit for each hour of delay equal to the invoiced amount for such services which may be applied toward future invoices from CONTRACTOR and shall pay for the actual equipment installation costs of the State associated with switching to an alternative provider with respect to such services.

17. RESPONSE TIME AND TROUBLE REPORTING

The CONTRACTOR shall provide a centralized trouble reporting and maintenance system that is manned 24 hours a day, seven days a week. Upon notification via the web or by phone, the CONTRACTOR will respond within two (2) hours and repair the services provided hereunder within four (4) hours of notification. A verbal report of trouble clearance will be furnished to the State employee who reported the trouble within one (1) hour of trouble clearance. A copy of the written trouble ticket will also be provided to OIR, upon requested. The report should provide notice that a correction of the problem has occurred. If correction has not occurred within four (4) hours, a report will be provided showing the plan to correct the problem including a projected correction time. The centralized trouble reporting center should provide notification to OIR's Network Control Center immediately after any occurrence of a service affecting network failure condition when OIR has not previously reported such failure. For trouble isolation involving multiple interfaces between the IXC and LEC equipment where no particular fault can be determined to be a specific vendor issue prior to repair, the CONTRACTOR shall resolve the problem without charges to the State.

18. CUT-OVER AND CHECK-OUT

Prior to cutover of any services provided hereunder, the CONTRACTOR agrees, upon request of the State, to participate in coordination meetings to assist in planning the installation of such services. These meetings will be conducted by the State and may include third parties, as appropriate. At these meetings, the CONTRACTOR and the State will cooperatively determine the cutover dates for such locations.

19. INSTALLATION INTERVALS

The installation intervals to provide the services hereunder, from the time of receipt of a service order until installation is completed, shall be as set forth below. If the CONTRACTOR consistently fails to meet the intervals set forth in this Section, the State may take appropriate action up to and including cancellation of this Agreement.

| <u>Service</u> | <u>Installation Interval</u> |
|---------------------------|------------------------------|
| Business Lines and Trunks | 21 Business Days |
| ISDN PRI Lines | 60 Business Days |
| ISDN BRI Lines | 60 Business Days |
| Centrex Services | 21 Business Days |

20. DEDICATED SUPPORT AND REPAIR TEAM

The CONTRACTOR agrees to provide single points of contact to support the activities of order, installation and repair. The CONTRACTOR will provide a list of the personnel assigned to provide such services (e.g., name, location, address, telephone number, etc.) upon execution of this Agreement, and will notify the State in writing when changes occur in the personnel assigned to perform these activities.

21. NETWORK MANAGEMENT

During the term of this Agreement, the CONTRACTOR shall, at no additional cost to the State, provide a 7-day x 24-hour network operations center to manage all services including call receipt functions. The network operations center shall provide the following functionality:

- Network Monitoring
- Security Management
- Fault Management
- Performance Management

22. OIR MAY AUDIT CONTRACTOR'S BOOKS

22.1 The State shall have the right to audit the books and records of the CONTRACTOR as they pertain to this Agreement, both independent of, and pursuant to, S.C. Code Section 11-35-2220. Such books and records shall be maintained for a period of three (3) years from the date of final payment under this Agreement.

22.2 The State may conduct, or have conducted, performance audits of the CONTRACTOR, including audits of specific requirements of this Agreement, as may be determined necessary by State.

22.3 Pertaining to all audits, the CONTRACTOR shall make available access to its computer files containing history of contract performance and all other documents specifically related to this Agreement. Additionally, any software used by the CONTRACTOR shall be made available for auditing purposes at no cost to the State.

23. COOPERATION

The State agrees to cooperate with the CONTRACTOR, as requested, and to make available sufficient staff, information, access to facilities, and other similar, suitable resources to the CONTRACTOR to assure satisfactory performance hereunder.

24. DUTY TO INSPECT AND ADVISE

The CONTRACTOR agrees that it has a duty to become totally familiar with all requirements set forth in the RFP and this Agreement, and to advise the State of any requirements (i.e., upfit, installation, modifications, alterations, special construction, etc.) necessary to provide delivery, implementation, operation, administration, access facilities, and any and all other supplies, equipment, services, or other cost items to the State necessary to accomplish full, complete and satisfactory performance of the requirements of the State at the prices set forth herein. The CONTRACTOR further agrees that for all such equipment, supplies and/or services provided by the CONTRACTOR, it has made the State aware of any modifications or alterations needed, and the CONTRACTOR agrees to provide all such supplies, equipment and/or services for the cost submitted to the State in its proposal, subject to any amendments/change orders specifically authorized by the State in writing. Any discrepancy coming to the attention of the State after the date of execution of this Agreement, which the CONTRACTOR knew or should have known about prior to said date, will render the CONTRACTOR liable for any costs attributable to said discrepancy if the State did not have actual knowledge of the discrepancy.

25. PATENT LIABILITY AND INDEMNIFICATION

- 25.1 The CONTRACTOR shall indemnify the State, its officers, agents, and employees, against any liability, including costs, for infringement of any United States Patent arising out of the performance of this Agreement, or out of the use of or disposal by the State of such services. Furthermore, the CONTRACTOR warrant, certify and agree that any equipment and/or software being provided does not infringe any patent or copyright ownership right binding in the United States.
- 25.2 The CONTRACTOR, at its own expense, will defend any suit which may be brought against the State to the extent that it is based on a claim that the goods furnished through this Agreement infringe a United States Patent, and, in any such suit, will pay those costs and damages which are attributable to such claim and finally awarded against the State, provided that the State shall give the CONTRACTOR prompt written notice of such claim, and full right and opportunity to conduct the defense thereof, together with full information and reasonable cooperation. No cost or expenses shall be incurred against the CONTRACTOR without its written consent. If principles of governmental or public law are involved, the State may participate in the defense of any such action at its own expense. If, in the CONTRACTOR'S opinion, the services furnished hereunder are likely to, or do become the subject of a claim of infringement of a United States Patent, then, without diminishing the CONTRACTOR'S obligation to satisfy a final award, the CONTRACTOR may, at its option and expense, (a) obtain the right for the using agency to continue to use such goods; or (b) substitute for the alleged infringing goods other equally suitable goods that are satisfactory to the State or (c) take back such goods, without charge or expense to the State, provided, however, that the CONTRACTOR WILL NOT EXERCISE OPTION (c) until the CONTRACTOR and the State have evaluated options (a) and (b), and provided that said evaluation takes place in a reasonable timeframe so as to provide the CONTRACTOR the right to exercise option (c) in a timely manner, and provided that CONTRACTOR and the State mutually agree that option (c) is to be exercised.
- 25.3 The preceding requirements are for the purpose of assuring the State that equipment, software, and services provided hereunder are free of any intellectual property right infringement. With respect to the "custom software," the CONTRACTOR is expected to advise the State if it has any reason to believe that the software infringes any intellectual property right. For pre-existing, currently marketed equipment and/or software, responsibility is imposed on the CONTRACTOR to indemnify the State against intellectual property right infringement. For custom-made software, the duty imposed is to advise the State, which duty shall be

exercised in good faith, of any belief that the product may have such consequences.

26. FORCE MAJEURE

- 26.1 The CONTRACTOR shall not be liable for any excess costs if the failure to perform under this Agreement arises out of causes beyond the control, and without the fault or negligence, of the CONTRACTOR. Such causes may include, but are not restricted to, acts of God or the public enemy; acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control, and without the fault or negligence, of the CONTRACTOR or the State (a "Force Majeure Event"). To the extent that CONTRACTOR is unable to perform due to the occurrence and continuance of a Force Majeure Event, the State shall not be liable for payment in respect of services not performed due to such Force Majeure Event.
- 26.2 If the failure to perform is caused by the default of a subcontractor, and such default arises out of causes beyond the control of both the CONTRACTOR and subcontractor, and without the fault or negligence of either of them, the CONTRACTOR shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the required delivery schedule.
- 26.3 If CONTRACTOR shall, as a result of any cause under Sections 26.1 or 26.2 above, fail to substantially perform essential obligations hereunder (meaning the basic ability to communicate via the services herein provided) and should said delay exceed five (5) days, the State may terminate the services(s) or supplies, or any portion thereof without termination charges or any other liability, except for services already provided, for the life of this agreement.

27. SITE AWARENESS

Further, as part of the Duty to Inspect and Advise, the services provided hereunder are to be made available by the CONTRACTOR to the State for use by and at many agencies, institutions, boards and commissions located throughout the State of South Carolina. The CONTRACTOR asserts that it is able to serve any and all such organizations with respect to provisioning, service, administration and maintenance of these services.

28. ADVERTISING USE AND REPRESENTATION

The CONTRACTOR agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the State and is considered by the State to be superior to other products or services. The State reserves the right to review and approve any commercial advertising wherein the State's use of the CONTRACTOR'S equipment, services and/or supplies under this Agreement is referenced. Such review shall be timely and approval shall not be unreasonably withheld.

29. INSURANCE

The CONTRACTOR shall maintain, throughout the performance of its obligations under this Agreement, a policy or policies of Worker's Compensation insurance, with such limits as may be required by law, and a policy or policies of general liability insurance insuring against liability for injury to, and death of, persons, and damage to, and destruction of, property arising out of, or based upon, any act or omission of the CONTRACTOR or any of its subcontractors or their respective officers, directors, employees or agents. Such general liability insurance shall have limits sufficient to cover any loss or potential loss resulting from this Agreement, including coverage for the risk of loss to equipment owned by the State and utilized in connection with this Agreement.

30. TERMINATION FOR NONAPPROPRIATION

If the legislature fails to appropriate, or authorize the expenditure of, sufficient funds to provide the continuation of this Agreement, or if a lawful order issued in or for any fiscal year during the term of this Agreement reduces the funds appropriated or authorized in such amounts as to preclude making the payments set out herein, this Agreement shall terminate on the date said funds are no longer available, without any termination charges or other liability incurring to the State. The State shall provide the CONTRACTOR with notice not less than thirty (30) days prior to the date of cancellation, if such time is available. Otherwise, prompt notice will suffice. In the event of occurrence of the circumstances described immediately above, the CONTRACTOR shall not prohibit or otherwise limit the State's right to pursue, and contract for, alternate solutions and remedies as deemed necessary by the State for the conduct of its affairs. All provisions stated herein shall apply to any amendment or the execution of any option to extend this Agreement.

31. TERMINATION FOR CAUSE

In the event of a breach by the CONTRACTOR, the State will give written notice specifying the breach. Any deviation from the requirements of this Agreement that is neither trivial nor innocent constitutes a breach and cause. Such deviations are evaluated on an instance-by-instance basis, but any deviation which impairs the utilization, performance, or value of the services hereunder to the State is a

breach. If such a notice of a breach is given and the CONTRACTOR has not begun correction of the breach within five (5) days or has not substantially corrected the breach within thirty (30) days of receipt of the written notice, the State shall have the right to terminate unilaterally and immediately, services hereunder, without further notice. Thereafter, the State reserves the right to purchase any and all services or other items in the open market, charging the CONTRACTOR with any additional actual cost over the expected cost of the services under any outstanding purchase order but for the material breach of CONTRACTOR (i.e., cost of cover). Should such charge be assessed, no subsequent proposals of the defaulting CONTRACTOR will be considered until the assessed charge has been satisfied. Additionally, the State shall have a right of rescission in any instance where the CONTRACTOR provides, or seeks to provide, any services for a price higher than that specified herein. In the event of rescission, revocation or termination, all documents and other materials in the possession of the State or scheduled for delivery to the State, relating to performance hereunder shall become the property of the State. Any amount invoiced to the State prior to termination and attributable to the breach shall not be paid. The State's failure to exercise its rights to terminate under this provision shall not be construed as a waiver of its rights to terminate, rescind or revoke the services herein in the event of any subsequent breach.

32. TERMINATION FOR CONVENIENCE

This Agreement may be canceled by the State at any time and for any reason, upon providing the CONTRACTOR with ninety (90) days notice prior to the effective date of said cancellation. The State shall pay any outstanding balance on invoices for services delivered prior to the effective date of said and shall negotiate and pay for reasonable termination costs, which compensate CONTRACTOR for its actual installation and set-up costs.

33. TAXES

The State is exempt from federal excise taxes, and such taxes shall not be added to the CONTRACTOR'S prices nor included on the CONTRACTOR'S invoices. To the extent that any tax of any kind is charged to the CONTRACTOR as a result of providing services under this Agreement, then, and in that event, such tax shall be billed to the State. The CONTRACTOR agree that it will take no action that interferes with the State's tax exempt status.

34. DISPUTES AND RESOLUTIONS

All disputes between the parties hereunder shall be submitted and resolved pursuant to South Carolina Code Section 11-35-4230. Any judicial proceedings by either party arising under this Agreement shall be pursued in the Circuit Court of the State of South Carolina, Richland County.

35. BREACH/WAIVER

No term or provision hereof shall be deemed waived unless breach thereof 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 consent to, waiver of, or excuse for, any different or subsequent breach.

36. EMPLOYMENT OPPORTUNITY

The CONTRACTOR agrees that it will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based upon race, sex, national origin, age, disability, or in any way violative of Title VII of 1964 Civil Rights Act or the South Carolina Human Affairs Law.

37. NOTICES AND AGENTS

Any and all notices permitted or required hereunder shall be deemed duly given:

- A) Upon actual delivery, if delivery is by hand; or
- B) Upon receipt by the transmitting party of confirmation or answer back if delivery is by telex or telegram; or
- C) Upon deposit into the United States mail if delivery is by postage prepaid, registered or certified return receipt requested, mail.

Each such notice shall be sent to the respective party at its regular business address as follows:

As to the State:

Director
Office of Information Resources
4430 Broad River Road
Columbia, South Carolina 29210

As to CONTRACTOR:

HTC Communications
Attn: Director, Business Services
P.O. Box 1820
Conway, South Carolina 29528-1820

38. SOUTH CAROLINA LAW APPLICABLE

The CONTRACTOR agrees to comply with the laws of South Carolina which require such persons or entities to be authorized and/or licensed to do business in this State. As such, the CONTRACTOR agrees to subject itself to the jurisdiction and process of the courts, and to the law of the State of South Carolina for all matters and disputes arising, or to arise, under this Agreement and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State. In the event of any dispute between the parties herein, all such disputes shall be pursued in accordance with the Contract Dispute Resolution process of Section 11-35-4230 of the Procurement Code, S.C. Code Ann. (1997), and if necessary in Circuit Court for the State of South Carolina, Richland County.

39. SEVERABILITY

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding any such illegality or unenforceability, the remainder of said Agreement shall remain in full force and effect, and such term or provision shall be deemed to be deleted and severable therefrom.

40. APPLICABILITY OF UNIFORM COMMERCIAL CODE

Except to the extent the provisions of this Agreement are clearly inconsistent therewith, this Agreement shall be governed by the applicable provisions of the Uniform Commercial Code. To the extent this Agreement entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.

41. SUCCESSORSHIP

This Agreement is binding upon the respective successors and assigns, if any, of the parties thereto, except that nothing contained herein shall be construed to permit any attempted assignment which would be unauthorized. The CONTRACTOR may not assign this Agreement, nor the duties or responsibilities hereunder, to a non-affiliate without the express written consent of the State, except that the CONTRACTOR may assign this Agreement to any lender providing financing to CONTRACTOR or its affiliate as collateral for security purposes. The State hereby consents to any such collateral assignment and agrees to execute and deliver any written consent to collateral assignment reasonably requested by such lender.

42. CONTRACT DOCUMENTS AND PRECEDENCE

This document, together with all subordinate and other documents incorporated by reference herein, will constitute the entire agreement between the parties with respect to the subject matter contained herein and may only be modified by an amendment executed in writing by both parties. The CONTRACTOR hereby agrees that, except where this Agreement specifically indicates otherwise, all written proposals, specifications, brochures and sales materials presented by the CONTRACTOR to the State leading to this Agreement, and all other CONTRACTOR representations, commitments, and warranties prior to, and in connection with, this Agreement, shall be deemed to be, and are, incorporated by reference into, and made a part of, this Agreement.

To the extent permitted by, and consistent with, the South Carolina Procurement Code, the order of precedence shall be:

- 42.1 This Agreement, including all amendments later executed, with the most recent amendment taking precedence over the next most recent amendment;
- 42.2 The RFP, including all amendments later executed, with the most recent amendment taking precedence over the next most recent amendment; and
- 42.3 The CONTRACTOR'S response to the RFP.

The terms and conditions of the final agreement shall prevail notwithstanding any variance in the terms and conditions of any purchase/change order submitted by the State to the CONTRACTOR or by the CONTRACTOR to the State.

43. ATTORNEYS FEES

In the event that the State is required to and shall bring suit or action to compel performance of, or recover for, any breach of any stipulation, covenant, term or condition of this Agreement, the State may seek attorneys fees from the CONTRACTOR, and the CONTRACTOR will pay to the State such attorneys fees as the court and/or such administrative hearing officer or body may award. Otherwise, attorneys' fees in connection with any suit or action hereunder will be borne by the parties experiencing said expenses.

44. DUTY TO PROVIDE DRUG-FREE WORK PLACE

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

45. LICENSES AND PERMITS

During the term of this Agreement, the CONTRACTOR shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by the State, county, city or other government entity to accomplish the work specified in this Agreement.

46. CONTRACTORS SOLELY RESPONSIBLE FOR PERFORMANCE

The CONTRACTOR will be solely responsible for performance under this Agreement. The State will rely upon the CONTRACTOR for full, complete, and satisfactory performance under the terms and conditions of this Agreement, and for any relief, or judgment which may be requested by the State to the CONTRACTOR or which may be entered against the CONTRACTOR in any litigation which may arise under this Agreement or the relationship between the parties.

46.1 Subject to the provision of this Agreement (including Section 26), in the event the CONTRACTOR is unable for any reason to provide any material, services, supplies, products or other items of any type or variety which it is to provide to the State under a purchase order accepted by CONTRACTOR pursuant to this Agreement, including but not limited to any such materials, services, supplies, etc. available from any other party (such as subcontractors) supplying said materials, services, etc. to CONTRACTOR, the State will have the right to deal directly with the other supplier without penalty or interference from the CONTRACTOR which fails to provide such services under such purchase order. Further, any additional actual cost to the State over the expected cost to the State of such purchase order arising as a result shall be borne by CONTRACTOR.

46.2 If the CONTRACTOR'S services provided for hereunder include services, equipment, or materials supplied by a subcontractor, the CONTRACTOR must act as the prime contractor for these items and assume full responsibility for performance hereunder. Thus, the CONTRACTOR will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

46.3 In the event the CONTRACTOR is unable for any reason to provide any material, services, supplies, products or other items of any type or variety to the State under a purchase order accepted by CONTRACTOR pursuant to this Agreement, including but not limited to any such materials, services, supplies, etc. available from any other party (such as subcontractors) supplying said materials, services, etc. to the

CONTRACTOR, the State will have the right to deal directly with the other supplier without penalty or interference from the CONTRACTOR. Further, any additional actual cost to the State over the expected cost to the State of such purchase order arising as a result shall be borne by the CONTRACTOR.

47. OWNERSHIP AND CONFIDENTIALITY OF DATA

All data and other records entered into any database of the State, or supplied to the CONTRACTOR by the State are, and shall remain, the sole property of the State. Due to the extremely confidential nature of all data, the CONTRACTOR will not copy or remove any data from State premises (including State databases) at any time and will not reveal or utilize for any other purpose any data which may become known to the CONTRACTOR during systems installation, testing or maintenance. The CONTRACTOR will be subject to both the laws of the State of South Carolina and of the United States Government regarding the confidentiality of all data.

48. ACCESS TO CONTRACT INFORMATION

The CONTRACTOR agrees that it will provide information to OIR about any or all services provided under this Agreement. This includes summary and detail information about the local telecommunication services and related billing data for any governmental agency. This information is necessary for OIR to analyze and plan the State Network. The CONTRACTOR will provide this information to OIR promptly upon receiving a request from OIR.

49. AMERICANS WITH DISABILITIES ACT (ADA)

The CONTRACTOR shall comply with the ADA as applicable.

50. PARTICIPATION BY NON-STATE GOVERNMENTAL UNITS

Pursuant to Article 19 of the South Carolina Procurement Code, 11-35-4610 to 4890, other public procurement units, including municipalities, counties, and political subdivisions are eligible to cooperatively purchase services under, and pursuant to, this Agreement. Accordingly, the CONTRACTOR and State hereby agree to cooperate with one another in advising these governmental units of the availability of this Agreement and to take such steps as appropriate to extend the prices, and other terms and conditions, of this Agreement to those other entities.

51. CONVERSION COSTS

The cost of initial installation to convert existing lines/circuits will be the responsibility of the CONTRACTOR as part of doing business with the State. One-time installation charges for subsequent service may be charged to the

appropriate government agency or institution. In addition, the CONTRACTOR is prohibited from offering any other services (long distance, Internet, etc.) to agencies, institutions, boards or commissions of the State other than the local services specified in this Agreement. However, OIR may elect to add additional services, if it is advantageous to the State.

52. LIMITATION OF LIABILITY

52.1 In no event will CONTRACTOR or any of its affiliate be liable to the State, OIR or any of its respective agencies, boards, commissions, affiliates or employees or to any third party for:

52.1.1 Any loss of profit or revenue, or for any indirect, consequential, incidental, punitive or similar or additional damages, whether incurred or suffered as a result of the unavailability of facilities, performance, non-performance, termination, breach, or other action or inaction under this Agreement, or for any other reason, even if State or OIR advises CONTRACTOR of the possibility of this loss or damage;

52.1.2 For an outage or incorrect or defective transmissions, or any direct or indirect consequences thereof; or

52.1.3 Any fraudulent or unauthorized calls originating from or terminating to State premises or the service.

52.2 The State or OIR or any of their respective agencies, boards, commissions, affiliates or employees agree that their sole and exclusive remedy in the event of an breach of the warranties described herein shall be termination of this Agreement and damages pursuant to Section 4.

EXHIBIT 1

HTCC SERVICE AREAS

| Exchange | City/Area |
|-----------------|--------------------|
| 843-248 | Conway |
| 843-381 | |
| 843-520 | Georgetown |
| 843-527 | |
| 843-545 | |
| 843-546 | |
| 843-232 | Myrtle Beach |
| 843-233 | |
| 843-238 | |
| 843-444 | |
| 843-445 | |
| 843-448 | |
| 843-449 | |
| 843-477 | |
| 843-626 | |
| 843-828 | |
| 843-916 | |
| 843-946 | |
| 843-249 | North Myrtle Beach |
| 843-272 | |
| 843-280 | |
| 843-361 | |
| 843-237 | Pawley's Island |



**NON-EXCLUSIVE STATE TERM CONTRACT
FOR
LOCAL TELECOMMUNICATIONS SERVICES**

JUNE 2001

Contract # 2000.17.02

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STATE OF SOUTH CAROLINA) NON-EXCLUSIVE STATE TERM
) CONTRACT FOR LOCAL
RICHLAND COUNTY) TELECOMMUNICATIONS SERVICES

THIS AGREEMENT is made by and between HTC Communications (herein referred to as "HTC" or "CONTRACTOR") with its principal offices located at 3480 Highway 701 North, Conway, South Carolina 29526 and the South Carolina Budget and Control Board, through the Office of Information Resources (herein referred to as "State" or "OIR"), with its principal offices located at 4430 Broad River Road, Columbia, South Carolina 29210.

WHEREAS, in November, 2000, the State issued Request for Proposals (RFP) Number OIR2000.17 to establish a multi-vendor, state term contract for various types of local telecommunication services including local business lines (1FBs), centrex services, DID, DOD/combo trunks, channelized T-1 access circuits, DSL access to ATM (excluding access to ISPs), and ISDN BRI and PRI lines (along with associated features and options); and

WHEREAS, the State issued two (2) amendments to this RFP consisting of vendor questions and the State's responses thereto numbering from 1 to 59, and six (6) "additional comments" by the State, such amendments being incorporated into this Agreement by reference, and

WHEREAS, on December 12, 2000, the CONTRACTOR submitted both a technical proposal and a separate business proposal, which are incorporated by reference into this Agreement, in which CONTRACTOR agreed among other things to be bound by the terms and conditions of the RFP during the entire term of this Agreement; and

WHEREAS, the CONTRACTOR has the legal authority and the technical expertise to provide the proposed local telecommunication services; and

WHEREAS, the State has evaluated all responses to the RFP and has determined that the CONTRACTOR'S proposal meets the State's technical and price requirements; and

WHEREAS, the parties have since met and conferred and have agreed to the additional prices, terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of, the mutual promises and other considerations herein contained, the parties agree, and the Agreement is hereby as follows:

1. DURATION/OPTION TO RENEW

This Agreement, which shall commence on the last date signed below, is for a non-exclusive, state term contract for the local telecommunication services as further described herein and shall be for an initial term of five (5) years. This Agreement may be renewed by the State, at its sole option, annually or in any combination as long as the term of the Agreement does not exceed a total of seven (7) years.

1.1 Term Contract - This Agreement is a non-exclusive, state term contract for local telecommunication services for a specified time period, and from which state governmental bodies must procure their requirements for such services during its term. If the State is offered a price that is ten percent (10%) less than the contract price for the same services, the State may establish a contract with the vendor offering the lower price, unless the CONTRACTOR agrees to meet those price. In all such instances, the CONTRACTOR shall be offered an opportunity to meet the offered price.

2. ORDERING LIMITATIONS

The CONTRACTOR shall accept purchase orders from no source except OIR, or a representative of another agency designated by OIR by written notice. A copy of any proposal made to a State agency must also be provided to OIR. In order to minimize disruption of agencies with multiple locations, the CONTRACTOR will not contact individual locations unless directed by OIR. Any orders entered by contract in violation hereof will be null and void ab initio without liability for payment or otherwise against either the State or the individual entity involved.

3. ACCEPTANCE

The State has the right, for thirty (30) days after the time of installation and/or replacement of any services requested herein, to terminate services, without termination charges or other liability, for any reason constituting a material breach hereof. In the event of such notification, the CONTRACTOR must immediately correct the basis for the problem and complete any correction in not more than thirty (30) calendar days followed by a second and final full thirty (30) day acceptance period. If services are terminated by the State due to CONTRACTOR'S material breach of this Agreement, then CONTRACTOR shall waive all installation charges. At the end of thirty (30) days, the services herein provided for shall be deemed accepted by the State, unless notice is provided by the State to CONTRACTOR in writing that a material breach of this Agreement has occurred.

4. WARRANTY

The CONTRACTOR warrants that the services it provides under this Agreement will be provided, and will be performed, in accordance with all applicable standards of performance established by the Public Service Commission of

South Carolina and/or the Federal Communications Commission. Any failure to comply with such standards which interferes with the State's ability to communicate via the services provided by the CONTRACTOR under any given purchase order will be regarded as a material breach entitling the State to terminate this Agreement after notice by the State and a reasonable opportunity to cure by the CONTRACTOR whose service is in breach of this Agreement without termination charges or other liability except for services already provided. The State reserves the right to negotiate for such services with any other vendor of its choice and to charge the CONTRACTOR for any conversion costs and additional actual costs over the expected cost of services under the purchase order but for the material breach of CONTRACTOR relating thereto. The warranties contained in this Section are exclusive and in lieu of all other warranties, whether express, implied or statutory, including, but not limited to, implied warranties of merchantability, infringement, completeness, quality or fitness for a particular purpose. CONTRACTOR hereby specifically disclaims any liability to State or OIR for interruptions affecting the services furnished under this Agreement that are attributable to interconnection facilities of State or OIR or to State or OIR's equipment failures, or to breach of this Agreement by State or OIR.

5. RESTORATION OF WORK AREAS

Upon completion of the work, the CONTRACTOR shall re-connect any utilities, equipment or appliances disconnected in the course of its work and replace all furnishings moved for the performance of the work. All debris and rubbish generated by the work shall be removed, and all premises left clean and restored to original condition.

6. INVOICE AND PAYMENT PROCESS FOR CHARGE BILLED TO OIR

6.1 The State agrees to pay the amount due and owing to the CONTRACTOR in accordance with the rate schedule established/negotiated under this Agreement. Additionally, the State agrees to pay the CONTRACTOR late payment charges, if such charges occur, pursuant to the provisions of the South Carolina Procurement Code, Section 11-35-45, and the instructions issued from time to time by the Comptroller General. All such times shall commence from the date of receipt of invoice by the State. In the event of any dispute as to the date of receipt, the burden shall be on the CONTRACTOR to establish such date by a return receipt or like documentation. Otherwise, the date asserted by the State shall prevail.

6.2 Additionally, the State shall hold the CONTRACTOR accountable for the accuracy and timeliness of all invoices, payments, credits and reports. If the CONTRACTOR consistently submits inaccurate invoices, or fails to submit invoices, reports, credits and/or payments to OIR in a timely manner, then OIR may, at its sole discretion, assess the CONTRACTOR a

penalty of four hundred (\$400.00) and 00/100 dollars per day per occurrence. If an invoice, payment, credit or report contains obvious and grievous errors or is consistently past due, OIR will provide the CONTRACTOR with a written warning notice defining the problem and setting forth the desired resolution. If within ninety (90) days from the date of the written warning notice, the CONTRACTOR has not resolved the problem, then OIR may assess the penalty set forth above.

- 6.3 When available, the CONTRACTOR shall submit monthly charges via magnetic media. This media shall be in a format mutually agreed to by the State and the CONTRACTOR. Once established, the State must be given at least four (4) months notice prior to any modification of this media. If such notice is not provided to the State, the CONTRACTOR shall be fully liable for all costs incurred by the State in modifying programs, billing reports, invoice documents, etc. in order to be able to read and process data in the new format. The State's preferred method for receipt of monthly invoices is client server ready FTP. In lieu of FTP, the State will accept submission via magnetic tape media. Any cost associated with providing invoices, reports, etc. on magnetic media shall be agreed to be the parties and included in an amendment to Exhibit 2.
- 6.4 When available, the CONTRACTOR shall also provide detailed monthly usage and billing reports in electronic format.
- 6.5 The CONTRACTOR agrees to designate a "single point of contact" in its billing department/organization to serve as a contact for State personnel to ask questions, obtain information, request credits/adjustments and resolve issues. The CONTRACTOR shall notify the State in writing of any change in the employee designated to provide these services. This employee shall serve as the State's contact for the following:
- ◆ Creating a client profile for OIR.
 - ◆ Monitoring completed orders for billing accuracy monthly.
 - ◆ Handling billing inquiries, pricing inquiries, and complaints through resolution.
 - ◆ Handling credit and adjustment requests.
 - ◆ Analyzing financial and performance data against SLA requirements.
 - ◆ Auditing and validating bills each month prior to being sent and notifying OIR of potential discrepancies.
 - ◆ Management of the generation of all invoice and all billing reports.
 - ◆ Maintaining historical billing data and client profile data
 - ◆ Availability to meet in person or via conference call with OIR and/or agencies upon request.

- 6.6 The CONTRACTOR shall make its best effort to provide a billing cycle that begins on the first day of each month and ends on the last day of such month.
- 6.7 The CONTRACTOR shall provide paper invoices and, when available, FTP or magnetic tape invoices by the 8th day of the month following the end of the billing cycle. Failure to provide the State with said invoices and reports in the specified time period shall subject the CONTRACTOR to the penalty charges set forth in this section. The CONTRACTOR shall provide the capability to create one (1) master invoice for multiple locations at the discretion of OIR.
- 6.8 The CONTRACTOR agrees to promptly review requests for adjustments and/or credits, and, where appropriate, to provide the State with said credits and adjustments within two (2) billing cycles of the resolution request. Failure to provide the State with said credit or adjustments in a timely manner shall subject CONTRACTOR to the penalty charges set forth in this Section.
- 6.9 The CONTRACTOR agrees that they will not submit or “turn over” past due invoices of a State government entity to a credit bureau, collection agency or any other group except the State account team without the prior consent of OIR. Such approval may be on a case-by-case basis or as set forth in a procedure approved by OIR. The CONTRACTOR agrees not to suspend or disconnect service of a State government entity without the prior consent of OIR, provided that such consent shall not be required and CONTRACTOR may terminate service upon five (5) days prior notice without liability to OIR or the State if after notice any undisputed invoice becomes over ninety (90) days past due.
- 6.10 All work order numbers issued to the CONTRACTOR by OIR authorizing it to perform work must be included on the CONTRACTOR’S invoice to OIR to receive payment for such work/service. Included in the itemization, the CONTRACTOR must include its service order number, due dates, and service descriptions.

7. DIRECT AGENCY BILLING

The CONTRACTOR may also bill user agencies directly for services provided under this Agreement. Such invoices shall include an OIR administrative charge, the amount of which will be determined by OIR (see Section 8 below) and any regulatory charges or fees incurred by CONTRACTOR pursuant to any federal, state or local telecommunications regulation. Itemized statements must be provided to user agencies for each direct-billed client showing all service details. The statement must include detail for each type of service and area. OIR reserves the right to require summary copies of direct-billed statements that must be

submitted to OIR at the same time they are provided to direct-billed clients. The CONTRACTOR must provide, when available, copies of billing information in electronic format including CD-ROM, MAG Tape or FTP.

7.1 Errors, Discrepancies, And Non-Compliance Penalties

The requirements of Section 6, including late payment charges, accurate billing, timely invoice delivery, and billing dispute resolutions, shall apply to direct agency billing and failure to comply with such requirement may result in penalties that compensate the State as set forth in Section 6.2 above. The CONTRACTOR shall also provide a single point of contact for resolution of billing issues for such billing.

7.2 Meet-Point Billing

The CONTRACTOR shall provide billing on behalf of any other vendors with which the CONTRACTOR must interconnect to complete the provisioning of circuits for a required service.

7.3 Report Management Support

The CONTRACTOR is required to provide monthly reports to OIR indicating all services ordered for State entities. Required information includes the type and quantity of services ordered, cost, order number, TN/Circuit ID, end user agency name, contact name and number, location information including installation address, billing address, billing account number, due date, and date installed.

8. ADMINISTRATIVE CHARGES/FEES

The CONTRACTOR agrees to include surcharges or administrative fees on monthly invoices billed directly to user agencies utilizing an amount or percentage specified by OIR. These fees will be included in the end users' monthly rate and will not be a separate line item on their invoice. These fees may be a percent, a specific amount, or some combination. All rates quoted and billed to agencies and other eligible entities by the CONTRACTOR must include these fees. These fees shall be collected and paid to OIR by the CONTRACTOR within two (2) billing cycles. If the CONTRACTOR fails to submit said fees to the State in a timely manner, it will be subject to the penalties set forth in Section 6.2 above.

9. UNIVERSAL SERVICE FUND

The CONTRACTOR warrants that it is qualified under applicable Federal Communications Commission and South Carolina Public Service Commission rules to apply for and receive Universal Service Fund allocations/disbursements

for services provided pursuant to this Agreement to schools, libraries, rural health care providers, agencies, institutions and consortia thereof, and other entities which are eligible for those allocations/disbursements on behalf, and for the benefit, of those entities, agencies and institutions. The CONTRACTOR also agrees to maintain those qualifications, and to use commercially reasonable efforts to assist schools, institutions and other entities in applying for and receiving these allocations/disbursements.

10. SERVICE AREA

The CONTRACTOR shall make the local telecommunication services available hereunder to State and local government agencies located in its local service areas, as set forth in Exhibit 1. The leased loop environments may prevent every location from having service available.

11. PRICING

The CONTRACTOR agrees that it will provide the local telecommunication services further described herein at the prices set forth in Exhibit 2 of this document. These prices shall be firm for the entire term of this Agreement except as set forth in Section 14 below. The CONTRACTOR is authorized to provide the following local telecommunication services under this Agreement:

- Business Lines and Trunks
- Basic Rate ISDN (BRI)
- Primary Rate ISDN (PRI)
- Centrex Services

12. GENERAL LOCAL TELECOMMUNICATION REQUIREMENTS

The CONTRACTOR shall comply with the following requirements when providing local telecommunication services under this Agreement:

12.1 Directory Assistance Listings

The CONTRACTOR must provide listings for user agencies in all directories within its local services areas. Such listings shall be provided at no cost to the user agencies.

12.2 Directory Assistance Service

The CONTRACTOR must provide directory assistance service to include requests for all domestic locations to the extent that listings are available. Directory Assistance Call Completion Service, where available, must not be allowed unless it is provided without charge. Charges for Directory Assistance are included in Exhibit 2.

12.3 E911 and 911

The CONTRACTOR must carry all 911 and E911 calls and ensure compatibility with all E911 emergency notification networks within its local service areas. The CONTRACTOR will ensure that calls to E911 centers indicate the actual street level address of the calling number. The CONTRACTOR must also work with the State to implement PBX 911 where a PBX provides service to multiple buildings or locations. The CONTRACTOR will collect fees for E911 and 911 from all users and remit to appropriate entities as required by statute. The State acknowledges that in a PBX environment it has sole responsibility to correctly route 911 calls. As such, the CONTRACTOR shall not be liable to the State of any direct, indirect, incidental or consequential damages arising from an incorrect programming of the PBX by the State.

12.4 Demarcation Points

The CONTRACTOR agrees to provide demarcation point placement in accordance with State requirements within any facilities occupied by any State agency, institution, or local government. This includes interface to State equipment located in a collocation agreement space, including but not limited to multiplexers, and access to State provided fiber and alternative access solutions including but not limited to ATM and fiber.

13. SERVICES

13.1 Business Lines and Trunks

The CONTRACTOR agrees to provide business lines, where available. All business lines provided by the CONTRACTOR shall meet industry performance standards.

13.2 ISDN BRI and PRI Lines

The CONTRACTOR agrees to provide ISDN BRI and PRI lines, where available. All BRI and PRI lines provided by the CONTRACTOR shall meet industry performance standards. PRI channels shall be provisioned as inbound, outbound, or data. The State will specify the configurations for each application.

13.3 Centrex Services

The CONTRACTOR shall provide a standard feature package as part of its Centrex offering. User agencies may activate 1 or all features on this

standard feature package. For a list of all features, see Exhibit 3 of this document.

14. RE-EVALUATION/RE-NEGOTIATION PROVISION

The State will require an annual review with the CONTRACTOR to discuss and negotiate price reductions and expansion of services and service areas.

- 14.1 The CONTRACTOR agrees to provide the State with at least the best available prices/costs for its then current quantities and volume of service provided in the State of South Carolina for the duration of this Agreement. If the CONTRACTOR or other members of the CONTRACTOR'S team (subcontractors) provides a lower price for any service to any other similarly situated customer in the State of South Carolina, the State's prices/costs must be lowered to a matching or lower rate.
- 14.2 The CONTRACTOR will provide annually, by the anniversary date of this Agreement, written detail identifying and comparing the State's prices/costs to other pricing that the CONTRACTOR or other members of the CONTRACTOR'S team (subcontractors) offers to similar customers in the State of South Carolina for any and all services.
- 14.3 The CONTRACTOR'S failure to offer lower rates than other contracts in the State of South Carolina with lower or equal revenue volumes will be considered a violation of the terms of this Agreement. The CONTRACTOR will issue credits to the State retroactively from the published or effective date of the reduced rates and appropriately adjust the rates for the remainder of the term of this Agreement.
- 14.4 The CONTRACTOR must agree to come into conformity with general price/cost decreases resulting from law, regulatory decisions, or industry competitive forces (e.g., access reductions). The CONTRACTOR may increase price/cost of the services provided hereunder if such price/cost increase is mandated by law or regulatory decision.
- 14.5 The CONTRACTOR shall meet with OIR annually, by the anniversary date of this Agreement, to discuss new technologies that may impact the services provided in this Agreement and develop mutual plans to address future plans for migration to new technologies. The CONTRACTOR may present other new technologies it plans to implement in its network to OIR at any time

15. INTERFACE TO OTHER SERVICE PROVIDER

The CONTRACTOR shall accept total responsibility for ensuring an operational system including any necessary interfaces between any local exchange carriers and any IXCs. The CONTRACTOR is also responsible for ensuring that all lines are PIC'd to the State's current long distance carrier and are locked to prevent changes. Only OIR may authorize changes. In the event that any calls are billed by any entity other than the State's long distance carrier, the difference in price shall be the responsibility of the CONTRACTOR.

16. REDUNDANCY AND BUSINESS RECOVERY

During the term of this Agreement, the CONTRACTOR shall maintain a plan of redundancy and business recovery. The plan shall include back-up and alternative facilities/resources, plans, procedures, conditions, authorizations, response and recovery times. The CONTRACTOR agrees to restore services as soon as possible, however, if not restored within four (4) hours, the CONTRACTOR shall provide an outage credit for each hour of delay equal to the invoiced amount for such services which may be applied toward future invoices from CONTRACTOR and shall pay for the actual equipment installation costs of the State associated with switching to an alternative provider with respect to such services.

17. RESPONSE TIME AND TROUBLE REPORTING

The CONTRACTOR shall provide a centralized trouble reporting and maintenance system that is manned 24 hours a day, seven days a week. Upon notification via the web or by phone, the CONTRACTOR will respond within two (2) hours and repair the services provided hereunder within four (4) hours of notification. A verbal report of trouble clearance will be furnished to the State employee who reported the trouble within one (1) hour of trouble clearance. A copy of the written trouble ticket will also be provided to OIR, upon requested. The report should provide notice that a correction of the problem has occurred. If correction has not occurred within four (4) hours, a report will be provided showing the plan to correct the problem including a projected correction time. The centralized trouble reporting center should provide notification to OIR's Network Control Center immediately after any occurrence of a service affecting network failure condition when OIR has not previously reported such failure. For trouble isolation involving multiple interfaces between the IXC and LEC equipment where no particular fault can be determined to be a specific vendor issue prior to repair, the CONTRACTOR shall resolve the problem without charges to the State.

18. CUT-OVER AND CHECK-OUT

Prior to cutover of any services provided hereunder, the CONTRACTOR agrees, upon request of the State, to participate in coordination meetings to assist in planning the installation of such services. These meetings will be conducted by the State and may include third parties, as appropriate. At these meetings, the CONTRACTOR and the State will cooperatively determine the cutover dates for such locations.

19. INSTALLATION INTERVALS

The installation intervals to provide the services hereunder, from the time of receipt of a service order until installation is completed, shall be as set forth below. If the CONTRACTOR consistently fails to meet the intervals set forth in this Section, the State may take appropriate action up to and including cancellation of this Agreement.

| <u>Service</u> | <u>Installation Interval</u> |
|---------------------------|------------------------------|
| Business Lines and Trunks | 21 Business Days |
| ISDN PRI Lines | 60 Business Days |
| ISDN BRI Lines | 60 Business Days |
| Centrex Services | 21 Business Days |

20. DEDICATED SUPPORT AND REPAIR TEAM

The CONTRACTOR agrees to provide single points of contact to support the activities of order, installation and repair. The CONTRACTOR will provide a list of the personnel assigned to provide such services (e.g., name, location, address, telephone number, etc.) upon execution of this Agreement, and will notify the State in writing when changes occur in the personnel assigned to perform these activities.

21. NETWORK MANAGEMENT

During the term of this Agreement, the CONTRACTOR shall, at no additional cost to the State, provide a 7-day x 24-hour network operations center to manage all services including call receipt functions. The network operations center shall provide the following functionality:

- Network Monitoring
- Security Management
- Fault Management
- Performance Management

22. OIR MAY AUDIT CONTRACTOR'S BOOKS

22.1 The State shall have the right to audit the books and records of the CONTRACTOR as they pertain to this Agreement, both independent of, and pursuant to, S.C. Code Section 11-35-2220. Such books and records shall be maintained for a period of three (3) years from the date of final payment under this Agreement.

22.2 The State may conduct, or have conducted, performance audits of the CONTRACTOR, including audits of specific requirements of this Agreement, as may be determined necessary by State.

22.3 Pertaining to all audits, the CONTRACTOR shall make available access to its computer files containing history of contract performance and all other documents specifically related to this Agreement. Additionally, any software used by the CONTRACTOR shall be made available for auditing purposes at no cost to the State.

23. COOPERATION

The State agrees to cooperate with the CONTRACTOR, as requested, and to make available sufficient staff, information, access to facilities, and other similar, suitable resources to the CONTRACTOR to assure satisfactory performance hereunder.

24. DUTY TO INSPECT AND ADVISE

The CONTRACTOR agrees that it has a duty to become totally familiar with all requirements set forth in the RFP and this Agreement, and to advise the State of any requirements (i.e., upfit, installation, modifications, alterations, special construction, etc.) necessary to provide delivery, implementation, operation, administration, access facilities, and any and all other supplies, equipment, services, or other cost items to the State necessary to accomplish full, complete and satisfactory performance of the requirements of the State at the prices set forth herein. The CONTRACTOR further agrees that for all such equipment, supplies and/or services provided by the CONTRACTOR, it has made the State aware of any modifications or alterations needed, and the CONTRACTOR agrees to provide all such supplies, equipment and/or services for the cost submitted to the State in its proposal, subject to any amendments/change orders specifically authorized by the State in writing. Any discrepancy coming to the attention of the State after the date of execution of this Agreement, which the CONTRACTOR knew or should have known about prior to said date, will render the CONTRACTOR liable for any costs attributable to said discrepancy if the State did not have actual knowledge of the discrepancy.

25. PATENT LIABILITY AND INDEMNIFICATION

- 25.1 The CONTRACTOR shall indemnify the State, its officers, agents, and employees, against any liability, including costs, for infringement of any United States Patent arising out of the performance of this Agreement, or out of the use of or disposal by the State of such services. Furthermore, the CONTRACTOR warrant, certify and agree that any equipment and/or software being provided does not infringe any patent or copyright ownership right binding in the United States.
- 25.2 The CONTRACTOR, at its own expense, will defend any suit which may be brought against the State to the extent that it is based on a claim that the goods furnished through this Agreement infringe a United States Patent, and, in any such suit, will pay those costs and damages which are attributable to such claim and finally awarded against the State, provided that the State shall give the CONTRACTOR prompt written notice of such claim, and full right and opportunity to conduct the defense thereof, together with full information and reasonable cooperation. No cost or expenses shall be incurred against the CONTRACTOR without its written consent. If principles of governmental or public law are involved, the State may participate in the defense of any such action at its own expense. If, in the CONTRACTOR'S opinion, the services furnished hereunder are likely to, or do become the subject of a claim of infringement of a United States Patent, then, without diminishing the CONTRACTOR'S obligation to satisfy a final award, the CONTRACTOR may, at its option and expense, (a) obtain the right for the using agency to continue to use such goods; or (b) substitute for the alleged infringing goods other equally suitable goods that are satisfactory to the State or (c) take back such goods, without charge or expense to the State, provided, however, that the CONTRACTOR WILL NOT EXERCISE OPTION (c) until the CONTRACTOR and the State have evaluated options (a) and (b), and provided that said evaluation takes place in a reasonable timeframe so as to provide the CONTRACTOR the right to exercise option (c) in a timely manner, and provided that CONTRACTOR and the State mutually agree that option (c) is to be exercised.
- 25.3 The preceding requirements are for the purpose of assuring the State that equipment, software, and services provided hereunder are free of any intellectual property right infringement. With respect to the "custom software," the CONTRACTOR is expected to advise the State if it has any reason to believe that the software infringes any intellectual property right. For pre-existing, currently marketed equipment and/or software, responsibility is imposed on the CONTRACTOR to indemnify the State against intellectual property right infringement. For custom-made software, the duty imposed is to advise the State, which duty shall be

exercised in good faith, of any belief that the product may have such consequences.

26. FORCE MAJEURE

- 26.1 The CONTRACTOR shall not be liable for any excess costs if the failure to perform under this Agreement arises out of causes beyond the control, and without the fault or negligence, of the CONTRACTOR. Such causes may include, but are not restricted to, acts of God or the public enemy; acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control, and without the fault or negligence, of the CONTRACTOR or the State (a "Force Majeure Event"). To the extent that CONTRACTOR is unable to perform due to the occurrence and continuance of a Force Majeure Event, the State shall not be liable for payment in respect of services not performed due to such Force Majeure Event.
- 26.2 If the failure to perform is caused by the default of a subcontractor, and such default arises out of causes beyond the control of both the CONTRACTOR and subcontractor, and without the fault or negligence of either of them, the CONTRACTOR shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the required delivery schedule.
- 26.3 If CONTRACTOR shall, as a result of any cause under Sections 26.1 or 26.2 above, fail to substantially perform essential obligations hereunder (meaning the basic ability to communicate via the services herein provided) and should said delay exceed five (5) days, the State may terminate the services(s) or supplies, or any portion thereof without termination charges or any other liability, except for services already provided, for the life of this agreement.

27. SITE AWARENESS

Further, as part of the Duty to Inspect and Advise, the services provided hereunder are to be made available by the CONTRACTOR to the State for use by and at many agencies, institutions, boards and commissions located throughout the State of South Carolina. The CONTRACTOR asserts that it is able to serve any and all such organizations with respect to provisioning, service, administration and maintenance of these services.

28. ADVERTISING USE AND REPRESENTATION

The CONTRACTOR agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the State and is considered by the State to be superior to other products or services. The State reserves the right to review and approve any commercial advertising wherein the State's use of the CONTRACTOR'S equipment, services and/or supplies under this Agreement is referenced. Such review shall be timely and approval shall not be unreasonably withheld.

29. INSURANCE

The CONTRACTOR shall maintain, throughout the performance of its obligations under this Agreement, a policy or policies of Worker's Compensation insurance, with such limits as may be required by law, and a policy or policies of general liability insurance insuring against liability for injury to, and death of, persons, and damage to, and destruction of, property arising out of, or based upon, any act or omission of the CONTRACTOR or any of its subcontractors or their respective officers, directors, employees or agents. Such general liability insurance shall have limits sufficient to cover any loss or potential loss resulting from this Agreement, including coverage for the risk of loss to equipment owned by the State and utilized in connection with this Agreement.

30. TERMINATION FOR NONAPPROPRIATION

If the legislature fails to appropriate, or authorize the expenditure of, sufficient funds to provide the continuation of this Agreement, or if a lawful order issued in or for any fiscal year during the term of this Agreement reduces the funds appropriated or authorized in such amounts as to preclude making the payments set out herein, this Agreement shall terminate on the date said funds are no longer available, without any termination charges or other liability incurring to the State. The State shall provide the CONTRACTOR with notice not less than thirty (30) days prior to the date of cancellation, if such time is available. Otherwise, prompt notice will suffice. In the event of occurrence of the circumstances described immediately above, the CONTRACTOR shall not prohibit or otherwise limit the State's right to pursue, and contract for, alternate solutions and remedies as deemed necessary by the State for the conduct of its affairs. All provisions stated herein shall apply to any amendment or the execution of any option to extend this Agreement.

31. TERMINATION FOR CAUSE

In the event of a breach by the CONTRACTOR, the State will give written notice specifying the breach. Any deviation from the requirements of this Agreement that is neither trivial nor innocent constitutes a breach and cause. Such deviations are evaluated on an instance-by-instance basis, but any deviation which impairs the utilization, performance, or value of the services hereunder to the State is a

breach. If such a notice of a breach is given and the CONTRACTOR has not begun correction of the breach within five (5) days or has not substantially corrected the breach within thirty (30) days of receipt of the written notice, the State shall have the right to terminate unilaterally and immediately, services hereunder, without further notice. Thereafter, the State reserves the right to purchase any and all services or other items in the open market, charging the CONTRACTOR with any additional actual cost over the expected cost of the services under any outstanding purchase order but for the material breach of CONTRACTOR (i.e., cost of cover). Should such charge be assessed, no subsequent proposals of the defaulting CONTRACTOR will be considered until the assessed charge has been satisfied. Additionally, the State shall have a right of rescission in any instance where the CONTRACTOR provides, or seeks to provide, any services for a price higher than that specified herein. In the event of rescission, revocation or termination, all documents and other materials in the possession of the State or scheduled for delivery to the State, relating to performance hereunder shall become the property of the State. Any amount invoiced to the State prior to termination and attributable to the breach shall not be paid. The State's failure to exercise its rights to terminate under this provision shall not be construed as a waiver of its rights to terminate, rescind or revoke the services herein in the event of any subsequent breach.

32. TERMINATION FOR CONVENIENCE

This Agreement may be canceled by the State at any time and for any reason, upon providing the CONTRACTOR with ninety (90) days notice prior to the effective date of said cancellation. The State shall pay any outstanding balance on invoices for services delivered prior to the effective date of said and shall negotiate and pay for reasonable termination costs, which compensate CONTRACTOR for its actual installation and set-up costs.

33. TAXES

The State is exempt from federal excise taxes, and such taxes shall not be added to the CONTRACTOR'S prices nor included on the CONTRACTOR'S invoices. To the extent that any tax of any kind is charged to the CONTRACTOR as a result of providing services under this Agreement, then, and in that event, such tax shall be billed to the State. The CONTRACTOR agree that it will take no action that interferes with the State's tax exempt status.

34. DISPUTES AND RESOLUTIONS

All disputes between the parties hereunder shall be submitted and resolved pursuant to South Carolina Code Section 11-35-4230. Any judicial proceedings by either party arising under this Agreement shall be pursued in the Circuit Court of the State of South Carolina, Richland County.

35. BREACH/WAIVER

No term or provision hereof shall be deemed waived unless breach thereof 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 consent to, waiver of, or excuse for, any different or subsequent breach.

36. EMPLOYMENT OPPORTUNITY

The CONTRACTOR agrees that it will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based upon race, sex, national origin, age, disability, or in any way violative of Title VII of 1964 Civil Rights Act or the South Carolina Human Affairs Law.

37. NOTICES AND AGENTS

Any and all notices permitted or required hereunder shall be deemed duly given:

- A) Upon actual delivery, if delivery is by hand; or
- B) Upon receipt by the transmitting party of confirmation or answer back if delivery is by telex or telegram; or
- C) Upon deposit into the United States mail if delivery is by postage prepaid, registered or certified return receipt requested, mail.

Each such notice shall be sent to the respective party at its regular business address as follows:

As to the State:

Director
Office of Information Resources
4430 Broad River Road
Columbia, South Carolina 29210

As to CONTRACTOR:

HTC Communications
Attn: Director, Business Services
P.O. Box 1820
Conway, South Carolina 29528-1820

38. SOUTH CAROLINA LAW APPLICABLE

The CONTRACTOR agrees to comply with the laws of South Carolina which require such persons or entities to be authorized and/or licensed to do business in this State. As such, the CONTRACTOR agrees to subject itself to the jurisdiction and process of the courts, and to the law of the State of South Carolina for all matters and disputes arising, or to arise, under this Agreement and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State. In the event of any dispute between the parties herein, all such disputes shall be pursued in accordance with the Contract Dispute Resolution process of Section 11-35-4230 of the Procurement Code, S.C. Code Ann. (1997), and if necessary in Circuit Court for the State of South Carolina, Richland County.

39. SEVERABILITY

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding any such illegality or unenforceability, the remainder of said Agreement shall remain in full force and effect, and such term or provision shall be deemed to be deleted and severable therefrom.

40. APPLICABILITY OF UNIFORM COMMERCIAL CODE

Except to the extent the provisions of this Agreement are clearly inconsistent therewith, this Agreement shall be governed by the applicable provisions of the Uniform Commercial Code. To the extent this Agreement entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.

41. SUCCESSORSHIP

This Agreement is binding upon the respective successors and assigns, if any, of the parties thereto, except that nothing contained herein shall be construed to permit any attempted assignment which would be unauthorized. The CONTRACTOR may not assign this Agreement, nor the duties or responsibilities hereunder, to a non-affiliate without the express written consent of the State, except that the CONTRACTOR may assign this Agreement to any lender providing financing to CONTRACTOR or its affiliate as collateral for security purposes. The State hereby consents to any such collateral assignment and agrees to execute and deliver any written consent to collateral assignment reasonably requested by such lender.

42. CONTRACT DOCUMENTS AND PRECEDENCE

This document, together with all subordinate and other documents incorporated by reference herein, will constitute the entire agreement between the parties with respect to the subject matter contained herein and may only be modified by an amendment executed in writing by both parties. The CONTRACTOR hereby agrees that, except where this Agreement specifically indicates otherwise, all written proposals, specifications, brochures and sales materials presented by the CONTRACTOR to the State leading to this Agreement, and all other CONTRACTOR representations, commitments, and warranties prior to, and in connection with, this Agreement, shall be deemed to be, and are, incorporated by reference into, and made a part of, this Agreement.

To the extent permitted by, and consistent with, the South Carolina Procurement Code, the order of precedence shall be:

- 42.1 This Agreement, including all amendments later executed, with the most recent amendment taking precedence over the next most recent amendment;
- 42.2 The RFP, including all amendments later executed, with the most recent amendment taking precedence over the next most recent amendment; and
- 42.3 The CONTRACTOR'S response to the RFP.

The terms and conditions of the final agreement shall prevail notwithstanding any variance in the terms and conditions of any purchase/change order submitted by the State to the CONTRACTOR or by the CONTRACTOR to the State.

43. ATTORNEYS FEES

In the event that the State is required to and shall bring suit or action to compel performance of, or recover for, any breach of any stipulation, covenant, term or condition of this Agreement, the State may seek attorneys fees from the CONTRACTOR, and the CONTRACTOR will pay to the State such attorneys fees as the court and/or such administrative hearing officer or body may award. Otherwise, attorneys' fees in connection with any suit or action hereunder will be borne by the parties experiencing said expenses.

44. DUTY TO PROVIDE DRUG-FREE WORK PLACE

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

45. LICENSES AND PERMITS

During the term of this Agreement, the CONTRACTOR shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by the State, county, city or other government entity to accomplish the work specified in this Agreement.

46. CONTRACTORS SOLELY RESPONSIBLE FOR PERFORMANCE

The CONTRACTOR will be solely responsible for performance under this Agreement. The State will rely upon the CONTRACTOR for full, complete, and satisfactory performance under the terms and conditions of this Agreement, and for any relief, or judgment which may be requested by the State to the CONTRACTOR or which may be entered against the CONTRACTOR in any litigation which may arise under this Agreement or the relationship between the parties.

46.1 Subject to the provision of this Agreement (including Section 26), in the event the CONTRACTOR is unable for any reason to provide any material, services, supplies, products or other items of any type or variety which it is to provide to the State under a purchase order accepted by CONTRACTOR pursuant to this Agreement, including but not limited to any such materials, services, supplies, etc. available from any other party (such as subcontractors) supplying said materials, services, etc. to CONTRACTOR, the State will have the right to deal directly with the other supplier without penalty or interference from the CONTRACTOR which fails to provide such services under such purchase order. Further, any additional actual cost to the State over the expected cost to the State of such purchase order arising as a result shall be borne by CONTRACTOR.

46.2 If the CONTRACTOR'S services provided for hereunder include services, equipment, or materials supplied by a subcontractor, the CONTRACTOR must act as the prime contractor for these items and assume full responsibility for performance hereunder. Thus, the CONTRACTOR will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

46.3 In the event the CONTRACTOR is unable for any reason to provide any material, services, supplies, products or other items of any type or variety to the State under a purchase order accepted by CONTRACTOR pursuant to this Agreement, including but not limited to any such materials, services, supplies, etc. available from any other party (such as subcontractors) supplying said materials, services, etc. to the

CONTRACTOR, the State will have the right to deal directly with the other supplier without penalty or interference from the CONTRACTOR. Further, any additional actual cost to the State over the expected cost to the State of such purchase order arising as a result shall be borne by the CONTRACTOR.

47. OWNERSHIP AND CONFIDENTIALITY OF DATA

All data and other records entered into any database of the State, or supplied to the CONTRACTOR by the State are, and shall remain, the sole property of the State. Due to the extremely confidential nature of all data, the CONTRACTOR will not copy or remove any data from State premises (including State databases) at any time and will not reveal or utilize for any other purpose any data which may become known to the CONTRACTOR during systems installation, testing or maintenance. The CONTRACTOR will be subject to both the laws of the State of South Carolina and of the United States Government regarding the confidentiality of all data.

48. ACCESS TO CONTRACT INFORMATION

The CONTRACTOR agrees that it will provide information to OIR about any or all services provided under this Agreement. This includes summary and detail information about the local telecommunication services and related billing data for any governmental agency. This information is necessary for OIR to analyze and plan the State Network. The CONTRACTOR will provide this information to OIR promptly upon receiving a request from OIR.

49. AMERICANS WITH DISABILITIES ACT (ADA)

The CONTRACTOR shall comply with the ADA as applicable.

50. PARTICIPATION BY NON-STATE GOVERNMENTAL UNITS

Pursuant to Article 19 of the South Carolina Procurement Code, 11-35-4610 to 4890, other public procurement units, including municipalities, counties, and political subdivisions are eligible to cooperatively purchase services under, and pursuant to, this Agreement. Accordingly, the CONTRACTOR and State hereby agree to cooperate with one another in advising these governmental units of the availability of this Agreement and to take such steps as appropriate to extend the prices, and other terms and conditions, of this Agreement to those other entities.

51. CONVERSION COSTS

The cost of initial installation to convert existing lines/circuits will be the responsibility of the CONTRACTOR as part of doing business with the State. One-time installation charges for subsequent service may be charged to the

appropriate government agency or institution. In addition, the CONTRACTOR is prohibited from offering any other services (long distance, Internet, etc.) to agencies, institutions, boards or commissions of the State other than the local services specified in this Agreement. However, OIR may elect to add additional services, if it is advantageous to the State.

52. LIMITATION OF LIABILITY

52.1 In no event will CONTRACTOR or any of its affiliate be liable to the State, OIR or any of its respective agencies, boards, commissions, affiliates or employees or to any third party for:

52.1.1 Any loss of profit or revenue, or for any indirect, consequential, incidental, punitive or similar or additional damages, whether incurred or suffered as a result of the unavailability of facilities, performance, non-performance, termination, breach, or other action or inaction under this Agreement, or for any other reason, even if State or OIR advises CONTRACTOR of the possibility of this loss or damage;

52.1.2 For an outage or incorrect or defective transmissions, or any direct or indirect consequences thereof; or

52.1.3 Any fraudulent or unauthorized calls originating from or terminating to State premises or the service.

52.2 The State or OIR or any of their respective agencies, boards, commissions, affiliates or employees agree that their sole and exclusive remedy in the event of an breach of the warranties described herein shall be termination of this Agreement and damages pursuant to Section 4.