

APPENDIX D TO DIR-SDD-1553



SERVICES AGREEMENT

This **SERVICES AGREEMENT ("Agreement")** is made and entered into by and between **Rightway Connections of Texas, Inc.**, a corporation organized under the laws of the State of Texas with its principal place of business at 15116 Lee Road, Suite 503, Humble, TX 77396 ("RWC"), and _____, a _____ with its primary address at _____, Texas _____ ("Customer"), to be effective as of the date this Agreement is last signed by an authorized representative of each party on the signature page hereof (the "Effective Date").

ARTICLE 1. TERM

1.1 The initial term of the Agreement shall run from _____ through _____. Thereafter, the Agreement term may be renewed for up to three (3) one (1) year periods upon mutual agreement of the parties. Rights and obligations under existing purchase orders shall not be affected by the expiration of the Agreement. In the event that this Agreement is not extended, support services shall be available to Customer in accordance with RWC's then current rates and policies.

ARTICLE 2. SCOPE

2.1 RWC shall perform and Customer shall accept the services and scope of work identified in Customer Service Proposal Number _____ dated _____ (hereinafter referred to as the "Services"), which is incorporated by reference into this Agreement as Attachment A, in accordance with the terms and conditions of this Agreement. Unless otherwise noted in this Agreement, Services shall only apply to equipment, components, assemblies, accessories, line cards, boards, and similar items provided by RWC ("Equipment") and machine readable computer programs, instruction sequences, procedures, data, logic, and/or rules that are provided by RWC, exclusive of source code, in or by any form or media including any documentation relating thereto ("Software") which has been properly installed, adjusted and maintained in accordance with applicable RWC instruction manual(s) and properly operated within specified application and environmental conditions (such Equipment and Software may hereinafter singularly, or collectively, be referred to as "Product" or "Products").

2.2 Unless specifically identified in Attachment A, RWC shall not provide Services to Licensed Channel Units (LCUs) and/or Original Equipment Manufacturer (OEM) products. In all cases, RWC assumes no liability for LCUs or OEM products, including but not limited to rectifiers and batteries, unless maintenance services are herein contemplated. In no event shall RWC be obligated to support or replace such LCUs or OEM products beyond the useful life span of the product or beyond the date the manufacturer discontinues production and/or support.

ARTICLE 3. PURCHASE ORDER(S)

3.1 Any Purchase Order issued by Customer for Services shall specifically incorporate by reference the terms and conditions of DIR Contract No. DIR-SDD-1553 and this Agreement. In the event (a) of a conflict between the terms and conditions of DIR Contract No. DIR-SDD-1553 and the Agreement and of any Purchase Order issued hereunder, or (b) the Purchase Order does not reference the terms and conditions of DIR Contract No. DIR-SDD-1553 and this Agreement, the terms and conditions of DIR Contract No. DIR-SDD-1553 shall control and prevail.

3.2 If RWC provides Services to Customer under this Agreement and Customer has not issued a Purchase Order for such Services, the terms and conditions of DIR Contract No. DIR-SDD-1553 shall control and prevail, and DIR Contract No. DIR-SDD-1553 may be referenced on the invoice(s) for the Services identified.

ARTICLE 4. CONTRACT PRICE AND SERVICE CHARGE

4.1 The contract price shall be paid to RWC in Dollars of the United States of America. Upon Customer's execution of this Agreement, Customer hereby orders the Services outlined in Attachment A and will pay for same pursuant to the terms of DIR Contract No. DIR-SDD-1553, Appendix A, Section 7.

4.2 Taxes will be handled in accordance with DIR Contract No. DIR-SDD-1553, Section 4F.

ARTICLE 5. PAYMENT TERMS

5.1 Invoicing and payment will be conducted in accordance to DIR Contract No. DIR-SDD-1553, Appendix A, Section 7.

5.2 Services that are outside the scope of this Agreement will be provided by RWC at RWC's then current hourly rates, units and materials charges. Services which may be provided for such additional charges include, but are not limited to the following:

- (a) Remedial service required by:
 - (i) Customer's failure to provide a suitable climatic environment.
 - (ii) Operator error.

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- (iii) Neglect or misuse, including use of the Equipment for purposes other than for which designed.
 - (iv) Acts of entities or persons not otherwise authorized by RWC in writing (including repairs by third parties).
 - (v) Damage caused by water, wind, lightning, transportation, accident, vandalism or burglary.
 - (vi) Alterations, including any deviation, from manufacturer's design which in RWC's sole judgment affects the stability or reliability of the Equipment.
 - (vii) Failure of interconnected equipment not covered under this Agreement.
 - (viii) Customer's improper installation of Equipment.
- (b) Installation of modifications, upgrades, features, enhancements or model conversions.
 - (c) Refinishing or refurbishing of Equipment.
 - (d) Assistance required in support of non-RWC manufactured equipment.
 - (e) Direct routine assistance initiated by an individual site, if support is provided to a Customer staffed control center and/or centralized engineering group.

5.3 In the event that RWC renders its Services prior to final execution of this Agreement, or continues its Services during any subsequent renewal renegotiations of this Agreement, Customer agrees to pay RWC the proposed contract price contemplated herein or a price that is commensurable with the actual services being performed by RWC. Such commencement of interim services by RWC, and payment by Customer, shall be done in good faith and with the intent to continue with the mutual and complete execution of this Agreement, or any subsequent renewals of this Agreement.

5.4 Any dispute will be handled in accordance with DIR Contract No. DIR-SDD-1553, Appendix A, Section 7.

ARTICLE 6. SUBCONTRACTING

6.1 RWC reserves the right to subcontract such portions of the Services as RWC deems appropriate and RWC shall remain responsible for the conduct of all services

ARTICLE 7. WARRANTY

7.1 RWC warrants to Customer that Services provided under this Agreement will be performed in a good workmanlike manner and in accordance with industry standards, and that units, materials and Services furnished will be free from defects in workmanship and material for a period of ninety (90) days from the date such Services, units or materials are received by Customer.

7.2 RWC's obligation and Customer's sole remedy under this article are limited to the correction of Service or the repair or replacement, at RWC's option, of the defective unit or material. RWC shall have no obligation to remedy any such defect or non-conformity if it can be shown: (a) that the Product was altered, repaired, or reworked by any party other than RWC without RWC's written consent; (b) that such defects were the result of Customer's improper storage, mishandling, abuse, or misuse of the Product; (c) that such defects were the result of Customer's use of the Equipment in conjunction with equipment electronically or mechanically incompatible or of an inferior quality; or (d) that the defect was the result of damage by fire, explosion, power failure, or any act of nature.

7.3 THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED, EXPRESSED OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR INTENDED USE OR PARTICULAR PURPOSE.

ARTICLE 8. LIMITATION OF LIABILITY

8.1 Limitation of Liability will be in accordance with DIR Contract No. DIR-SDD-1553, Appendix A, Section 9K. 8.2 Indemnification will be handled in accordance with DIR Contract No. DIR-SDD-1553, Appendix A, Section 9.

ARTICLE 9. PROPRIETARY RIGHTS/NON-DIVULGENCE

9.1 To the extent allowable under the Texas Public Information Act, all data, information, documentation, and Software in written, electronic, photographic, or other tangible form, or data or information provided orally or visually and summarized in writing within thirty (30) days after its disclosure, and which is marked "Confidential", "Proprietary", "Private" or in any other manner indicating its confidential and/or proprietary nature which is supplied by RWC, or one of its suppliers, to Customer under this Agreement, except for that which may be in the public domain, shall, as between the parties hereto, be treated as the "Confidential and Proprietary Information" of RWC. To the extent allowable under the Texas Public Information Act, Customer, except as specifically authorized in writing by RWC, shall: (a) use the same degree of care in safeguarding such Confidential and Proprietary Information as it uses for its own confidential and proprietary information, but no less than reasonable care; (b) not reproduce or reverse engineer or decompile any Confidential and Proprietary Information in whole or in part; (c) limit disclosure and use of any Confidential and Proprietary Information to employees having a need to know in connection with operation, maintenance, or support of the Products; and (d) not disclose any Confidential and Proprietary Information to any third parties.

9.2 To the extent allowed under applicable records retention laws and policies, if this Agreement is terminated or canceled, or Customer is found to have breached any of the provisions of this Article 9, Customer agrees to immediately return all Confidential and Proprietary Information and copies thereof, in whatever form or medium to RWC. In any event, the obligations of Article 9 will survive termination or cancellation of this Agreement. Notwithstanding the foregoing, the return of Software and associated documentation shall be governed by the provisions of Article 10.

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ARTICLE 10. SOFTWARE LICENSE

10.1 Customer acknowledges that this is a contract for Services only. In the event Customer chooses to implement "Services Support" Software, which is available only under this Agreement, RWC agrees to grant, and Customer agrees to accept, a nonexclusive, nontransferable license to use such Services Support Software pursuant to this Agreement. Such Services Support Software shall be treated as the exclusive property of RWC, and to the extent allowable under the Texas Public Information Act, Customer shall: (i) hold such Services Support Software in confidence to the same extent that it protects its own similar confidential and proprietary information of similar character or importance; (ii) utilize such Services Support Software solely on the Equipment on which it is first installed by RWC; (iii) not provide or make such Services Support Software available to any person except to its employees on a "need-to-know" basis; (iv) not modify, disassemble, or decompile the Services Support Software or reverse engineer any portion of the Services Support Software or functioning of the Equipment, or permit others to do so without the prior written consent of RWC; and (v) not reproduce or copy such Services Support Software in whole or in part except for backup and archival purposes or as otherwise permitted in writing by RWC.

10.2 If performance of the Services requires RWC to modify, including any patch, replacement, revision, update, or upgrade thereto, any Software which is subject to a separate software license agreement between the parties, Customer's ownership and/or license rights in such Software modifications shall be governed by such separate license agreement. Otherwise, for license purposes, all Software shall be covered under the license provisions of this Agreement.

10.3 To the extent allowed under applicable records retention laws and policies, IN ADDITION TO, AND NOTWITHSTANDING THE AVAILABILITY OF, OTHER REMEDIES PROVIDED IN THIS AGREEMENT, IN THE EVENT OF A BREACH OF THIS ARTICLE 10 BY CUSTOMER, THEN RWC SHALL, UPON NOTICE TO CUSTOMER, BE ENTITLED TO (A) THE IMMEDIATE RETURN OF ALL SUCH SOFTWARE, ASSOCIATED DOCUMENTATION, AND COPIES THEREOF, WHEREVER SUCH SOFTWARE, DOCUMENTATION, AND COPIES MAY RESIDE, FOR WHICH CUSTOMER IS IN BREACH OF THE LICENSE OR HAS NOT PAID THE LICENSE FEE THEREFORE, AND (B) TERMINATE THE LICENSE GRANTED TO CUSTOMER UNDER THIS ARTICLE 10 FOR SUCH SOFTWARE AND ASSOCIATED DOCUMENTATION, AND FOLLOWING SUCH NOTICE, to the extent allowed under applicable records retention laws and policies, CUSTOMER AGREES TO IMMEDIATELY DISCONTINUE USE AND ENJOYMENT OF SUCH SOFTWARE AND ASSOCIATED DOCUMENTATION.

10.4 The obligations of Customer under this Article shall survive the termination of this Agreement for any reason and shall continue even if the Software is no longer utilized with the Equipment.

ARTICLE 11. EXCUSABLE DELAY

11.1 Force Majeure will be handled in accordance with DIR Contract No. DIR-SDD-1553, Appendix A, Section 10C.

ARTICLE 12. CUSTOMER'S RESPONSIBILITIES

12.1 If performance of the Services require RWC to perform work on the Customer's premises, the Customer shall ensure all RWC-designated personnel have access to the premises and the Products during the times necessary to perform the work. RWC's personnel shall comply with site and security regulations as specified by Customer.

12.2 If performance of the Services require RWC to perform work on the Customer's premises, the Customer shall provide reasonable working space and facilities including heat, light, ventilation, electric current and outlets for use by RWC's designated personnel. Adequate storage space for equipment and materials shall be made available by the Customer as required. All such facilities shall be provided at no charge to RWC.

12.3 Any information which RWC reasonably requests from the Customer and which is required for RWC to properly maintain the Products shall be provided by the Customer in a timely fashion and form reasonably specified by RWC.

12.4 Customer acknowledges that RWC has the right to reasonably refuse support, and/or separately invoice for support, to any non-qualified Customer employee, or representative of Customer, that has not been adequately trained on the products and/or applications being supported under this Agreement.

ARTICLE 13. NOTICES

13.1 Any notice will be handled in accordance with DIR Contract No. DIR-SDD-1553, Appendix A, Section 11.

ARTICLE 14. ENTIRETY OF AGREEMENT

14.1 Assignments will be handled in accordance with DIR Contract No. DIR-SDD-1553, Appendix A, Section 4D.

14.2 DIR Contract No. DIR-SDD-1553 and this Agreement together with all attachments constitutes the entire agreement between RWC and the Customer with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, representations, writings, advertisements, publications and understandings of any nature whatsoever. In the event of any conflict between DIR Contract No. DIR-SDD-1553, this Agreement and any Attachment, the provisions of DIR Contract No. DIR-SDD-1553 shall prevail provided, however, that to the extent possible this Agreement and the Attachments shall be construed so as to minimize conflict.

14.3 Any changes to this Agreement requested either by the Customer or RWC may only be affected if mutually agreed upon in writing by duly authorized representatives of the parties hereto. This Agreement shall not be modified, supplemented, or any rights of a party to it waived except by such in writing.

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14.4 Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach of the right to require performance with respect thereto, or to claim a breach with respect thereto.

14.5 Neither party shall use the name of the other party in any news release, public announcement, advertisement or other form of publicity without the prior written consent of such other party.

14.6 The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of Texas without regard to its conflicts of laws rules. Venue to be state courts in Travis County, Texas. Nothing herein shall be construed to waive the Sovereign Immunity of the State of Texas.

14.7 If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written, such parties acting by their representatives, being thereunto duly authorized.

RIGHTWAY CONNECTIONS OF TEXAS, INC.

By: Daniel Muniz

Name: Daniel Muniz

Title: President

Date:

CUSTOMER

By: _____

Name: _____

Title: _____

Date: _____

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ATTACHMENT A

(The appropriate Customer Service Proposal as referenced herein will supersede this page)