



Dear Contractor:

Avatel Technologies, Inc looks forward to utilizing your company's services. Our nationwide account coverage requires that we utilize technical services provided by companies such as yours. Our needs are for technical expertise and support in on-premises telecommunications solutions, hosted cloud solutions, and data networking.

The purpose of the subcontractor profile is to make sure that your company has every opportunity to be awarded work in your area. The information contained in the material packet included will help us help you. Items 1-3 below must be completed and returned to be considered for inclusion in our national technical workforce and item 4 will help us understand and select your company over others when assigning work.

The returned contractor documentation material packet should include:

- 1) A signed and completed original of the Subcontractor Agreement (An executed copy will be returned upon request).
- 2) Completed W-9
- 3) Copy of your Certificate(s) of Insurance for General Liability and Workers Compensation coverage.
- 4) Completed Questionnaire

If you have any questions regarding this process and/or the documents required, please do not hesitate to contact Torina Boatright, VP Operations at 813-314-2121 or Torina.boatright@avatel.us.

Respectfully,

Torina Boatright
Vice President Operations

AVATEL Technologies, Inc.
Subcontractor Agreement

SUBCONTRACTOR AGREEMENT made as of the _____ day of _____, 20____ by and between AVATEL Technologies, Inc. ("AVATEL") and _____ ("Subcontractor").

1. **APPOINTMENT.** Subcontractor hereby agrees to serve as a subcontractor to AVATEL, and AVATEL hereby appoints subcontractor as a subcontractor to perform the specific jobs designated from time to time by AVATEL, and specifically accepted by Subcontractor (collectively the "job"). As to each job assigned to and accepted by Subcontractor from AVATEL a purchase order and specific work order shall be issued pursuant to this Agreement, which governs the relationship of AVATEL and Subcontractor. The following provisions shall apply to each Job performed by Subcontractor on behalf of AVATEL.
2. **PAYMENT TERMS.** No payment shall be due by AVATEL to Subcontractor until the contracted work is completed. Completion of work shall be defined as fully performed and properly functioning as determined by AVATEL and the final recipient of product and / or service. Payment will be due to Subcontractor within 30 days from receipt of invoice and required customer signed documentation. In light of the relationship between the parties, as further set herein below, any fee or other compensation paid by AVATEL to Subcontractor hereunder shall be made without withholding for income tax, Social Security contributions, unemployment insurance contributions or other similar deductions (herein collectively referred to as the "Withholdings"). Any taxes or other withholdings levied now or hereafter by any federal, state or local government shall be for the account of and paid by Subcontractor.
3. **AVATEL RESPONSIBILITIES.** AVATEL agrees to provide, or be responsible for, the following:
 - a. to provide Subcontractor with all written documentation necessary for the Job, in a clear and legible form, which may include floor plans, key plans, special instructions, house terminal locations, main frame drawings, top view drawings of equipment room and AVATEL standards and procedures for installation and testing;
 - b. to give Subcontractor the telephone number of the AVATEL representative in charge of the Job, who shall be available during normal business hours, Eastern Standard Time, to answer questions and give direction with regard to Job related problems;
 - c. to deliver all system equipment required for the Job within sufficient time to permit Subcontractor to perform the Job in an orderly and timely manner; to coordinate all network facilities related to the Job;
 - d. to act as liaison, where necessary at AVATEL's discretion, with all parties concerned with the Job, such as the customer, architect, electricians, consultants and other trade and building personnel;
 - e. to document all moves and changes in a clear manner and to provide Subcontractor with copies of such documents;
 - f. to inform Subcontractor of any changes in the dates of required performance;
 - g. to assist in resolving any problems during the testing phase of the work;
 - h. and any other assistance which may be required to facilitate the completion of the work.
4. **SUBCONTRACTOR RESPONSIBILITIES.** Subcontractor agrees to provide the following equipment and material and be responsible for the following items:
 - a. to provide a work force in sufficient number, with all certifications and skills to complete the Job within the schedule provided. Subcontractor shall not hold AVATEL or its customer liable for additional charges due to inadequate preparation by its technicians. Subcontractor must notify Avatel and obtain approval when subcontracting Avatel jobs.
 - b. to complete the Job in accordance with the time schedule set forth in the AVATEL work order;

- c. to make all necessary arrangements with client and / or building manager or owner for building access;
- d. to give notices and comply with laws, rules and regulations of public authorities bearing on the performance of the Job, including securing (at Subcontractor's expense) any building permits, special permits, approvals and licenses necessary for the proper execution and completion of the Job;
- e. to comply with all federal, state and local laws, Social Security Act, unemployment compensation acts and worker's compensation acts insofar as applicable to performance of the Job and, when requested by AVATEL, provide such evidence of compliance by itself and any or all of its sub-subcontractors with all such federal, state and local laws;
- f. to provide all the tools, equipment and materials necessary to complete the Job that are not provided by AVATEL pursuant to section 3(c), including, without limitation, all wire, cable blocks, brackets and hardware, all in accordance with AVATEL's specifications and standards furnished to Subcontractor;
- g. to install all equipment, including without limitation, MDF's, IDF's, cable, identifications of wires and cables, in accordance with AVATEL's written documentation and standards;
- h. to test all equipment in accordance with AVATEL's standards and to repair all problems and troubles revealed as a result of such testing;
- i. to review the entire installation with the customer and return all completed paperwork to AVATEL within appropriate time frames as outlined. Customer Satisfaction signoff and/or Delivery & Acceptance (if applicable) documentation within 24 hours. Invoice for Labor within 72 hours. No monies will be disbursed without proper completion and return of all paperwork. Delayed invoicing receipt will result in delayed payment regardless of invoice date posted on the actual invoice generated to AVATEL.

A written change order will be required on any deviation to agreed work order to authorize payment.

- j. to work in a clean and professional manner, respecting the property of the AVATEL customer at all times. **If unnecessary damage occurs, this must be pointed out to the customer and reported to AVATEL immediately;**
- k. to clean up at each IDF, MDF and any area where cable and wire was installed on a daily basis, to completely and thoroughly clean up all areas of work upon completion of the Job, and to clean up or repair any portion of the customer's premises requiring the same as a result of work done by Subcontractor that is identified by the customer at time of cut-over or when the Job is completed, including without limitation, the replacing or patching of ceilings and/or ceiling tiles, walls, fire walls and penetrations;
- l. to pick up any equipment, if necessary, at AVATEL warehouse or assist if required, at the Job site to unload equipment and/or retention of equipment, if needed, at the subcontractor's location;
- m. to be responsible for the care, use and quantities of all equipment provided by AVATEL which is associated with the contracted project and any unused equipment shall be returned to AVATEL home office or alternate location at AVATEL's shipping expense;
- n. and any other duty mutually agreed upon between AVATEL and Subcontractor from time to time in order to ensure the orderly and timely completion of the job;
- o. Subcontractor shall be liable for all damages made to customer premises and/or Avatel equipment during the performance of its work hereunder. Subcontractor shall be obligated to repair, or contract for the repair of any and all such damages at Subcontractor's sole cost and expense in a timely manner to ensure customer satisfaction;
- p. Subcontractor shall NOT install any unauthorized equipment and/or software at the customer's premise for any purpose including but not limited to accessing customer network or power resources, data, call records or activity, or any other information. Subcontractor accepts full liability for their business and its employees for any and all unauthorized activity during the performance of its work

hereunder. Subcontractor shall be obligated solely to accept any and all repercussions legal or otherwise as well as associated costs related to the reparation of such actions both to the customer and Avatel as required.

5. **CHANGE REQUEST.** Changes or amendments to any AVATEL work order and purchase order issued pursuant to this Agreement and delivered to Subcontractor may be made in AVATEL's discretion. In the event AVATEL wishes to issue a change to any Job, it shall do so by issuing, in writing, a modified work order and purchase order to Subcontractor or authorized representative of Subcontractor. AVATEL will not pay for any such changes unless a signed modified work order and purchase order has been executed by AVATEL and delivered to the Subcontractor prior to Subcontractor providing any such "extras" or "changes".
6. **INSURANCE.** Without restriction the generality of section 7 hereof, Subcontractor shall provide, maintain and pay for;
 - a. Workers' Compensation Insurance required by applicable laws and regulations for all their employees performing work for AVATEL and Employers' Liability Insurance in the amount of not less than \$100,000.00, or such greater amount as AVATEL may from time to time specify in writing. Such insurance shall provide for waiver of subrogation against AVATEL.
 - b. Comprehensive General Liability Insurance (including coverage for automobile liability and broad form contractual liability) against claims for bodily injury, death, or property damage occurring on, in or about the premises where the work is being performed pursuant to Schedule A and/or AVATEL work order attached hereto, with limits for General Liability Insurance of \$1,000,000.00 per occurrence, and for Automobile Liability Insurance of \$1,000,000.00 per occurrence, or such greater amounts as AVATEL, from time to time, may specify in writing. Such insurance policies shall name AVATEL as an additional insured party there under.

Unless expressly agreed in writing by AVATEL, the duration of each insurance policy shall include the period from the date of commencement of the Job until the date performance of the job is fully completed.

All insurance policies shall:

Provide that no cancellation or change to such insurance shall be affected without giving at least fifteen (15) days prior written notice to AVATEL; and

Be valid and enforceable policies issued by insurers of recognized Responsibility approved by AVATEL. Certificates of such insurance shall be delivered to AVATEL prior to the commencement of the Job.

No subcontractor shall be issued a purchase order and/or be allowed to begin work till satisfactory evidence of compliance with the above insurance requirements has been received at AVATEL's office and approved by AVATEL Management.

7. **INDEMNIFICATION.** Subcontractor shall indemnify and hold harmless AVATEL and its affiliates, agents, officers, directors, shareholders and employees from and against all claims, demands, losses, costs, damages, actions, suits or proceedings that arise out of, or are attributable to, Subcontractor's performance of, or failure to, perform this Agreement, including, but not limited to, any and all costs of defense of any action against AVATEL including reasonable attorney's fees and fees of expert witnesses.
8. **AUTHORITY.** AVATEL warrants to Subcontractor that it has the necessary authority to engage in the services of Subcontractor to complete the Job.
9. **NO HIRE.** Neither AVATEL nor subcontractor will hire away personnel from the other.
10. **NECESSARY INFORMATION.** AVATEL and Subcontractor will provide to the other such information as may reasonably be required by the other in order to perform its obligations under this Agreement. In the event one party should need information from the other, such request shall be made in writing and mailed or delivered by facsimile to the other party hereunder. The recipient party shall have one (1) business day in order to respond to such information request, unless otherwise agreed by the parties.

11. **CONFIDENTIALITY.** AVATEL and Subcontractor each agrees that it will not divulge or communicate or use for its benefit or for the benefit of any other person or entity any confidential information obtained or acquired from the other party in the course of performing its obligations under this agreement. Each party acknowledges that all confidential information obtained or acquired from the other party pursuant to this Agreement is the sole and exclusive property of the other party. Upon termination of this Agreement, each party agrees to return all material or copies containing such confidential information so obtained or acquired, whether in printed, written or electronic form, to the other party. Confidential information includes, without limiting the generality of the information of any kind or nature. The obligations hereunder with respect to maintaining in confidence and limited use of the confidential information shall continue during the term of the Agreement and thereafter until the fifth anniversary of the termination of this agreement.

The party receiving confidential information shall not be liable for use or disclosure of the information if:

- a. the information is, or becomes available, in the public domain otherwise than as a consequence of a breach by the receiving party of its obligation not to disclose confidential information of the other party;
- b. the information is subsequently lawfully obtained by the receiving party from a third party without the breach of any confidentiality restriction on subsequent use or disclosure;
- c. the information was known to the receiving party or in its possession, in each case as evidenced by the pre-existing written records, without any obligation of confidentiality at the time of the disclosure; or
- d. the information is required to be disclosed by the receiving party at the request or order of any judicial or administrative body or governmental authority, provided that the receiving party takes reasonable steps to give the disclosing party sufficient prior notice in order to contest the request or order.

12. **NON-SOLICITATION.** As a result of this Agreement, Subcontractor will have access to some or all of AVATEL's customer list. This customer list has been developed over a lengthy period of time and acquired at significant expense and is treated as confidential information by AVATEL. Subcontractor hereby agrees that during the term of this Agreement and thereafter until the second anniversary of the termination of this Agreement, it will not directly or indirectly interfere with, or solicit, contact, or accept any business from AVATEL customers relating to the sale, installation or servicing of communications or computer equipment without prior written consent of AVATEL. Subcontractor will not sell any equipment or labor to AVATEL's customers without prior written approval and will constitute a breach of contractual agreement and result in a legal termination of this agreement. Subcontractor will only represent AVATEL Technologies Inc. and agrees not to solicit AVATEL customers in any way, shape, or form. This agreement is mutually binding and Avatel will agree to the same terms as it applies to Subcontractor customers.

13. **UNAUTHORIZED USE OF NAMES.** Subcontractor will not use the names of AVATEL customers as references without prior written approval of AVATEL management. Subcontractor will represent AVATEL while on customer premises, and only AVATEL.

14. **EQUITABLE REMEDIES.** The parties recognize that a breach of any of the covenants contained in Sections 9, 11 and 12 hereof would be deemed irreparable harm for which there is no adequate remedy at law and which would result in damages to the non-breaching party and the non-breaching party could not be adequately compensated for such damages by monetary award. Accordingly, each party agrees that, in the event of any such breach and in addition to all other remedies available to the non-breaching party at law or in equity, the non-breaching party shall be entitled to apply to a court of competent jurisdiction of such relief by way or restraining order, injunction, decree or otherwise as may be appropriate to ensure compliance with the provisions of this agreement.

15. **TERM AND TERMINATION.**

- a. This Agreement may be terminated by either party upon thirty (30) days prior written notice, provided, however, such notice shall not affect the obligations of the parties with respect to completion of any Job in progress at the time of such notice.

- b. Termination of this Agreement shall not affect any right or obligation of the parties arising from, or relating to, the period prior to such termination and the covenants contained in Sections 7, 11 and 12 hereof shall survive any termination of this Agreement.

16. MISCELLANEOUS.

- a. **LEGAL RELATIONSHIP.** Subcontractor is not an employee, agent or representative of AVATEL for any purpose whatsoever and is not granted, under this Agreement or otherwise, any expressed or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of AVATEL, or to bind AVATEL and Subcontractor arising pursuant to this Agreement shall only be that of a contractor and subcontractor and, in particular, nothing in this Agreement shall be construed so as to render the relationship between AVATEL and Subcontractor or the relationship between Subcontractor and AVATEL to be that of employer and employee, principal and agent, partnership or joint venture. Subcontractor acknowledges that its relationship with AVATEL is that of independent subcontractor and, therefore, agrees that it will be solely responsible for the payment of all income, employment and other taxes in connection with any payments made to Subcontractor by AVATEL, and agrees that if any taxing authority attempts to assert that Subcontractor and Subcontractor's employees are actually employees of AVATEL, Subcontractor will indemnify AVATEL for any taxes which AVATEL is required to pay as well as any costs of resisting such taxing authority's claim including, but not limited to, attorney's fees, accountant's fees and other costs associated therewith.
- b. **NOTICES.** All notices required or permitted to be given pursuant to this Agreement shall be given in writing, shall be transmitted by personal delivery, by registered or certified mail, postage prepaid, or by telecopier and shall be addressed as follows:

When Subcontractor is the intended recipient:

Attention: _____

Telecopy No: _____

When AVATEL is the intended recipient:

AVATEL Technologies Inc.
Attention: VP of Operations
220 S. Hilltop Road, Brandon, FL 33511
Fax No: (813) 314-2127.

- c. **BINDING EFFECT: ASSIGNMENT.** This Agreement shall be binding upon all parties and their respective successors and assigns and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither party shall assign any of its rights or delegate any of its duties under this Agreement (by operation of law or otherwise) without the prior written consent of the other party, and any such assignment or delegation without the prior written consent of the other party shall be void.
- d. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other agreement, written or oral, with respect thereto. No modification to this agreement shall be valid unless it is in writing and signed by AVATEL and Subcontractor.
- e. **TIME OF THE ESSENCE.** Time is and shall be the essence of this Agreement.

- f. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the US Virgin Islands without regard to the conflicts of laws of such State.
- g. **EXPENSES OF LITIGATION.** In the event that any litigation, arbitration or other judicial proceeding is brought by a party relating to this Agreement, the prevailing party will be entitled to recover from the liable party all costs, attorney fees, and other expenses incurred by the prevailing party.

17. ARBITRATION

- a. **POLICY.** Any claim between the parties arising out of or relating to this Agreement, whether or not a contract claim, shall be determined by binding arbitration. Whether a claim is covered by this Agreement shall be determined by the arbitrator. All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceedings hereunder.
- b. **MEDIATION.** At the request of either party, made not later than thirty (30) days after the initial arbitration demand, the parties agree to submit the dispute to non-binding mediation which shall not delay the arbitration date.
- c. **HEARING.** The arbitrator shall take such steps as may be necessary to hold a private hearing within sixty (60) days of the arbitration demand; to conclude the hearing within three (3) days; and to render a written decision not later than twenty (20) days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator may for good cause afford to permit reasonable extensions or delays, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator shall apply applicable law. The arbitrator may award injunctive relief or any other remedy available from a judge and may award attorney' fees and costs to the prevailing party but shall not have the power to award punitive damages.
- d. **PROCEDURES.** There shall be no discovery or substantive motions, except the arbitrator shall authorize such discovery as may be shown to be necessary to ensure a fair hearing. The arbitrator shall not be bound by the rules of evidence or of civil procedure, but rather may consider such writings and oral presentations as reasonable business people would use in the conduct of their day-to-day affairs, and may require the parties to submit some or all of their case by written declaration or such other manner of presentation and arbitrator may determine to be appropriate. The parties intend to limit live testimony and cross-examination to the extent necessary to ensure a fair hearing on material issues.
- e. **ARBITRATION DECISION.** The award of the arbitrator shall be final and non-appealable, absent fraud, collusion, or willful misconduct by the arbitrator. The parties hereby consent to the jurisdiction and venue or the courts of the State of Florida. The parties hereby waive all defenses as to personal jurisdiction; venue and sovereign immunity from jurisdiction, attachment, and execution in and proceeding to confirm enforce the award. The party who brings any proceeding to enforce the award and prevails shall be paid its full costs and attorneys' fees by the other party.

IN WITNESS OF WHEREOF, the parties have executed this Agreement as of the date set forth below.

SUBCONTRACTOR: AVATEL Technologies, Inc.

By: _____ By: _____

Date: _____ Date: _____

*****Please attach copies of your certificates of insurance for Liability and Workers Compensation when returning this agreement and subcontractor package. Assignment of work will not occur without the proper certificates of insurance on file. *****

Avatel Sub-Contractor Expansion Questionnaire

| | | | |
|---|--|---------------------------------------|--|
| Contractor Name: | | Questionnaire Contact | |
| Location/Address: | | Name: | |
| Multiple Office Locations?: <input type="checkbox"/> Yes <input type="checkbox"/> No | | Phone #: | |
| Coverage Locations (Cities/States): | | Contact for Service Engagement | |
| Distance willing to travel (one-way): | | Name: | |
| Avaya Business Partner?: <input type="checkbox"/> Yes <input type="checkbox"/> No | | Phone #: | |
| Typical Billing Terms: | | Email: | |
| Do you at any time sub-contract? <input type="checkbox"/> Yes <input type="checkbox"/> No | | Union?: | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Please designate below which on-premises telecommunication solutions can you install and service. Please include all relative information requested.

| Systems | Certified | Experienced | Visit Charge | Hourly Rate | Overtime Rate | Weekend Emergency Calls? | Weekend Rate | Do you carry repair parts? |
|---------|--------------------------|--------------------------|--------------|-------------|---------------|--|--------------|--|
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |

As it relates hosted cloud solutions, do you have experience in implementing and troubleshooting:

1. Do you have experience implementing or trouble shooting SIP Telephony Experience? Yes No
2. Do you have experience implementing and supporting Yealink products? Yes No
3. Do you have experience implementing and supporting SIP to Analog Paging Adaptors? Yes No
4. Do you have experience implementing and supporting Switches and Routers? Yes No
5. Do you have experience implementing and supporting 3CX Solutions? Yes No

Can you install wiring/cabling? Yes No If so, what wiring/cabling?

| Wiring/Cabling | Certified | Experienced | Visit Charge | Hourly Rate | Overtime Rate | Weekend Emergency Calls? | Weekend Rate | Do you carry this product? |
|----------------|--------------------------|--------------------------|--------------|-------------|---------------|--|--------------|--|
| CAT5 | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| CAT6 | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Fiber | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Burial | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Overhead | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Plenum | <input type="checkbox"/> | <input type="checkbox"/> | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Please list any additional relevant expertise not listed above or to support the information above that would incent Avatel to utilize your services above others: