

CONTRACT FOR KENTUCKY INFORMATION HIGHWAY 2
NEXT GENERATION NETWORK

BETWEEN

THE COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET

AND

KIH2 CONSORTIUM MEMBERS

This Catalog Master Agreement (“CMA”) is entered into, by and between the Commonwealth of Kentucky, Finance and Administration Cabinet (“the Commonwealth”) and BellSouth MNS, Inc., as the prime contractor and integrator for BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., and as agent for all 18 Local Exchange Companies within the Commonwealth of Kentucky as identified in the Solicitation (collectively, “KIH2 Consortium”, individually, “Contractor”) to establish a contract for the Kentucky Information Highway 2: Next Generation Network (“KIH2”).

The Commonwealth and Contractor agree to the following:

Scope of Contract

KRS 45A.605 authorizes the Finance and Administration to enter into such contract(s) on behalf of agencies of the Commonwealth of Kentucky, with any person, partnership, or corporation that operates an information highway. The specific purpose of this CMA is to establish a contract in accordance with KRS 45A.605 for a next generation communication network (“KIH2”) for voice and data related services (including Internet and dial-up access services). The Commonwealth reserves the right to add additional information highway services, within the scope of KRS 45A.605, during the life of this contract, upon mutual agreement of the parties.

Effective Date of Contract

It is anticipated that service provisioning under KIH2 will not occur until July 1, 2005, but for the purposes of having a smooth and effective transition from the current information highway (“KIH1”) to (“KIH2”), with minimal disruption to the critical infrastructure of the Commonwealth, Bellsouth is authorized to begin this transition on February 1, 2005. Therefore, the effective date of this CMA is February 1, 2005, with an end date of June 30, 2010. This CMA has five (5) additional optional one-year renewal periods beginning July 1, 2010. The parties agree to establish an aggressive schedule for transition of the

Commonwealth from KIH1 to KIH2 as soon as practicable, with the expectation that the transition will be completed no later than December 31, 2005.

Documents Incorporated/Order of Precedence

The documents, which comprise and govern this contract, are incorporated herein as follows:

- a) The specific terms in this CMA and any subsequent modifications thereto, including the clarifications listed on Exhibit A and the final pricing listed on Exhibit B both attached hereto;
- b) Any Addenda to the Solicitation;
- c) The Solicitation and all attachments thereto, including Section 40--Terms and Conditions of a Contract with the Commonwealth of Kentucky;
- d) General Conditions contained in 200 KAR 5:021 and Office of Material and Procurement Services' FAP 110-10-00;
- e) Any clarifications concerning the Contractor's proposal in response to the Solicitation; and
- f) The Contractor's response to the Solicitation.

In the event of any conflict between these documents, the order of precedence above shall control.

SLA/Report Card

The Parties will establish a Service Level Agreement ("SLA") between the Commonwealth Office of Technology ("COT") and the Contractor, which will include the criteria for an annual vendor Report Card as identified in the Solicitation, within sixty (60) days of contract award.

Assignment

The Contractor shall not assign the Contract in whole or in part or any payment arising therefrom without the prior written consent of the Finance and Administration Cabinet, Office of the Controller, such consent not to be unreasonably withheld.

Taxes

Notwithstanding the provisions in Section 40.130, Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby as required by law. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto and not required or permitted to be passed on to the end user shall be borne by the Contractor as required by law.

Limitation and Disclaimer of Warranties

Neither Contractor nor any of its underlying service providers, information providers, licensors, employees, or agents warrant that the service will be uninterrupted or error free, or make any warranty as to the results to be obtained from use of the service. The service is provided without warranties of any kind, either express or implied, including but not limited to warranties of title or implied warranties of merchantability or fitness for a particular purpose or otherwise, other than those warranties (if any) that are implied by and incapable of exclusion, restriction, or modification under the laws applicable to this contract, all such warranties being expressly disclaimed.

Remedies and Damages Limitations

Circumstances may arise where, because of default on Contractor's part or other liability, the Commonwealth is entitled to recover damages from Contractor. In each such instance, regardless of the basis on which the Commonwealth is entitled to claim damages from vendor (including breach, negligence, misrepresentation, or other contract or tort claim), vendor is liable for no more than:

1. damages for violation or infringement of any copyright or trademark;
2. damages for bodily injury (including death) to persons and damages for physical injury to tangible personal property or real property; and
3. the amount of any other actual direct damages, which shall, under no circumstances, exceed the amount of charges paid by the Commonwealth for use of the affected Services during the twelve-month period preceding the date such claim first arose, unless a court of competent jurisdiction deems this provision to be an unconstitutional indemnification or assumption of the legal risk of another party by the Commonwealth.

In no event will the measure of damages payable by Contractor include, nor will vendor be liable for, any amounts for loss of income, profit or savings or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, unless a court of competent jurisdiction deems this provision to be an unconstitutional indemnification or assumption of the legal risk of another party by the Commonwealth.

Force Majeure

Contractor shall not be responsible for any delay or failure in delivery or performance of any of its duties hereunder due to acts of God, acts or omissions of any other network provider or any other occurrence commonly known as force majeure, including weather, war, riots, acts of terrorism, embargoes, strikes, or other concerted acts of workers, casualties or accidents, or any other causes or circumstances whether of a similar or dissimilar nature to the foregoing that prevent or hinder the delivery of the Services.

If a force majeure event occurs, the Contractor shall give prompt notification of its inability to perform to the Commonwealth. During the period that the Contractor is unable to perform, the Commonwealth shall also be excused from performance of its

obligations to the extent such obligations are reciprocal to, or depend upon, the performance of the Contractor that has been prevented by the force majeure event. The Contractor shall use commercially reasonable efforts to avoid or remove the cause(s) of its nonperformance and both Parties shall proceed to perform once the cause(s) are removed or cease.

Compliance with State Laws

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky without regard to its conflict of law provisions. The rights and obligations of the parties thereto shall be determined in accordance with these laws. Any litigation with respect to this contract shall be brought in state or federal court in Franklin County, Kentucky, or before the Kentucky Public Service Commission, if applicable.

Universal Service Fund Non-Appropriation of Funding

This paragraph only applies to situations in which Contractor is providing services under this contract and funding for such services is contingent upon appropriate Universal Service Fund ("USF") being provided by the federal government to affected Commonwealth agencies:

In the event that USF funding for services under this contract is terminated, the Contractor agrees that, to the extent the Commonwealth has exercised due diligence and good faith in applying for such USF funding and performed all other reasonable and foreseeable duties and obligations required of the Commonwealth in connection with obtaining initial and continuing funding from USF, the Commonwealth may terminate the applicable services from the Contractor under this contract, based upon the lack of USF funding, upon at least thirty (30) days' written notice to BellSouth, without payment of any early termination charges.

However, if services are terminated under this contract, due to the above, and the Commonwealth obtains specific funding for such services from the same or an alternate source within the current state fiscal year, the Commonwealth shall, to the extent legally permissible, give the Contractor right of first refusal to re-provision the services terminated.

Notwithstanding any failure to obtain USF funding, to the extent that services have already been properly authorized and performed under scope of this contract, the Commonwealth shall have an obligation to pay the applicable charges for such services in full. Charges shall become due and payable in full on the later of sixty (60) days after any initial denial of USF funding, or thirty (30) days after billing. Upon request, the Commonwealth shall be obligated to use its best efforts to diligently appeal any initial denial of USF funding; however, an appeal shall not relieve the Commonwealth of the obligation to pay all charges as set forth above when they become due.

