

# CONTRACT AMENDMENT #3

## SIGNATURE AND COVER PAGE

<b>State Agency</b> Colorado Department of Corrections ("CDOC" or "Premises Provider")	<b>Original Contract Number</b> 82140
<b>Contractor</b> Global Tel*Link Corporation ("GTL" or "Contractor")	<b>Amendment Contract Number</b> 112044
<b>Current Contract Maximum Amount</b> This is a revenue-generating contract. No State funds are expended through this contract.	<b>Contract Performance Beginning Date</b> August 1, 2015
	<b>Current Contract Expiration Date</b> July 31, 2020

### THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

<p style="text-align: center;"><b>CONTRACTOR</b> Global Tel*Link Corporation</p> <div style="text-align: center;">                   _____                  By: Jonathan Walker, Executive Vice President             </div> <p style="text-align: center;">Date: <u>7/24/18</u></p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> John W. Hickenlooper, Governor Colorado Department of Corrections Rick Raemisch, Executive Director</p> <div style="text-align: center;">                   _____                  By: Deb Goheen, Interim Director of Finance and Administration             </div> <p style="text-align: center;">Date: <u>7/24/18</u></p>
<p><b>CONTROLLER</b></p> <div style="text-align: center;">                   _____                  By: Lenny Merriam, CDOC Controller             </div> <p style="text-align: center;">Amendment Effective Date: <u>7/24/18</u></p>	

**1. PARTIES**

This Amendment (the "Amendment") to the original Contract shown on the Signature and Cover Page for this Amendment is entered into by and between the Contractor and the State.

**2. TERMINOLOGY**

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Contract shall be construed and interpreted in accordance with the Contract.

**3. AMENDMENT EFFECTIVE DATE AND TERM**

**A. Amendment Effective Date**

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have

no obligation to Contractor under this Amendment either before or after of the Amendment term shown in §3.B of this Amendment.

**B. Amendment Term**

The Parties' respective performances under this Amendment and the changes to the Contract contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Contract.

**4. PURPOSE**

The Parties wish to amend the original Contract to reflect the terms under which GTL will provide CDOC a license to use GTL's proprietary utility software for extracting data from GTL's offender Tablets using a GTL-provided laptop computer and to further clarify ownership of data and CDOC's rights to take action necessary to its investigation and/or prosecution of offender conduct related to use of GTL's offender Tablets. Additionally, this Amendment clarifies the protection to which GTL's confidential and proprietary information, trade secrets, and software is entitled.

**5. MODIFICATIONS**

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

- A. The final sentence of **Section 16 – REMEDIES, subsection D**, is hereby revised to henceforth read:

“Terminate this Contract, in whole or in part, for default.”

- B. The first sentence of **Section 17– TERMINATION, subsection A. – Termination Without Cause**, is hereby revised to henceforth read:

“Either Party shall have the right to terminate this Contract, in whole or in part, by giving the other party ninety (90) days notice pursuant to **Section 19**.”

- C. The first sentence of **Section 17– TERMINATION, subsection B. – Termination for Convenience**, is hereby revised to henceforth read:

“The State may terminate this Contract, in whole or in part, should circumstances occur which remove the governmental power to fulfill the State's obligation under this Contract.”

- D. **Section 17– TERMINATION, subsection C. – Costs and Expenses**, is hereby revised to henceforth read:

“If the State terminates this Contract, in whole or in part, for the reasons set forth in **Section 17.B.**, the State may compensate Contractor for its appropriate costs in implementing any additional services described in **Exhibits B and C** which the State has sought in accordance with **Section 6.B**, above, but only if Contractor demonstrates by evidence acceptable to the State in its sole discretion that it has not already recovered its costs in implementing those additional services and only if Contractor's performance in implementing those additional services has been, in the sole judgment of the State, in complete compliance with every material requirement of this Contract. This provision is not intended to obligate the State to any financial obligation. Any such expenditure would require the appropriate commitment voucher. Contractor's costs may be stated in the Option Letter or in other documentation exchanged by the Parties under this Contract.”

- E. **Section 19 – NOTICES and REPRESENTATIVES, subsection A. – State**, is hereby revised to henceforth read:

Colorado Department of Corrections
Colorado Correctional Industries
Attn: David Lindsay, Interim Director
1250 Academy Park Loop
Colorado Springs, CO 80910
Phone: (719) 226-4208
david.lindsay@state.co.us

- F. **Section 25– RISK OF LOSS** is hereby revised to henceforth read:

“The Company and its insurers, if any, shall relieve the State of all risks of loss or damage to the Equipment during the periods of transportation, installation and operation of the Equipment. Further, the State shall bear no risk of loss or have any responsibility for damage to or destruction of offender Tablets, as may be necessary to obtain, extract, analyze, or preserve any data, recordings, or recorded information in any form or other information sought in connection with any ongoing investigation by CDOC into possible criminal conduct concerning offenders’ use of Tablets or conduct involving the Tablets that may compromise the safety or security of any correctional facility operated by or under contract to CDOC. Such incidental damage or destruction shall be considered normal use for the procedure undertaken and CDOC shall have no liability or obligation to reimburse GTL for any such normal use. However, in the event of any damage to GTL Equipment or hardware caused by the State or its employees beyond the circumstances outlined above, the State will cooperate with and provide all proper information for any claim GTL may choose to submit to the Colorado Division of Risk Management pursuant to the provisions of C.R.S. § 24-30-1501, *et seq.* This provision is not intended to obligate the State to any financial obligation. Any such expenditure would require the appropriate commitment voucher.

- G. **Section 28. – EQUIPMENT OWNERSHIP AND CONFIDENTIALITY OF RECORDS** is hereby revised to henceforth read:

**A. Equipment Ownership**

The CDOC agrees and acknowledges that all telephone instruments, system equipment, recording equipment, software and fixtures, including printers, modems, computers (as inventoried to Contractor) and supplies installed or furnished by Contractor in order to perform the Services, shall remain the sole and exclusive property of the Contractor, third party manufacturers, or the contractor's subcontractor(s) or Licensor(s), as applicable.

**B. Ownership of Call Data**

The Contractor agrees to provide and maintain computer hard drive space in such size and quantity, as is necessary to hold ITS call recordings including completed calls for a minimum of term of the contract and incomplete calls for sixty (60) days. Such recordings shall be accessible on site at the server or on hard disk. The Contractor acknowledges that the content of such recordings, and the recording media on which the recordings are located, shall be the property of CDOC and the tapes or other recording media will be turned over to CDOC upon the expiration or termination of the Contract,

with no claim from Contractor. Any intellectual property contained on such media which belongs to the Contractor shall remain the property of the Contractor even though the Contractor will allow possession of the intellectual (proprietary) property to remain with the CDOC and the CDOC shall not disclose or attempt to provide a license or otherwise transmit this property to any other third party. Call Detail Records (CDR) will be stored and accessible to CDOC for a minimum of term of the contract.

### **C. Ownership of Tablet Data**

**CDOC reserves the right to collect all offender data or information of any sort (including without limitation, metadata) stored on or in the GTL Tablet device or on or in GTL's server(s) or any third party's server if held for or on behalf of GTL. Any data of every nature generated by an offender's use of a GTL Tablet device belongs exclusively to CDOC, provided, however, for the avoidance of doubt, that such data shall not include any GTL or third-party intellectual property or content protected by copyright or other intellectual property rights, like music, video or similar content, which all, right, title, and interest, in and thereto shall be retained by GTL or its licensors. GTL makes no claim to any such offender data, as there is no expectation of the offender's privacy on GTL Tablet devices. Data so generated shall, upon request of the State, or any authorized representative of the State, be retrieved by GTL by every form of data retrieval (or "data dump") reasonably available to GTL and presented as soon as reasonably possible to the requestor. If the State, or any authorized representative of the State, has a Tablet in its possession, it shall have the right to retrieve all such data without GTL's assistance, permission, or knowledge using forensic software, hardware storage download, or file(s) download(s). The offender-generated data that CDOC may seek includes, without limitation usage data relating to the following:**

- i. Terms for which an offender searched;**
- ii. Videos an offender watched;**
- iii. Offender views and interactions with content;**
- iv. Voice and audio data generated when an offender used audio features;**
- v. Images, videos, or any type of data that an offender stored on a Tablet;**
- vi. Purchase activity;**
- vii. The identity of any people, entities, or other third parties with whom the offender communicated or shared content;**
- viii. Activity on third-party sites and applications;**
- ix. Browsing history;**
- x. Telephony log data from calls or messages, including without limitation, GTL's phone number, calling-party number, receiving-party number, forwarding numbers, time & date of calls and messages, duration of calls, routing information, and types of calls; and**

- xi. **All other data generated by the offender's use of the Tablet device, whether generated directly by the offender or gathered by any third party to which GTL has access.**

**D. Confidential State Records**

In the event the Contractor shall obtain access to any records or files of the State in connection with this Contract, or in connection with the performance of its obligations under this Contract, which records, files or other information are designated as confidential by the State, by markings, written notice to the Contractor, or other appropriate means, then the Contractor shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records. The Contractor shall notify its employees that they are subject to the confidentiality requirements as set forth above, and shall provide each employee with a written explanation of the confidentiality requirements before the employee is permitted access to confidential data.

**E. CORA Compliance**

Nothing herein is intended or shall operate as a waiver of any applicable law governing disclosure of records, including the Colorado Open Records Act, CRS §24-72-101 et seq. The State agrees to provide the Contractor with prompt written notice of requests for disclosure under such laws of any Contractor information within the scope of this clause.

**H. Exhibit B – Mobility Service, Section VI – Additional Terms** is hereby modified by adding the following **Subsection c – Data Extraction Software**:

- c. **Data Extraction Software.** GTL shall provide the State with use of GTL's proprietary utility software for extracting data from GTL's offender Tablets, and associated documentation (collectively "Software"), subject to the terms contained in this Amendment. GTL grants the State a non-exclusive, non-transferable, license to use the Software solely for extracting data from GTL's offender Tablets in support of State investigations. The Software and the license to use the Software is provided at no charge to the State on a term license only basis, and is not a sale of the Software. Nothing in this Amendment, the Contract, or through GTL's performance under either shall constitute a transfer of right, title, or interest in or to the Software, which are retained by GTL and its licensors, subject only to this license to use the Software.
  - i. The use of the Software is supplied in object code only, and nothing in this Amendment shall be construed as granting any license in the underlying source code that is used to generate the Software, or creating an implied license in the Software.
  - ii. The State shall not (a) make available or distribute all or part of the Software to any third party by assignment, sublicense or by any other means; (b) copy (except as required to complete an extraction, as detailed in the extraction guide), adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the Software; or (c) allow third party access to the Software.
  - iii. The State agrees to (a) hold the Software in confidence using the same degree of care (but no less than reasonable care) it uses to protect its own confidential and proprietary information; (b) restrict disclosure and use of the Software solely to

those State employees or agents who are authorized to use the Software to extract data from GTL's offender Tablets in support of ongoing State investigations or prosecutions and advise these employees or agents of their obligations hereunder with respect to the Software; (c) not copy or otherwise duplicate the Software or allow anyone else to copy or otherwise duplicate the Software, except as may be necessary to CDOC's investigations or prosecutions under the Project, provided that all titles, trademarks, and copyright, proprietary and restricted rights notices shall be reproduced in all such copies, and that all such copies shall be subject to the terms of this Amendment; (d) exclude the Software from disclosure in response to any request for information under the Colorado Open Records Act; and, (e) within one (1) year following the effective date of this Amendment, or such earlier time reasonably requested by GTL, and in either case subject to ongoing investigations or prosecutions, promptly return the Software to GTL, and certify in writing that it has not improperly retained any part of the Software.

- iv. If the State becomes legally compelled or required to disclose any part of the Software, the State shall provide GTL with prompt, prior, written notice of such requirement so that GTL may seek a protective order or other appropriate remedy; provided, further, that if such a protective order or other remedy is not obtained or available, the State shall disclose only that portion of the Software that is legally required to be disclosed and to otherwise take all reasonable steps to preserve the confidential nature of the Software, including use commercially reasonable efforts to seek protective treatment of the Software required to be disclosed.
- v. The State agrees that GTL has no responsibility to advise the State with respect to any law, regulation, or guideline that may govern or control data extraction from electronic devices, or compliance therewith. The State has its own legal counsel to advise it concerning any and all such law, regulation, or guideline, and compliance therewith, and makes its own determination on when and how to use the data extraction capabilities provided through the Software. GTL disclaims any responsibility to provide, and has not provided, the State any legal advice concerning such applicable law, regulation, or guideline, or compliance therewith.
- vi. This subsection c – Data Extraction Software shall continue to apply and remain enforceable for as long as the State uses, or retains possession of a copy of, the Software, notwithstanding the termination of the Contract, or any part thereof
- vii. In addition to the foregoing terms and conditions, the Parties further agree to the Nondisclosure Agreement which is attached to this Amendment as Attachment 1 to Exhibit B – Mobility Service and is hereby so attached to the Original Contract.

I. **Exhibit B – Mobility Service, Section VI – Additional Terms** is hereby modified by adding the following **Subsection d – Hardware/Equipment used in Data Extraction**:

- d. **Hardware/Equipment used in Data Extraction.** GTL shall provide CDOC with use of a GTL-owned laptop computer and any other equipment necessary for CDOC's use on the Project and CDOC is hereby authorized to utilize all such hardware and

equipment, at no charge to the State, in its efforts on the Project, as defined in **Attachment 1 to Exhibit B**.

- i. Further, CDOC is authorized, but not obligated to alter, destroy, Chip-Off, render unusable, or otherwise damage offender Tablets, as may be necessary to obtain, extract, analyze, and preserve any data, recordings, or recorded information in any form or other information that the State owns or has the right to own, control, or access. Any data of every nature generated by an offender's use of a GTL Tablet device belongs exclusively to CDOC, provided, however, for the avoidance of doubt, that such data shall not include any GTL or third-party intellectual property or content protected by copyright or other intellectual property rights, like music, video or similar content, which all, right, title, and interest, in and thereto shall be retained by GTL or its licensors. Such incidental damage or destruction to all such hardware and equipment shall be considered normal use for the procedure undertaken and CDOC shall have no liability or obligation to reimburse GTL for any such normal use.

#### **6. LIMITS OF EFFECT AND ORDER OF PRECEDENCE**

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments or other modifications to the Contract, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Contract, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract or any prior modification to the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Contract to the extent that this Amendment specifically modifies those Special Provisions.

#### **7. COUNTERPARTS**

This amendment may be executed in one or more identical original counterparts, each of which is deemed an original, but all of which together shall constitute one and the same instrument.

**NONDISCLOSURE AGREEMENT**

This Nondisclosure Agreement (this “Agreement”), is made and entered into as of the effective date of Amendment #3 by and between the **State of Colorado, acting by and through the Colorado Department of Corrections** (“State” or “CDOC”) and **Global Tel\*Link Corporation** (“GTL” or “Contractor”), an Idaho corporation with corporate headquarters at 12021 Sunset Hills Road, Suite 100, Reston, Virginia 20190.

The Parties hereto entered a contract effective on August 1, 2015 (cms# 82140), under which GTL provides offender telephone services to CDOC. That original contract was subsequently modified by Amendment #1 (cms# 86708) to implement GTL’s enhanced communication services (“Mobility Services”), which offenders access through mobile computer Tablets (“Tablets”). Other modifications to the original contract have also been agreed upon. As used in this Agreement, the original contract, as modified, is hereafter referred to as the “Original Contract.”

Now, therefore, the Parties agree as follows:

1. In connection with any investigation by the State into possible criminal conduct concerning offenders’ use of Tablets or conduct involving the Tablets that may compromise the safety or security of correctional facilities at the Colorado Department of Corrections (“Project”), GTL may disclose to the State, or the State may learn through the Project, certain confidential or proprietary information or trade secrets of GTL in written, oral or other tangible or intangible forms which may include, but is not limited to, financial information, specifications, documents, records, drawings, schematics, blueprints, tracings, diagrams, models, data, customer names and other technical, financial or business information (individually and collectively, “Information”). Such Information, when identified by GTL as confidential or proprietary, or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential, shall be deemed to be confidential or proprietary for purposes of this Agreement. Any data of every nature generated by an offender’s use of a GTL Tablet device belongs exclusively to CDOC. GTL makes no claim to any such offender data as there is no expectation of the offender’s privacy on GTL Tablet devices and such data is excluded from the foregoing definition of “Information.” Subject to that limitation, the State agrees to maintain the confidentiality of such Information and to not use, disclose, publish or disseminate such Information in any manner not consistent with the terms and conditions of this Nondisclosure Agreement.

2. The State shall:

(a) hold such Information in confidence with the same degree of care (but no less than reasonable care) with which it protects its own confidential and proprietary information;

(b) restrict disclosure of the Information solely to its employees or agents with a need to know such Information and to experts necessary in the State’s sole discretion to assist in any manner in the Project and cause those persons to comply with the confidentiality obligations hereunder with respect to such Information;

(c) use the Information only as needed for the purposes of the Project;

(d) except for the purposes of the Project and any prosecutions that may arise from information obtained or evidence developed under the Project, not copy or otherwise duplicate such Information or knowingly allow anyone else to copy or otherwise duplicate such Information, and ensure that any and all copies shall bear the same notices or legends, if any, as the originals;

(e) exclude the Information from disclosure under the Colorado Open Records Act (CORA), but only to the extent permitted by law;

(f) and, upon request and completion of the Project and any related prosecutions, promptly return to GTL all Information in a tangible form or certify to GTL that it has been destroyed, as long as preservation of evidence is not otherwise required.

3. The State shall not have an obligation to preserve the confidential or proprietary nature of any Information which:

(a) Is or becomes publicly known through no wrongful act of the State;



Attachment 1 to EXHIBIT B – Mobility Service

- (b) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation with respect to such Information;
  - (c) is independently developed by an employee, agent or contractor of the State;
  - (d) is approved for release by written authorization of GTL.
4. This Agreement shall apply only to Information relating to the Project disclosed or made available by GTL after the effective date of the Amendment to which this Agreement is attached and only to confidential Information as contemplated by this Agreement or as otherwise required under CORA. The terms of this Agreement shall continue to apply to Information, notwithstanding any termination of the Contract whether in whole or in part.
5. Other than as expressly provided herein or in the Original Contract between the parties, nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Information.
6. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, excluding any conflicts of law provisions, the application of which would have the effect of making Colorado law inapplicable. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.
7. The State acknowledges that any material violation of any of the covenants and agreements contained in this Agreement could result in irreparable and continuing harm and damage to GTL which may be extremely difficult to quantify and for which money damages alone may not be adequate compensation. Consequently, the State agrees that in the event it violates any material covenants and agreements, GTL may be entitled to specific performance of the State's obligations under this Agreement, as well as such further injunctive relief as may be granted by a court of competent jurisdiction. Nothing in this Agreement shall be construed to prohibit any party from also pursuing any other legal or equitable remedy, the parties having agreed that all remedies are cumulative. Nothing in this Agreement shall be construed as an admission of any violation of this Agreement or as a waiver of any rights, remedies, protections, or immunities available to the State under the Original Contract or applicable law. This Agreement is not intended to obligate the State to any financial expenditure. Any such expenditure would require the appropriate commitment voucher.
8. Other than as expressly provided herein or in the Original Contract between the Parties, all Information shall remain the exclusive property of GTL. GTL does not grant a license (by implication or otherwise) under any of its copyrights, patents, trade secrets, trademarks, trade name rights or any other intellectual property rights as a result of the disclosure of the Information to the State under this Agreement. Ownership of the data, recordings, or recorded information in any form disclosed by any means, including but not limited to GTL's Chip-Off Procedure, is controlled by the terms and conditions of the Original Contract. This Agreement does not apply to any data, recordings, or recorded information in any form or other information that the State owns or has the right to own, control, or access.
9. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. Assignment of any rights or delegation of any duties under this Agreement will be permitted only in the manner stated in the Original Contract.
10. In the event either party is required by judicial or administrative process to disclose the other's Information, they will promptly notify the other as soon as is reasonably possible and allow the other to oppose such process, to the extent permitted by the judicial or administrative body requiring disclosure. Additionally, such party shall make reasonable efforts to include said Information within any protective order issued by the appropriate judicial or administrative body.
11. Nature of this Agreement: This Agreement may not be changed orally but only by an agreement in writing signed by the Parties. This Agreement is subject to the Original Contract and that Original Contract and all modifications are incorporated herein by reference and the Original Contract remains in full force and effect except where specifically modified in this Agreement.

END OF AMENDMENT #3