

CONTRACT AMENDMENT #1

Amendment #1	Original Contract (CLIN) #09CAA00153	Amendment CMS # 25906
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1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between Value Added Communications, Inc. (hereinafter called "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Corrections, (hereinafter called the "CDOC").

2) EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3) FACTUAL RECITALS

a) The Parties entered into the Contract to provide Inmate Telephone Services (ITS) at all CDOC Correctional Facilities and all Privately-Managed CDOC Facilities.

b) In accordance with Section 4.2 of the Contract, the prevalent practice is that, in response to the monthly invoices, revenue generated to both parties predominately derive from user funds held by CDOC (i.e. debit-based call services), and the CDOC commissions exceed by large margins those user fees collected by Contractor (i.e. collect- and advance pay-based call services). As a result, CDOC makes net payments to the Contractor for Contractor's revenue by offsetting CDOC commissions, and Contractor rarely makes payments to CDOC. The Parties mutually expect this practice to continue under the prevailing circumstances.

c) Because of its ability to offset CDOC commissions against revenue owed to Contractor, and to make net payments to Contractor, CDOC has present assurance Contractor will be able to meet its foreseeable commission obligations. Accordingly, the Parties agree that no performance bond is immediately required for the remaining term of this contract.

d) The Parties also understand that circumstances may change, and the Contractor may become the predominate party in a position obligated to make payments to CDOC, in which case, a performance bond would provide assurance to CDOC of Contractor's continuing ability to meet its obligation to pay commissions to CDOC.

4) CONSIDERATION-COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment.

5) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6) MODIFICATIONS.

The Contract and all prior amendments thereto, if any, are modified as follows:

a. Section 1.1.4 Performance Bond

Delete Section 1.1.4 Performance Bond of the Contract in its entirety and replace with:

"1.4 Performance Bond. The Parties agree that no performance bond is immediately required for the remaining term of this contract. However, within ten (10) days notice from CDOC, the

Contractor shall provide to the State, at Contractor's cost, a duly executed performance bond in the penal sum of Five Hundred Thousand Dollars (\$500,000), issued by a surety licensed to do business in the State of Colorado, and shall maintain such performance bond for the term of this Contract, including any extensions or renewals. Such bond shall include but not be limited to payment of all commissions owed to CDOC by the contractor, but not paid due to Contractor's default."

b. Add Section 35 to read:

STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §35 applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the CDOC, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

c. Exhibit A, Statement of Work/Specifications for Inmate Telephone System (ITS)

Delete Paragraph 1.I. Service and Maintenance of Exhibit A (Statement of Work/Specifications for Inmate Telephone System) in its entirety and replace with:

"I. Service and maintenance. For overall ITS maintenance, Contractor will provide three (3) full time In-state technicians, a full time Project Manager and the option for a fourth technician if needed. If necessary, the Contractor will subcontract with other subcontractors to provide service and maintenance, with CDOC's approval, which will not be unreasonably denied. In-state technicians will be based out of Canon City, Colorado and will work at the direction of the CDOC Inmate Phone Supervisor or designee. Contractor will act as the CDOC's single point of contact for all service and maintenance issues related to the ITS, regardless of the responsible subcontractor or carrier."

7) START DATE

This Amendment shall take effect on the later of its Effective Date or December 1, 2010.

8) ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

9) AVAILABLE FUNDS

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

CONTRACTOR
Value Added Communications, Inc.

By: Mark Turner
Title: President/COO


Signature

STATE OF COLORADO
Bill Ritter, Jr. GOVERNOR
Department of Corrections
Aristedes W. Zavaras, Executive Director

By:  12/3/10

Deb Kugler, Budget Manager

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: 

Dennis P. Diaz, CDOC Controller

Date: 12/7/10