

STATE OF IDAHO SPECIAL CONTRACT TERMS AND CONDITIONS FOR TELECOMMUNICATIONS SERVICES

These State of Idaho Special Contract Terms and Conditions for Telecommunications Services supplement the State of Idaho Standard Contract Terms and Conditions. In case of conflict, these State of Idaho Special Contract Terms and Conditions for Telecommunications Services prevail.

1. GENERAL TERMS AND CONDITIONS

A. DEFINITIONS: Unless the context clearly requires otherwise, the definitions set forth in the State of Idaho Standard Contract Terms and Conditions shall apply to capitalized terms used in these State of Idaho Special Contract Terms and Conditions for Telecommunications Services. In addition, the following terms shall have the following meanings when used in these State of Idaho Special Contract Terms and Conditions for Telecommunications Services.

(1) Agreement: A contract or purchase order, including solicitation or specification documents, the State of Idaho Standard Contract Terms and Conditions, and the State of Idaho Special Contract Terms and Conditions for Telecommunications Services, as well as any amendments mutually agreed upon by both parties.

(2) Major Trouble:

(a) "Major Trouble" is defined as any one or a combination of the following:

- (i) The loss of a Critical Business Function;
- (ii) The failure of a Critical Circuit; or
- (iii) The loss of data service at a Critical Facility.

(b) "Critical Business Function" is defined as a discipline directly related to life safety, public safety, finance or revenue and taxation.

(c) "Critical Circuits" are defined as any circuit with a capacity of T1 or greater.

(d) "Critical Facilities" are defined as any location with circuit connection of DS3 or greater.

Notwithstanding the State of Idaho's identification of Critical Circuits, priority for restoring service in the event of a Service outage is governed by Telecommunications Service Priority ("TSP") regulations. National Security Emergency Preparedness ("NSEP") telecommunications services are given first priority for restoration in the event of service outages. Provider will restore Service to all other customers pursuant to the terms of the applicable service level agreements.

(3) Minor Trouble: "Minor Trouble" is defined as network problems not classified as Major Trouble but which fail to meet performance objectives identified in the Agreement.

(4) Provider: The sole proprietorship, partnership, consortium, L.L.C., corporation or other form of business entity that is obligated under the Agreement to offer, install and maintain Telecommunications Services to Users.

(5) Service(s): Those Telecommunications Services and other related services ordered by User and provided by the Provider pursuant to a Service Order, subject to the terms and conditions of the Agreement and the applicable Service Order.

- (6) **Service Order:** A document provided by the User to Provider which details the type of Service desired and provides all information necessary for Provider to provide the Service to User.
- (7) **State:** The Department of Administration, Division of Purchasing, acting as statutory agent for the User.
- (8) **Telecommunications Services:** The transmission of two-way interactive signs, signals, writing, images, sounds, messages, data or other information of any nature by wire, radio, light waves or other electromagnetic means, which are offered to or for the public, or some portion thereof, for compensation.
- (9) **User:** The ordering entity or State of Idaho agency.

B. SERVICES

- (1) **Types of Service:** The Services available under the Agreement are as defined in the Agreement, including the solicitation and an applicable Service Order.
- (2) **E-Rate Service:** The Provider acknowledges and agrees that Telecommunications Services offered under the Agreement may be eligible for E-Rate discounts. Qualifying schools or libraries may acquire Services offered through the Agreement, and related E-Rate discounts may apply. To qualify for E-Rate discounts, schools or libraries must comply with all program requirements, including but not limited to, the E-Rate application process, technology plan approval, reimbursement and invoicing prerequisites. Upon receipt of all properly executed E-Rate forms and related documents, Provider will apply the E-Rate discounts. Provider's sales account team and the State's E-Rate coordinator will work together to ensure timely application of discounts under the USF E-Rate program.

C. **PRICING:** Pricing shall be as designated in the Agreement.

D. LATE PAYMENT AND EARLY TERMINATION

- (1) **Late Payment:** A late charge shall be assessed and accrue at the rate determined in the application of Idaho Code Section 63-3045 commencing ten (10) calendar days after payment is due. Payments will be made in accordance with Idaho Code Section 67-2302(2).
- (2) **Early Termination:** The User may terminate for any or no reason at any time any Service Order for ongoing Services.
 - (a) If a User or the State terminates a Service or individual circuit prior to installation of Service as requested in a valid Service Order, charges shall be those actual expenses incurred by Provider through the date of termination.
 - (b) If a User or the State terminates a Service, or individual circuit, during the first twelve (12) months after commencement of any Service, for any reason other than what is described in sections 1.E.(1) [For Cause] and 1.E.(2) [For Non-Appropriation], the User shall pay a termination charge as set forth in the Agreement. Termination charges shall not be charged unless set forth in the solicitation or accepted in writing by the State and the User. Unless additional early termination charges are set forth in the solicitation or accepted in writing by the State, the early termination charge shall not exceed one hundred percent (100%) of the monthly recurring charges for that Service (or the applicable fraction thereof), multiplied by the number of months remaining in the first twelve (12) months of the Service term.

- (c) Users and the State may avoid termination charges for a circuit if a circuit of equal or greater value is ordered within thirty (30) days after termination of the original circuit. The new circuit must be ordered for a period at least equal to the remaining contract term of the disconnected circuit.

E. TERMINATION

(1) For Cause: The State may terminate the Agreement or any Service Order issued pursuant to the Agreement when the Provider has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time as set forth in the notice. If the default or non-compliance is not capable of cure or where the State, in its sole discretion, determines that health or safety of persons is at risk due to the default or non-compliance the State may provide written notice of immediate termination. If the Agreement is terminated for default or non-compliance, the Provider will be responsible for any direct costs, damages, or both incurred by the State for placement of a new Agreement. The State, upon termination for default or non-compliance, reserves the right to offset damages against payment due, and to take any legal action it may deem necessary. If the State terminates the Agreement for default or non-compliance and such termination is subsequently determined by a court of competent jurisdiction to have been without cause, the termination shall be deemed a termination under Section 1.D.(2) [Early Termination] and the State and the User shall only be responsible for payment in accordance with that section, which shall be the full extent of the State of Idaho's liability.

(2) For Non-Appropriation: Provider acknowledges that the User and the State are governmental entities, and that the Agreement shall in no way be construed so to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State Legislature, as may exist from time to time. The State reserves the right to terminate the Agreement, in whole or in part, if, in its sole judgment, the Legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for the State or the User to continue payment or requires any give-back of funds as may be required for the State or the User to continue payment, or if the Executive Branch mandates any cuts or holdback in spending. Any such termination shall take effect on ten (10) calendar days' notice and be otherwise effective as provided in the Agreement. It is understood and agreed that the payments provided for in the Agreement shall be paid from Legislative appropriations.

F. SUBCONTRACTING: The Provider may enter into any subcontract(s) relating to the performance of the Agreement or any part thereof. The Provider's use of subcontracts shall not in any way relieve the Provider of its responsibility for the professional and technical accuracy, adequacy, and timeliness of the work to be performed under the Agreement. The Provider shall be and remain liable for the performance of the work in accordance with the Agreement, as well as for any liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, arising from the negligent or wrongful acts or omissions of Provider's subcontractor(s) under the Agreement.

G. ASSIGNMENT: Neither the Agreement nor any Service Order or any interest therein shall be transferred by the Provider to any other party without the approval, in writing, of the Administrator of the Division of Purchasing. Any attempt to assign the Agreement, without prior written approval, shall result in the termination of the Agreement or Service Order, at the sole discretion of the State. All rights of action for any breach of the Agreement by the Provider are reserved to the State. Notwithstanding the preceding and subject to the provisions contained herein, the Provider may assign the Agreement or any Service Order, without prior written consent, to an entity that controls, is controlled by, or is in common control with the Provider, or to any successor in interest to the Provider, or, if necessary, to satisfy the rules, requirements and/or regulations of any federal, local or state governmental agency. In the event of an assignment without prior

written approval, the Provider shall remain fully responsible and liable for performance under the Agreement.

H. LIMITS OF LIABILITY: For Service issues, Provider shall perform Problem Management as provided in Section 2.E. [Problem Management] below and such remedies shall not be subject to the limits of liability set forth in this section. For all other claims, except with regard to its indemnification obligations under the Agreement, Provider's aggregate liability shall be limited to twice the aggregate value of the Agreement or Two Million and 00/100 Dollars (\$2,000,000.00), whichever is greater. The aggregate value of the Agreement shall be equal to the value of all service orders placed under the Agreement for the current term and any exercised renewal terms of the Agreement. **IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES.** Direct damages include costs or damages incurred by the State for placement of a new Agreement upon a termination for cause so long as the State:

- (1) Procures a substantially similar product or Service under the same terms and conditions as provided in the Agreement;
- (2) Procures such product or Service for the same term as the term applicable to the product or Service being replaced; and
- (3) Otherwise takes all reasonable steps to mitigate the amount of costs incurred.

I. WARRANTIES: Except as set forth in Section 2.C. [Performance Objectives], the Provider warrants that the Services shall be provided as set forth in the Provider's response to the solicitation and in any written materials describing the services provided to the State of Idaho by the Provider.

2. SERVICE LEVELS

A. STATE RESPONSIBILITIES

The User will ensure reasonable access for the Provider's employees and Provider's subcontractors' employees to User-controlled sites where Provider's equipment is or will be installed. Access will be provided for the purposes of installation and preventative and corrective maintenance. To the extent access is outside the control of the User, the User will cooperate with Provider in obtaining access to the premises to install, operate, maintain, repair and remove Provider's equipment. Provider's employees or agents will comply with the User, State of Idaho, and federal access and security rules and regulations which have been communicated to Provider. Provider will provide notice to the User prior to entering the User's premises to install, maintain or repair any Provider equipment in connection with the Service(s) provided under the Agreement. Provider will only enter the User's premises if escorted by User authorized personnel, unless the User grants written permission to Provider for unescorted access. Outage credits under applicable service level agreements will not be granted for service interruptions or times of service degradation during any period in which Provider or its agents are not afforded access to the User's premises if such access is reasonably necessary to prevent a degradation or restore Service.

B. PROVIDER RESPONSIBILITIES

(1) Filing Individual Case Based Contracts (ICBs): The State of Idaho represents that less than ten percent (10%) of data traffic traversing the Provider's network will be interstate. The Provider shall file ICB's with the appropriate regulatory authority and supply copies to the State.

- (2) Providing an Escalation List:** Upon request of the State or the User, the Provider will submit an escalation list. The escalation list will contain the contact name, work telephone number, cell telephone number, e-mail address for key operations and technical contacts, and the Provider's twenty-four (24) hour network administration and control center. The Provider will deliver this list to the State and the User within five (5) calendar days after request.
- (3) Provide Constant Network Monitoring:** Provider will maintain a twenty-four (24) hour, seven (7) day a week, three hundred sixty-five (365) days per year staffed network operations center to monitor Services provided to Users, in order to facilitate response to Major and Minor Trouble.

C. PERFORMANCE OBJECTIVES

- (1)** The Provider warrants its network elements, including, without limitation, hardware, equipment and cables, are designed to meet its Service objectives pursuant to this section. Provider represents that all interfaces and protocols extended to Users are designed to meet the specifications described in Provider's technical publications. These technical publications may include, but are not limited to, the ATM Forum, the Frame Relay Forum, EIA/TIA, ANSI or ITU. There are no other warranties expressed or implied. Remedies that apply to this area are contained in 2.E.(2) [Liquidated Damages].
- (2)** Further, the Provider will submit to the State, within five (5) business days after signing the Agreement, the Provider's standard targeted Service level objectives for its network for each of its offered Services. The objectives will include some or all of the following: availability, reliability, mean-time-to-repair ("MTTR"), mean-time-between-failure ("MTBF"), and bit error rate ("BER"). The targeted Service level objectives will become part of and incorporated into the Agreement as if set forth in full.

D. SERVICE MANAGEMENT

- (1) Initiation of New Service:** Users will place a Service Order for new Service either by fax or by e-mail. The due date for a Service Order will be mutually agreed upon when the User places a Service Order. If the Provider cannot complete installation after thirty (30) calendar days past the established due date for a Service Order, the Service Order will automatically cancel, with no further liability to the State of Idaho, and the State, at its option, may seek, without penalty, substitute services from another Provider. The User will track the status of a Service Order via telephone, written form, or, preferably, electronic form.
- (2) Disconnection of Service:** The User will place a Service Order for discontinuance of Service either by fax or by e-mail. Except as otherwise provided in the Agreement, the User will provide the Provider with thirty (30) calendar days' written notice to discontinue Service. The User will track the status of a Service Order via telephone, written form, or, preferably, electronic form.

E. PROBLEM MANAGEMENT

- (1) Trouble Reports:** The State or User will place a Major or Minor Trouble report with the Provider either in written form (e.g., memo or fax), telephonically or, preferably, electronic form (e.g., web-based forms). The State or the User shall designate, in its discretion, whether the report identifies a condition that is Major Trouble or Minor Trouble. Upon written request, the State or the User shall provide detailed information supporting the designation to the Provider. Provider shall track the progress of problem resolution using telephonic or electronic notification such as , web-based or e-mail tracking.

(2) Liquidated Damages

- (a) It is essential for the State of Idaho's business that the Services be provided uninterrupted. The Provider agrees to delivery of Service as agreed upon pursuant to the Agreement and any Service Order issued pursuant to the Agreement, including the targeted Service level objectives submitted in accordance with Section 2.C.(2) [Performance Objectives] above. Failure to provide Services in accordance with the Agreement constitutes an event of default. The parties agree that actual damages to the State for the failure of or delay in delivery will be difficult or impossible to determine. Therefore, if the Provider misses the initial response time for a Major Trouble, the State may assess Provider Two Hundred Fifty and 00/100 Dollars (\$250.00) per hour for each hour missed, up to eight (8) hours as described below, as liquidated damages, not as a penalty. If the Provider misses the initial response time for a Minor Trouble, the State may assess Provider One Hundred Fifty and 00/100 Dollars (\$150.00) per hour for each hour missed, up to eight (8) hours as described below, as liquidated damages, not as a penalty. The State reserves the right to offset the amount of liquidated damages against other sums owing under the Agreement or any Service Order issued hereunder.
- (b) If Provider has not remedied either a Major or Minor Trouble after eight (8) hours from the time of the trouble report, the State may assess Seven Hundred Fifty and 00/100 Dollars (\$750.00) per hour as liquidated damages, not as a penalty, until such time as the Major or Minor Trouble is fully remedied. The State reserves the right to offset the amount of liquidated damages against other sums owing under the Agreement or any Service Order issued hereunder.

(3) Chronic Trouble Remedy

- (a) "Chronic Trouble Circuit" is a particular circuit for which:
 - (i) Three (3) or more trouble tickets have been opened for the same trouble within a ninety (90) day period;
 - (ii) One (1) Service outage has occurred for a duration of more than twenty-four (24) hours; or
 - (iii) Service outages accumulating one hundred twenty (120) hours or more over any period of one hundred eighty (180) consecutive calendar days and the cause of each such trouble is determined to be in Provider's network and is not the result of a cause beyond the control and without the fault or negligence of the Provider.
- (b) Whenever State or User reports to Provider, and Provider confirms that a Service is a Chronic Trouble Circuit, Provider will immediately perform a detailed investigation and report the findings to the State and the User. The State or User may disconnect a specific Chronic Trouble Circuit without incurring termination liability or further obligation, except for payment due and owing for Services received prior to disconnection, by providing Provider written notice, unless such circuit has remained trouble-free for a period of thirty (30) days prior to such termination notice.

F. PLANNED OUTAGES: The Provider shall provide at least three (3) State of Idaho business days advance notice to the State, via e-mail or telephone, of any planned outages affecting the Provider's network.

G. BILLING AND CREDITS

- (1) Billing Address and Interval:** The Provider will render a timely, accurate and complete invoice to the billing address identified on the Service Order, unless a revised billing address

is provided in writing to the Provider by the User. The billing "end date" will be mutually agreed upon between the User and the Provider.

- (2) Invoicing for a Finished Service:** Where by necessity a finished Service is provisioned by the Provider and other telecommunications carriers, the Provider will submit a single consolidated invoice.
- (3) Billing Elements:** Invoices submitted by the Provider must include applicable one-time charges, recurring charges and any prorated charges.
- (4) Application of Credits:** The State or User will notify the Provider in writing of any billing or administrative errors within sixty (60) calendar days of receipt of invoice, including identifying the amount of the apparent error. The Provider shall respond in writing to such notification within fifteen (15) calendar days of receipt. Failure to so respond shall be deemed agreement by the Provider to the amount of the claimed mistake. Credits for any billing or administrative errors shall be applied by the Provider to the User's account within forty-five (45) calendar days of notification of such error. The State reserves the right to offset amounts in dispute pursuant to this section pending resolution thereof.