answering and placing a TTY-based TRS call must stay with the call for a minimum of ten minutes. CA's answering and placing a Speech to speech call must stay with the call for a minimum of 15 minutes. After the required time to stay on the line, if the change is necessary, both parties shall be informed.

D.1.31.S Typing Error: To correct a typing error, Communications Assistants shall not backspace, but continue in a forward direction by typing "xx" (common TTY conversation for error) and then typing the word correctly.

D.1.31.T. Verification: Communications Assistants shall verify spelling of proper nouns, numbers, and addresses that are spoken. This shall be relayed as discussed above in "Parentheses for Non-conversation Items."

D.1.31.U. Stay on the Line: The Communications Assistant will stay on the line until both parties have terminated the call. If necessary to process a complaint or compliment, the call will be transferred to a supervisor.

D.1.31.V. Answering Machine or Voice Mail Messages and Answering Machine or Voice Mail Retrieval: Communications Assistants will leave messages on answering machines or other voice processing systems, and also retrieve messages from these systems. Provider shall propose procedures to include the following steps:

D.1.31.V.1. The Communications Assistant will inform the caller when an answering machine has been reached and will transmit to the caller the content of the outgoing message.

D.1.1V.2. The Communications Assistant will leave the caller's full message, either by voice or TTY.

D.1.31.V.3. The Communications Assistant will confirm to the caller that the message as been left.

D.1.1V.4 The caller will only be charged for the initial call regardless of the number of redials required to capture the full outgoing message and leave a message.

D.1.31.V.5. Communications Assistants will retrieve messages from voice processing systems and relay a TTY message to a voice user or a voice message to a TTY user. Provider shall propose procedures for handling this requirement, and the procedures shall include methods for obtaining any necessary system access codes from the user and statements regarding confidentiality of that information.

D.1.32 Communications Assistant Requirements: Other

D.1.32.A. Violating Confidentiality: A CA or supervisor who, after investigation, is found to have violated confidentiality rules and

regulations shall either be terminated immediately or be given a warning and automatically terminated the second time it occurs. Proposals shall specify the policy for reviewing alleged violations of confidentiality.

D.1.32.B. Communications Assistant Counseling: The Contractor is required to establish a counseling and support program that will help CAs deal with the emotional aspects of relaying calls. Because CAs are not allowed to talk about their calls with other CAs, friends or family, CAs need to have access to someone they can talk to and trust. CAs must be afforded access to either internal or external counseling and support services in a completely confidential manner. Those providing this support must be trained professionals in this area and have knowledge in the field of communication disabilities. Proposers shall briefly describe their Communications Assistant counseling programs.

D.1.32.C. Obscenity Directed to the Communications Assistant: CAs do not have to tolerate obscenity directed at them. A proposal shall specify how the provider will handle these situations. It is acceptable to transfer callers using obscenities to a supervisor to determine why the caller is using obscenity and to explain that this is inappropriate.

D.1.33. CONTRACTOR REPORTING REQUIREMENTS

D.1.33.A. Monthly Traffic Reports: invoices: Invoices shall be sent no later than the 21st of each month for the preceding month and should contain the following information:

D.1.33.B. Amount due for the mandatory part of the service based on the basic price per minute.

D.1.33.C. Minutes of the Communications Assistant work time, where the Communications Assistant work time is the time, in minutes and seconds, from the moment when a communications assistant is ready to render assistance and/or ready to accept information to process a call to the OTRS until both relay users disconnect. This is the time used for billing the Commission.

D.1.33.D. Amount of credit for intrastate toll revenues billed to relay users.

D.1.33.E. The following information at a minimum, shall accompany the invoice:

D.1.33.F. Number of intrastate toll calls completed, corresponding Communications Assistant work time, corresponding talk time (the time, in minutes and seconds, from the moment the relay caller is connected with the called telephone number and conversation begins until the caller hangs up), and percent of intrastate calls completed to total calls handled.

D.1.33.G. Number of local calls completed, corresponding Communications Assistant work time, corresponding talk time (the time, in minutes and seconds, from the moment the relay caller is connected with the called telephone number and conversation begins until the caller hangs up), and percent of local calls completed to total calls handled.

D.1.33.H Number of intrastate general assistance calls handled (general assistance calls are calls to the OTRS where no out-dial call is placed, usually the relay caller is seeking information about the OTRS), corresponding Communications Assistant work time, and percent of general assistance calls handled to total calls handled.

D.1.33.I. Number of calls to intrastate OTRS Relay numbers completed, corresponding Communications Assistant work time, corresponding talk time (the time, in minutes and seconds, from the moment the relay caller is connected with the called telephone number and conversation begins until the caller hangs up), and percent of OTRS Relay calls completed to total calls handled.

D.1.33.J. Number of intrastate busy/no answer calls handled, corresponding Communications Assistant work time, and percent of busy/no answer calls to total calls handled.

D.1.33.K . Number of calls handled and corresponding percent of the total calls handled categorized as:

TTY calls ASCII calls Baudot calls Voice calls Voice carry over calls Hearing carry over calls Spanish To Spanish calls Local calls Intrastate Calls Interstate Calls International Calls Ship to Shore 900/976 calls VCO to VCO, HCO to HCO calls Speech to Speech Calls

D.1.33.L. Average length of calls handled.

D.1.33.M. Number of incoming calls (calls placed to the OTRS):

D.1.33.M.1. Number of incoming calls placed in queue;

D.1.33.M.2. Number of incoming calls answered from queue; and
D.1.32.M.3. Delayed call profile to show how many calls stayed in queue for less than 1 second, 1-5 seconds, 5.01-10 seconds, 10.01-15 seconds, 15.01-20 seconds, 20.01-25 seconds, 25.01-30 seconds, 30.01-40 seconds, 40.01-50 seconds, 50.01-60 seconds, 60.01-90 seconds, 90.01-120 seconds, 120.01-180 seconds, 180.01+ seconds.

D.1.33.N. Information regarding daily calls handled:

D.1.33.N.1. Number of calls handled for each day of the month;

D.1.33.N.2. Average number of weekday calls;

D.1.33.N.3. Average number of weekend calls; and

D.1.33.N.4. Peak days and hours of operation.

D.1.33.O. Average speed of answer time for each-six hour time period (beginning at 12 Midnight) for each day and the average speed of answer time for the month.

D.1.33.P. Appropriate call detail reports from the switch should be attached to the invoice to verify the information included in the invoice.

D.1.33.Q Complaints, with the required data outlined in D.1.20. These reports must incorporate complaints that originate either with the relay provider or the State of Oregon contract administrator at the Public Utility Commission. These reports must be submitted monthly, by the 21st of each month.

D.1.33.R. Invoice Format: The Contractor must work with the Commission staff to develop an acceptable format for the invoice. The Commission reserves the right to request additional data from the provider at a later date during the course of the contract.

D.1.34. All of the above shall be reported to the Commission no later than 21 calendar days after the close of each month.

D.1.35. Both electronic and written production of the above information is required. The State will accept either ASCII or Excel format. The electronic production format must be approved by the PUC prior to the first report being submitted.

D.1.36. The Contractor will submit the reporting format that will be used to provide all of the above information.

D.1.37 The Contractor must include information on its capability to provide ad hoc reports, including new information the Contractor has in its system database or in new formats for existing information.

D.1.38 Reconciliation between billing units and traffic data reported for the month.

D.1.39. Annual Report: By September 30th of each year the Contractor shall provide to the Public Utility Commission a finalized annual report of operations, traffic patterns, and accounting data and outreach information pertaining to the OTRS. On an annual basis, the Contractor must provide forecasted usage figures and costs to the Commission for the upcoming year for use in the annual program budget.

D.1.40. Other Reporting Requirements: The Contractor shall report quarterly to the Commission the results of the user evaluations

conducted in accordance with Section D.1.25. "Consumer Input" of this RFP. Contractor shall develop and provide a plan to obtain consumer input on the quality of the delivery of service. The input shall include, but not limited to, compliments, suggestions, policy review, and complaints. Contractor shall develop a plan to include the users of the system in any evaluation of the OTRS. An outline of this plan shall be included with the Contractor's Proposal. The plan should explain methods for consumer input and how the recommendations from these evaluations will be incorporated into the policies of the relay service.

D.1.41. The Contractor shall provide monthly summary reports to the Commission regarding numbers of complaints received and topic areas of the complaints, including at least the following categories:

Blockage Slow answer time CA typing speed Clarify/understandability of CA Noise on line Explanation of how relay works General information

D.1.42. DAS Sales/Volumes Report: Contractor shall provide quarterly volume/sales reports to SPO.

D.1.42.A. Contractor shall furnish to SPO quarterly reports of billed services provided under this Contract.

D.1.42.B. The reports shall clearly indicate the RFP and/or Contract number(s).

D.1.42.C. Reports are due by the 15th day following the end of each calendar quarter. Calendar quarters end March 31, June 30, September 30 and December 31.

D.1.42.D. Copies of all volume/sales quarterly reports are also to be sent to the RSPF Manager.

D.1.42.E. All DAS Report Copies: Contractor shall supply reports in a format approved by both parties. Reports on a 3.5 inch diskette are preferred, however, hard copy reports are acceptable. The following format examples are preferred for sales information reports:

Excel Spreadsheet
Lotus Spreadsheet

D.1.42.F. THE DAS STATE PROCUREMENT OFFICE RESERVES THE RIGHT TO CANCEL THIS CONTRACT IF SALES/VOLUME REPORTS ARE NOT RECEIVED AS SCHEDULED.

D.1.43. SPECIAL REPORTING REQUIREMENTS: (UPON REQUEST ONLY) The Contractor shall be prepared to provide in-depth reports upon request in addition to reports outlined in the RFP upon, along with an estimate of cost, at any time during the life of the Contract.

D.1.43.A. The purpose of the special reports may be to respond to an industry, legislative, or Commission request for information, so they must be provided on a timely basis.

D.1.43.B. Costs for special reports shall be negotiated at the time of request and are not evaluated for award consideration. Special reports are not minimum standards required in this RFP. Special report requests may include, but are not limited to:

D.1.43.B.1. Traffic reports including a Numbering Plan Area (NPA) traffic report: The example reports are generated using all calls to the OTRS, including local, intrastate, interstate, international, general assistance, and busy/no answer calls.

D.1.43.B.2. Number of subscribers: The number of different telephone numbers from which calls are placed through the OTRS. If a household has different people who use the OTRS and they all share one telephone line, only one subscriber will be counted. If a subscriber calls through the OTRS from home and from work, two subscribers will be counted.

D.1.43.B.3. Number of completed calls: The number of local, intrastate, and intrastate 800 number calls placed for relay users where a connection is made with the called telephone number.

D.1.43.B.4. Total agent work time: Agent work time is the time, in minutes and seconds, from the moment a relay agent is ready to render assistance and/or ready to accept information to process a call to the OTRS until both relay users disconnect.

D.1.43.B.5. Talk time: The time, in minutes and seconds, from the moment the relay caller is connected with the called telephone number and conversation begins until the caller hangs up.

D.1.43.B.6. Inbound calls: The number of calls placed to the OTRS.

D.1.43.B.7. Number of calls handled: The number of local calls completed, the number of intrastate calls completed, the number of intrastate general assistance calls handled, the number of intrastate 800 number calls Completed, plus the number of intrastate busy/no answer calls handled. Note: A relay user may make one call to the OTRS and ask the relay agent to place five outbound calls.

D.1.44. FINANCIAL HISTORY: The Public Utility Commission reserves the right to evaluate the financial responsibility of the Proposer after evaluation of the proposals received, but prior to award of a contract. This financial history information may include, but not be limited to:

D.1.44.A. Audited Financial Statement or 10K Report for the most recent two (2) years, including at a minimum:

D.1.44.A.1. statement of income and related earnings;

D.1.44.A.2. cash flow statement;

D.1.44.A.3. balance sheet; and

D.1.44.A.4. opinion concerning financial statements from a CPA.

D.1.44.A.5. Primary banking source letter of reference.

D.1.44.B. The Public Utility Commission also reserves the right to evaluate the viability of any subcontractor which is expected to receive more than ten (10) percent of the value of the contract.

D.1.5 Policies and Procedures Manual: The Public Utility Commission reserves the right, after evaluation of the proposals received and prior to award of a contract to request Contractor to provide a comprehensive Communications Assistant Policies and Procedures Manual which shall include, but not be limited to, confidentiality, handling of emergency and crisis calls, consequences of non-compliance to policies, and functions and roles of a relay Communications Assistant.

D.1.46 Proposer references shall be contacted, evaluated and scored per the criteria in Section D.2.1.

D.1.47 SERVICE LEVELS: Contractor shall maintain the service level for the volume of calls shown in Attachment B. Proposer shall describe its plan for maintaining this level.

D.1.48. Service Level Expansion: Contractor must have the capability to provide service levels that exceed the volume shown in Attachment B. Proposer shall describe how they will demonstrate the capability of expanding service in response to increasing demand up to the maximum call level identified on Attachment B.

D.1.49. DISASTER RECOVERY PLAN: Contractor shall have a complete plan to recover data and restore relay service in the event of natural or man-made disasters is required. The Commission's Relay Administrator must be notified of any disruption in service that lasts more than 30 minutes. Such notification shall take place within three hours of the time the disruption begins or by 8:30 a.m. on the next business day if the notification would otherwise occur outside normal business hours. The report should explain how the problem will be corrected and give an approximate time and date when relay service will be in full operation. After the service is back in full operation, the Contractor will submit a written report on the problem to the RSPF Manager.

D.1.50. CALLER-PROVIDED INFORMATION: Contractor may require that a caller provide NPA/NXX type information to identify the caller's

local calling area if that information is necessary to distinguish local calls from toll calls and to allow for faster call set-up times. The Contractor must specify how such information would result in faster call set-up times and provide justification that no other equipment is available which would avoid the necessity for callers to provide their phone number.

D.2. DESIRABLES

The desirable features specified in this RFP are designed to assist the Proposer in preparing a proposal to provide the services desired by the State. Additional desirable features, which will be considered in evaluation, are also described. Proposers shall identify their response associated with each desirable requirement.

The desirable features of this RFP specify features or functions that will further improve or enhance the level of service. Responses to desirable items are optional; however, points will be awarded based on how well the Proposer's response meets each desirable item and its value to the State.

This may be in written narrative form, by reference to other documentation included in your proposal or a combination of the two. Proposers are to indicate the document title, page number and specific paragraph(s) where the information is contained.

For desirables, Proposers shall provide sufficient information for the State to judge the value of the service(s) in the State's environment. Responses to desirables will be evaluated in terms of how well the concessionaire's service(s) provides the desired feature as well as evaluated competitively among the Proposer responses based on how well each concessionaire's service(s) compares to other proposed in the context of the State's environment.

D.2.1. Customer References(A maximum of Ninety (90)) points are assigned to this section): As a part of the Proposal, Proposer may send an evaluation form to three customers with similar services, as qualified below.

D.2.1.A. Reference shall be from customers who have the equivalent level of TRS services as described in this RFP.

D.2.1.B. Proposer shall provide quality references that can provide responses to questions from the following general categories regarding services provided:

Quality of the service and support (5 points possible)

Responsiveness of the company (5 points possible)

Quality of training (5 points possible)

Quality of user documentation (5 points possible)

Overall satisfaction (5 points possible)

Whether the customer would use the contractor again? Yes (+5 points) No (-5 points). See Attachment C

D.2.1.C. Each reference will be asked one question from each category (the same question to all Proposers' references). The question will be to rate the Proposer's performance, regarding that question, on a scale from 1 to 5, 5 being the best.

(3 references x (a maximum of 30 points per reference) = 90 points maximum per Proposer Proposal).

D.2.2 Test Calls: (25 points) The Evaluation Committee will make test calls in order to test the Proposers performance of the services. Five (5) calls made by evaluators will be processed to test the quality of the service. The Proposer must provide contact information for the test calls. Each test will be worth up to 5 points (a score of 0-5 is 1 point, 6-10 is 2 points, 11-15 is 3 points, 16-20 is 4 points and 21-15 is 5 points on each test call). See Attachment D

D.2.3. Spanish to English/English to Spanish (25 points). It is desirable to have Spanish to English and English to Spanish relay (i.e., consumers who are Spanish speaking can call through the relay to an English speaking party and vice versa, with CAs providing translation). Please specify how the Contractor will provide the amount per minute over the unit prices listed in Attachment A that this desirable feature will cost. The lowest price will get the full 25 points for the section, and for each price proposed that is the next highest, a percentage of points will be deducted from the point system. See below for example of percentage formula. Proposers who do not respond to this portion, or respond with an "N/A" will receive zero points.

D.2.4. Percentage of OTRS Account Manager Time. (100 points) It is desirable to have the OTRS Account Manager reside in Oregon and use at 75% or 100% of their time on the OTRS account. Please specify how much more beyond the unit prices in Attachment A that this desirable feature will cost for a) OTRS Account Manager residing in Oregon and devoting 75% of their time to the OTRS account, and b) OTRS Account Manager residing in Oregon and devoting 100% of their time to the OTRS account. The lowest price will get the full 100 points for the section, and for each price proposed that is the next highest, a percentage of points will be deducted from the point system. See below in Section E.5.1 for example of percentage formula. Proposers who do not respond to this portion will receive zero points.

D.2.5. Captioned Telephone with VCO or Enhanced VCO with Voice Recognition TRS (25 points): It is desirable for the State to provide Captioned Telephone with VCO or Enhanced VCO with Voice Recognition TRS. Outside of the mandatory requirements and waived requirements, outlined in the FCC Declaratory Ruling on Captioned Telephone VCO on August 1, 2003, additional requirements are outlined:

D.2.5.1. Minimum 125 Words Per Minute: Word per minute is not the voicing speed of the CA but the speed at which a user is receiving information.

D.2.5.2. 98% accuracy: Accuracy is the percentage of error subtracted from 100%

D.2.5.3. 2% or less Error Rate. Errors are any word that changes the context of the sentence, including missing words or sentences.

D.2.5.4. Pricing: Pricing for this desirable feature should be for the rate per minute for Captioned Telephone with VCO or Enhanced VCO with Voice Recognition TRS only and should begin with a minimum of 200 units in July 2004 and increase five units a month over the next five years. See Pricing Proposal Attachment E . The lowest price per minute will receive the highest score of 25 points, with higher proposals receiving a percentage of the points. See below in Section E.5.1 for example of percentage formula.

D.3 PRICING:

D.3.1. In order to assist Proposers in the preparation of their price proposals and to comply with the requirements of this solicitation,D.3 "Price Proposal Instructions" Attachment A and E Price Proposal Forms (have been prepared. Proposers must submit their price proposals on Attachment A and E in accordance with the instructions specified herein. Altering the Price Proposal Forms is unauthorized and may result in proposal rejection.

D.3.2. Each Price Proposal Sheet must be signed and dated by an individual who is authorized to bind the firm to all prices offered. Enter the title of the individual and the firm in the spaces provided.

D.3.3. All criteria included in the Price Proposal Form, i.e., the estimated quantity of conversation or session minutes monthly, shown on this form is for price evaluation purposes. The State reserves the right, at its sole discretion, to purchase in different quantities than those referenced in the Price Proposal Form. The State reserves the right, at its sole discretion not to purchase any service for which proposals are solicited under this RFP.

D.3.4.A All Unit/Extended Prices must be clearly typed or written in ink with dollars and cents e.g., $24.15

D.3.4.B. All Unit Prices must be the actual unit price the State will pay for the proposed item per this RFP and may not be contingent on any other factor or condition in any manner.

D.3.4.C. All goods or services required or requested by the State and proposed by the Proposer at No Cost to the State must be clearly entered in the Unit and Extended Price with $0.00

D.3.4.D. All goods or services required or requested by the State and Not Offered by the Proposer to the State must be clearly typed in the Unit and Extended Price with N/O.

D.3.4.E. Nothing shall be entered on the Price Proposal Forms that alters or proposes conditions or contingencies on the proposed prices.

D.3.4.F. For Attachment A, Proposers are to total up each of the columns (or rows and total end column) and divide the total by 4 to achieve an average per minute rate. There are 300 price points. Desirable price points are an additional 125 on Attachment A and 25 on Attachment E

SECTION E - SELECTION/EVALUATION CRITERIA

E.1. EVALUATION COMMITTEE: An Evaluation Committee will be established composed of TRS and TDAP Advisory Committee members, Public Utility Commission staff and other community members with a background in telecommunications or consumers who are relay users. The committee will be assisted in a number of support activities by Public Utility Commission staff; Department of Administrative Services- Purchasing Division staff; and the Attorney General's Office and its staff.

Each Committee member will conduct his/her own evaluation of each Proposal, and will assign points for desirable features and points for pricing. Points will be added for a final total.

E.2. MANDATORY REQUIREMENTS: Mandatory requirements will be evaluated by the Evaluation Committee on a pass/fail basis. Proposer must meet all mandatory requirements to be considered responsive.

E.3. DESIRABLE FEATURES:

E.3.1. EVALUATION OF DESIRABLE FEATURES: The evaluation team will analyze the proposals to determine how well they meet the service desired. All, part, or none of the points for each desirable item may be awarded at this stage. Points awarded will be based on how

well the written proposal meets and describes the stated desirable. The points awarded for desirable items will be totaled for each proposal.

E.3.1.A. Submittals will be evaluated, scored and ranked on completeness, quality of content and responsiveness to the criteria established in the proposal documents. Failure to provide all required information may result in elimination from further consideration. The evaluation committee will prepare a written summary and justification of the final rank order of the Proposals and a contract offer made to the selected Proposer.

E.3.1.B. Submittals will be judged on the completeness and quality of content. Only those submittals that contain complete information as required by these requirements and that meet all other stated requirements will be considered for evaluation.

E.4. SUBMITTAL EVALUATION

E.4.A. EVALUATION OF THE RFP RESPONSES WILL BE BASED ON THE FOLLOWING CRITERIA:

Customer References	90
Test Calls	25
Spanish to English/English to Spanish	25
Account Manager (percentage of time for OTRS)	100
Captioned Telephone with VCO Services	25
Conversational Minutes Price	300
PROPOSAL MAXIMUM AVAILABLE POINTS:	565

E.4.1 RESPONSIBILITY EVALUATION: The 3 references provided by Proposer will be required to respond to the six 6 performance measures listed in Attachment C assigning points from "1" (Poor) to "5" (Excellent). Each set of references' scores will be totaled for the reference responsibility evaluation total point score.

E.4.2 EVALUATION COMMITTEE SCORING: Desirable Features and references will be evaluated by the Evaluation Committee on a point system, with a maximum potential score of 115 points. Points will be awarded based upon how well Proposer's response to Desirable Features meets the desired requirements. Maximum point values are assigned to indicate the relative importance of each desirable. All final scores are rounded to the nearest whole number.

E.5. PRICING: Cost points will be awarded based upon the lowest average per minute rate for each of the categories shown in Attachment A and E, with a maximum potential Pricing Point Score of 450 points. Each Proposal will be awarded a percentage of the maximum potential Pricing Point Score based upon the lowest per minute rate in relation to the next highest per minute rate offered. The points will be totaled for each category to obtain the total

cost points.

E.5.1 PRICING PERCENTAGE FORMULA. For each of the pricing categories, the following formula shall be used to determine the price points for each category.

The following proposers propose a Voice Conversation per minute rate of:

Proposer A: .25
Proposer B: .30
Proposer C: .35

There are 25 points available for this category

Proposer A would receive 25 points for submitting the lowest rate.

Proposer B would receives 21 points, 25 divided by 30 = .8333. .8333 times 25 (points) = 20.833 rounded up to 21.

Proposer C would receive 18 points. 25 divided by 35 = .714. .714 times
25 (points) = 17.85 rounded up to 18.

Points will be rounded up or down to the nearest whole number.

Proposers category price points shall be totaled to obtain the total price points.

E.6 TOTAL SCORE: The desirable feature point score total established by the Evaluation Committee will be added to the Pricing Point Score total for Proposer's point score total. The Committee will review the results of their evaluation of the finalists. The findings of the Committee will be summarized and the summary and award recommendation will be forwarded to SPO, which will approve or reject the evaluation.

E.7 AWARD: Award will be made to the responsive and responsible Proposer who achieved the highest points as determined by the evaluation committee.

SECTION F - STANDARD SERVICE CONTRACT TERMS AND CONDITIONS

F.1 ORDER OF PRECEDENCE: The printed terms and conditions set out in this Section F are the Oregon Standard Service Contract Terms and Conditions established for trade services. The State may also provide Special Terms and Conditions in Section G, which apply only

to the Contract awarded as a result of this solicitation. Whenever possible, all terms and conditions are to be harmonized. In the event of a conflict between the Standard and Special Terms and Conditions, the Special Terms and Conditions take precedence, unless the Standard term in question is required by law. In the event of any other conflict, the Contract shall be interpreted utilizing the following order of precedence: (i) the Special Terms and Conditions, (ii) these Standard Terms and Conditions, (iii) the remaining portions of the Request for Proposal, and (iv) the Proposal.

F.2 INVOICES: Contractor shall invoice the Oregon Public Utility Commission{"Agency") based on the prices submitted by the Contractor, less revenues received by the Contractor from the calling and called parties making intrastate toll calls as described in Section G.8. Invoices shall be sent to:

Residential Service Protection Fund (RSPF) Manager Oregon Public Utility Commission 550 Capitol Street ST NE, STE 215 P.O. Box 2148 Salem, Oregon 97308-2148

F.3 PAYMENT; OVERDUE ACCOUNT CHARGES: Payment shall be due and owing no later than thirty (30) days from date of acceptance of Services or expiration of the acceptance period, whichever occurs first. Contractor may only assess overdue account charges, in accordance with the provisions of ORS 293.461(3), up to a maximum rate of two-thirds of one percent per month (8% per annum).

F.4. PAYMENT ADDRESS: Payment shall be sent to Contractor at the address specified in the invoice.

F.5. SOURCE OF FUNDS; FUNDS AVAILABLE AND AUTHORIZED: Contractor shall look solely to Agency for payments due and owing under the Contract. Agency has sufficient funds available and authorized within its biennial appropriation or limitation to finance the cost of purchases under the Contract prior to the end of the current biennium. Contractor understands and agrees that Agency payment of amounts under the Contract attributable to purchases made after the last day of the current biennium is contingent on Agency's receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under the Contract

F.6. MOST FAVORABLE PRICES AND TERMS: Contractor represents that all prices, terms and benefits offered by Contractor are equal to or better than the equivalent prices, terms and benefits being offered by Contractor to any other State or local government unit or commercial customer.

F.6.1. Should Contractor, during the term of the Contract, enter into any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other such

government unit or commercial customer, the Contract shall thereupon be deemed amended to provide the same price or prices, terms and benefits to Agency. This provision applies to comparable Goods and Services, and to purchase volumes by the Agency that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits or more favorable terms.

F.6.2. Donations of Goods or Services to charitable, nonprofit or government entities, if the donations are recognized as such and are deductible under the federal Internal Revenue Code, shall not be considered contracts, agreements, sales or arrangements with other government units or commercial customers that call for the application of this paragraph.

F.6.3. Should such decreased prices again increase during the term of the Contract, including extensions, the State shall honor the increase, but only within the price limits established by the original Contract, if acceptable documentation verifying the increase is submitted to State Procurement Office. The State Procurement Office shall determine what constitutes acceptable documentation.

F.7. INSPECTIONS/ACCEPTANCE: The Agency shall have [INSERT #] calendar days from date of completion of performance of the Services within which to inspect and accept or reject them. If the Services are rejected, Agency shall provide Contractor with written notification of rejection. Notice of rejection shall include itemization of apparent defects, including but not limited to (i) discrepancies between the Services or Goods and the applicable specifications or warranties; (ii) other apparent defects in workmanship, design, materials, or manufacture; and/or (iii) otherwise nonconforming Services or Goods (including late performance). Notice of rejection shall also indicate whether cure will be allowed.

F.7.1 CURE:

F.7.1(a) SERVICES. Agency may elect to have the Contractor perform remedial Services that comply with the Contract specifications and warranties, or may, in its sole discretion, have the Services performed by other forces and charge the cost to Contractor.

F.7.1(b) If Contractor commits any violation or breach any covenant, warranty, obligation or requirement under this Contract, or so fails to pursue the work or to provide the Services as to endanger Contractor's performance under this Contract in accordance with its terms, the State Procurement Office may provide to Contractor written notice of the violation or breach with a demand that Contractor cure the violation or breach within no fewer than thirty (30) calendar days after delivery of the notice, or such longer

period of cure as the State Procurement Office may specify in such notice. If Contractor fails to fully cure the violation or breach within the time specified in the notice, the State Procurement Office may commence withholding any payments otherwise due to Contractor until the violation or breach has been fully remedied, or may terminate this Contract for failure to cure within the time specified in the notice.

F.7.1(c) Nothing in this Section F.7.1 shall preclude Agency from other remedies to which it may be entitled.

F.8. WARRANTIES:

F.8.1. AUTHORITY; BINDING OBLIGATION. Contractor represents and warrants that Contractor has the power and authority to enter into and perform the Contract and that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.

F.8.2. RESERVED

F.8.3. WARRANTY ON SERVICE STANDARDS. Contractor warrants that all Services to be performed under this Contract, shall be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of first quality shall be employed in the performance of this Contract.

F.8.4. MANUFACTURER WARRANTIES: Contractor shall have all manufacturer warranties covering Goods, if any, transferred to Agency at time of delivery at no charge.

F.8.5 WARRANTY OF TITLE. Contractor warrants that all Goods, if any, are free and clear of any liens or encumbrances, and that Contractor has full legal title to such Goods, and that no other person has any right, title or interest in the Goods which shall be superior to or infringe upon the rights granted to Agency hereunder.

F.8.6 YEAR 2000 REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants that (i) all equipment, devices, firmware, computer hardware and software delivered under the Contract, if any, will individually and in combination correctly process, sequence, and calculate all date and date-related data for all dates prior to, through and after January 1, 2000, and (ii) any software products delivered under the Contract that process date or date-related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century and recognizes year 2000 and all subsequent leap years as leap years. Contractor's liability with respect to items (i) and (ii) above shall not exceed: (1) twice the total Contract amount (including any

amendments) or (2) $100,000, whichever is greater.

F.8.7 WARRANTIES CUMULATIVE. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Contract. All warranties provided in the Contract shall be cumulative, and shall be interpreted expansively so as to afford the State the broadest warranty protection available.

F.9. INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES AND WITHHOLDING:

F.9.1. Contractor shall perform all required Services as an independent contractor. Although Agency reserves the right (i) to determine (and modify) the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

F.9.2. If Contractor is currently performing work for the State or the federal government, Contractor warrants and certifies that: Contractor's performance of Services under the Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of Services under the Contract. Contractor is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265.

F.9.3. Contractor shall be responsible for all federal or State taxes applicable to compensation or payments paid to Contractor under the Contract, and unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or State tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under the Contract, except as a self-employed individual.

F.10. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

F.10.1. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vi) The Vietnam Era

Veterans' Readjustment Assistance Act of 1974, as amended; (vii) ORS Chapter 659, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. The laws, regulations, and executive orders applicable to the Contract are incorporated by reference where so required by law. For public Contracts as defined in ORS 279.310 (1), Authorized Purchaser's performance is conditioned upon Contractor's compliance with ORS 279.312, 279.314, 279.316, and 279.320, the terms of which are incorporated by reference into such Contracts.

F.10.2. In the event of a conflict between the drawings and/or specifications requirements, if any, and applicable federal or State laws, the federal or State laws shall prevail. Provided, however, in the event any conflict is based solely upon minimum standards, such as quality or safety, the higher or more stringent standard shall apply. Contractor shall be responsible for making any modifications required to achieve compliance with the required laws and standards. Contractor shall notify Agency immediately of any such required modifications upon receipt of knowledge or notification of such.

F.10.3. In the event any Good to be provided under the Contract is recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable standards, Contractor shall immediately notify Agency of the recall or non-compliance, and shall provide copies of the notice or other documentation.

F.10.4. In, in the sole discretion of the Agency, a change in the law or recall of a Good frustrates the purpose of the Contract or would result in a change in Contract price, Agency may terminate the Contract without penalty. Contractor's remedy shall be limited to reimbursement for the percentage of the Services completed. In the alternative, if price renegotiation or amendment is available to Agency, Agency may require Contractor to complete necessary modifications, where applicable, in a timely manner. In such case, where applicable, the parties shall negotiate the price of necessary changes in good faith. Contractor shall be responsible for removing recalled or rejected Goods and for making any required modifications, including shipping, handling, parts, labor, and travel, and all other expenses, at no cost to the Authorized Purchaser.

F.11. FOREIGN CONTRACTOR: If the amount of a Contract with an Oregon Authorized Purchaser exceeds $10,000 and if Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. The Oregon Authorized Purchaser shall be entitled to withhold final payment under the Contract until Contractor has met this requirement.

F.12. SAFETY AND HEALTH REQUIREMENTS: Contractor warrants that Goods and Services provided under the Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (OSHA), and with all Oregon safety and health requirements, including, but not limited to, those of the State Workers' Compensation Division.

F.13. MATERIAL SAFETY DATA SHEET: Contractor shall provide the Authorized Purchaser with a Material Safety Data Sheet as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Contract which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag or mark such Goods.

F.14. RECYCLED PRODUCTS: Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the Contract. These products shall include recycled paper, recycled PETE products, as defined in ORS 279.545(5), and other recycled plastic resin products. Contractor shall specify the minimum percentage of recycled product incorporated into the Goods provided under the Contract.

F.15. TIME IS OF THE ESSENCE: Contractor agrees that time is of the essence for Contractor's performance of its obligations under the Contract.

F.16. FORCE MAJEURE: Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract. The Authorized Purchaser may terminate the Contract upon written notice after reasonably determining that such delay or default will likely prevent successful performance of the Contract.

F.17. EVENTS OF DEFAULT:

F.17.1. CONTRACTOR. Contractor shall be in default under the Contract if:

F.17.1(a) Contractor commits any material breach or default of any covenant, warranty, certification, or obligation it owes under the Contract;

F.17.1(b) Contractor institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in Contractor's obligations under the Contract; or

F.17.1(c) Contractor attempts to assign rights in, or delegate duties under, the Contract, or sells or otherwise transfers title or an ownership interest in rented Goods.

F.17.2 AUTHORIZED PURCHASER. Authorized Purchaser shall be in default under the Contract if it commits any material breach or default of any covenant, warranty, certification, or obligation it owes under the Contract.

F.18. TERMINATION:

F.18.1 MUTUAL CONSENT. The Contract may be terminated at any time by mutual written consent of the parties with at least 90 days notice and an agreement for a transition plan to another provider before termination can be mutually agreed

F.18.2 AGENCY. SPO shall act on behalf of Agency in terminating the Contract.

F.18.2(a) FOR CONVENIENCE. SPO may without penalty to the State, and at its sole discretion, terminate the Contract at any time, in whole or in part, for convenience.

F.18.2(b) LACK OF FUNDING/LEGAL PROHIBITION. Agency is excused from performance, and SPO may without penalty to the State terminate the Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as SPO may establish in such notice, upon the occurrence of any of the following events: (i) Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Goods to be purchased and/or the services to be provided under the Contract; or (ii) federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of Services and/or Goods under the Contract is prohibited, or the Agency is prohibited from paying for such Services and/or Goods from the planned funding source. Pursuant to this section, upon receipt of written notice of termination, Contractor shall stop performance under the Contract as directed by SPO.

F.18.2(c) EVENT OF DEFAULT. Agency is excused from performance and SPO may terminate the Contract, in whole or in part, immediately upon an event of default by Contractor. In the event a court of competent jurisdiction determines that insufficient evidence of Contractor's default has been established, the termination shall be deemed for the State's convenience.

F.18.2(d) RETURN OF DOCUMENTS/DELIVERABLES. Upon termination of the Contract by SPO, Contractor shall deliver to Agency all documents, information, works-in-progress, and other property that are or would be deliverables had the Contract been completed. Contractor shall also deliver to Agency all property in Contractor's possession or

subject to its control required to complete the Contract.

F.18.3 CONTRACTOR. Contractor may terminate the Contract, in whole or in part, immediately upon an event of default by Agency.

F.19 INDEMNIFICATION:

F.19.1 Contractor shall defend, indemnify, save, hold harmless the State and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, and costs and expenses of any nature whatsoever resulting from, arising out of, or relating to (i) the activities of Contractor or its officers, employees, subcontractors, or agents, (ii) the Goods sold, and (iii) the services provided pursuant to the Contract.

F.19.2 Provided, however, that the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State and/or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State and/or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and/or that of its officers, employees, and agents under (i) and (ii) above.

F.20 REMEDIES:

F.20.1 STATE. In addition to the remedies afforded elsewhere herein, the State shall be entitled to recover for any and all actual and incidental damages suffered as the result of Contractor's breach of Contract. The State shall also be entitled to any equitable remedies to which it may show itself entitled.

F.20.2 CONTRACTOR. Contractor's sole remedy for Agency's breach of Contract shall be a claim for the sum designated for performing the Services multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid by the Agency under the terms of the Contract, if any, and any right to setoff the State may have.

F.20.3 ATTORNEY'S FEES. with the exception of defense costs and expenses pursuant to F.19, neither party shall be entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to the Contract.

F.21 TRADE SECRETS: Contractor shall label the information and documentation qualifying as trade secrets under ORS 293.501(2) that it wishes to protect from disclosure to third parties with the following: "This data constitutes a trade secret under ORS 192.501(2) and is not to be disclosed except as required by law." Agency will take reasonable measures to hold in confidence all such labeled information and documentation. Provided, however, the State shall not be liable for release of any information when authorized or required by law or court order to do so, whether pursuant to Oregon Public Records Law or otherwise. Further, the State shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

F.22 ACCESS TO RECORDS: Contractor shall retain, maintain, and keep accessible all records relevant to Contractor's performance of the Contract (collectively, "Records") for a minimum of three (3) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Contractor shall maintain all fiscal Records during the Record-retention period in accordance with generally-accepted accounting principles. Agency, as well as its duly authorized representatives, shall have access to Records for purposes of examination and copying.

F.23 AUTHORIZED REPRESENTATIVES/NOTICES: For Agency, the authorized representative shall be the individual identified as the contact person in C.2.2. Contractor's authorized representative shall be the individual specified in the Proposal. All notices required under the Contract shall be in writing and addressed to the appropriate authorized representative. Mailed notices shall be deemed given five (5) days after post-marked, when deposited, properly addressed and prepaid, into the U.S. postal service. Faxed notices shall be deemed given upon electronic confirmation by the transmitting machine of successful transmission to the designated fax number.

F.24 INSURANCE: Contractor shall maintain during the term of the Contract the insurance required under Section H.

F.25 GOVERNING LAW: The Contract shall be governed by and construed in accordance with the internal laws of the State of Oregon without regard to principles of conflicts of law. With regard to transactions in Goods, the UCC shall govern, as modified, if so, by the terms of the Contract.

F.26 VENUE; CONSENT TO JURISDICTION: Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall

be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

F.27 SURVIVAL: Termination of the Contract shall not extinguish or prejudice the State's right to enforce the warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, and remedies provisions.

F.28 SEVERABILITY: If any provision of the Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be illegal or otherwise invalid.

F.29 ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights or delegate responsibilities under the Contract, in whole or in part, without the prior written approval of SPO. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee, transferee, or delegate shall be considered the agent of Contractor. The provisions of the Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and permitted assigns.

F.30 MERGER CLAUSE; AMENDMENT; WAIVER: The Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified therein regarding the Contract. No waiver, consent, or amendment shall bind either party unless in writing and signed by both parties, and all necessary approvals have been obtained (including that of SPO). Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of the Contract shall not constitute a waiver by Agency of that or any other provision.

SECTION G - SPECIAL CONTRACT TERMS AND CONDITIONS

G.1 TERM OF CONTRACT/OPTION TO EXTEND: The initial term of the Contract shall be **2 (two)** years and become effective on the date this Contract is signed by every party hereto. Upon concurrence of the parties, the Contract may be extended for additional terms

("Extension Terms"). Provided, however, that the maximum duration of the Contract, including all extensions, shall not exceed five (5) years.

G.2. EXTENSIONS: SPO shall notify Contractor in writing of the State's intent to extend the Contract ("Renewal Notice") at least ninety (90) days prior to the expiration of the then current term. If Contractor consents to the extension, it shall sign and return the Renewal Notice to SPO within the time period specified therein. If the Contractor does not consent, the Contract shall expire according to its terms, unless earlier terminated.

G.3. ONE MONTH EXTENSION OPTION: Notwithstanding the foregoing, the State reserves the right in its sole discretion to extend the Contract for a maximum of one (1) calendar month beyond any term. SPO shall notify Contractor in writing of the one-month extension prior to the expiration of the then current term. Consecutive one-month extensions obtained under this Section are not allowed.

G.5. DELIVERY DESTINATION FOR GOODS: Goods, if any, provided in conjunction with the Services identified in the RFP, shall be delivered F.O.B. destination to the Service location specified in G.1, together with all warranty documentation, inspection reports, and certifications, where applicable.

G.6. BILLING ADDRESS: The address to which all invoices shall be sent is:

Residential Service Protection Fund (RSPF) Manager Oregon Public Utility Commission 550 Capitol Street ST NE, STE 215 P.O. Box 2148 Salem, Oregon 97308-2148

G.7. PRICE ADJUSTMENTS: All proposal prices and discounts shall be firm for the original contract period. No changes in price or services may be changed during that time, unless mandated by the FCC, and/or only for specific items agreed to by the State

Changes in proposal prices or discounts can be considered, by the State, only at the time of renewal, at a rate not to exceed the Consumer Price Index (CPI) through the US Department of Labor, Bureau of Labor Statistics. All information regarding proposed price changes shall be submitted to the State, in writing, at least 60 days prior to contract termination date. Proposed price changes must be accompanied by documentation supporting such increases. The State reserves the right to accept or reject any proposed price changes, in the best interest of the State. If the proposed price or discount changes are accepted, they shall become effective on the first day of the contract renewal period.

G.8. OTRS CALL REVENUES: Contractor shall be required to remit monthly, to the Public Utility Commission, all revenue collected from customers for intrastate toll or long distance calls made

through OTRS. Contractor will be reimbursed for the costs of relaying these OTRS calls through the per-minute rate that will be established through the proposal process and that will be paid for all billable minutes.

G.9. REPRESENTATIVES TO THE PUBLIC UTILITY COMMISSION'S TELECOMMUNICATION DEVICES ACCESS PROGRAM (TDAP) ADVISORY COMMITTEE: Upon implementation of the relay service, the Contractor will designate the relay provider's OTRS account manager or an appropriate alternative to the "Public Utility Commissions Telecommunications Devices Access Program" (TDAP) Advisory Committee. The nominee will represent the relay service contractor at the committee's regular and emergency meetings. The Contractor representative will not have voting power.

G.10. FINES BY THE FEDERAL COMMUNICATIONS COMMISSION: In the event the Federal Communications Commission (FCC) levies a fine for not complying with the FCC rules and regulations, the Contractor will be responsible for paying the fine(s) and will hold the State of Oregon free and harmless from this burden.

Liquidated Damages: State and Contractor recognize and agree that, in the event of certain breaches under this Contract, it would be difficult to prove damages. Therefore, State and Contractor recognize and agree that, upon the occurrence of a breach by Contractor as described in Sections G.11. - G.14 below, State shall be entitled to deduct from Contractor's monthly invoice the certain dollar amounts described below as Liquidated Damages.

G.11. State and Contractor also recognize and agree that

G.11.1. these Liquidated Damages are reasonable in light of the difficulty of proof of loss, the anticipated harm caused by such breaches, and the inconvenience and infeasibility of the State in obtaining an adequate remedy,

G.11.2. the Liquidated Damages represent an estimated amount of the projected loss or damages that the State would suffer in connection with such breaches,

G.11.3. the Liquidated Damages are not a penalty, and

G.11.4. the State and Contractor have both had ample opportunity to review this section with their respective legal counsel and both the State and Contractor understand its significance.

G.12. If Contractor should:

G.12.1 fail to begin delivery of services on the date and at the time specified in Section D.1.6., then for each calendar day of delay, State shall deduct from Contractor's monthly invoice as fixed, agreed and Liquidated Damages the sum of a rate equal to the

cost of continuance of service by the incumbent contractor.

G.12.2. fail to meet the daily ASA (Average Daily Answer Time) requirements as specified in Section D.1.11.C, then for each day that is in violation of the daily ASA requirement, the State may deduct from Contractor's monthly invoice as fixed, agreed and Liquidated Damages the sum of $100.00

G.12.3. fail to meet the busy signal requirements as specified in Section D.1.11.B., then for each call on which the busy signal requirement is not met, the State may deduct from Contractor's monthly invoice as fixed, agreed and Liquidated Damages the sum of the rate of $100 per blocked call.

G.12.4. fail to keep service available or if Contractor suffers a service outage **that is not caused by force majure**, then for each hour or fraction thereof that the service is not 100% available, the State may deduct from Contractor's monthly invoice as fixed, agreed and Liquidated Damages of $100 per hour. Contractor will have **forty-**eight (48) hours to correct the problem before liquidated damages are assessed.

G.13. State acknowledges that certain events might occur which could cause Contractor to fail to meet its obligations under the Contract. Contractor shall not be charged Liquidated Damages nor will Contractor be held in default or charged with a breach of the Contract when the delay in delivery or performance arises from forces or causes beyond Contractor's reasonable control and without the fault or negligence of Contractor. However, Contractor shall bear the burden of proof of establishing that such delay in delivery or performance was not within its reasonable control or without its fault or negligence.

G.14. These liquidated damages are in addition to any other remedies available to the State.

G.15. POST-TERM OBLIGATIONS: If the initial term or any extension term of this Contract expires or is not extended, or if this Contract is terminated by the State for any reason, the State may, at its discretion, direct Contractor to transfer to the State and secure to the State all right, title and interest in, and the right to use (and any successor contractor's right to use), in this program or in a successor program that resembles this program, all telephone numbers and other communications numbers and addresses by which program users accessed the services provided under this Contract. At the time of any such transfer, Contractor shall use its best, good-faith efforts to effect as expeditiously as possible an orderly and complete transition of Contractor's duties and responsibilities with respect to the program to the successor contractor or to the State, including, without limitation, transferring all existing records, files and documents necessary to