



PARTIES: WDOC & Inmate Calling Solutions **PURPOSE:** Revise calling rates

Contract **MOU/IAA** **AWEC** **Contract Manager:** Amber Green

CENTRAL SERVICES REVIEW MAR - 7 2016

Administrator: _____	Date: _____
Fiscal Manager: _____	Date: <u>3/4/16</u>
Purchasing Manager: _____	Date: <u>3/3/16</u>

BASE CONTRACT

Dates: 7/27/12 to 6/30/15	Administrator Approval: Dan Shannon
Amount: \$	Budget Unit: Revenue
Purpose: Inmate telephone service, 65.5% commission	

AMENDMENT #1

Dates: 2/18/14 to 6/30/15	Administrator Approval: Dan Shannon
Amount: \$	Budget Unit: Revenue
Purpose: Change the Interstate calling rates per FCC requirements.	

AMENDMENT #2

Dates: 6/30/15 to 6/30/17	Administrator Approval: Dan Shannon
Amount: \$	Budget Unit: Revenue
Purpose: Change the Interstate calling rates per FCC requirements, extend the contract expiration to 6/30/17	

AMENDMENT #3

Dates: 9/8/15 to 6/30/17	Administrator Approval: Dan Shannon
Amount: \$ 0	Budget Unit: Revenue
Purpose: Revise calling rates per Attachment B-3	

AMENDMENT #4

Dates: 3/1/16 to 6/30/17	Administrator Approval: Dan Shannon
Amount: \$ 0	Budget Unit: Revenue
Purpose: Revise calling rates per Attachment B-4, add Contractor Responsibilities per FCC requirements	



WYOMING
DEPARTMENT OF
CORRECTIONS

WDOC Form #105
Contract Control Sheet

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Last Revised: 01/06/09

DISTRIBUTION		
RQS	MSA	MSC
Recipient:	Name/Initials:	Date:
Purchasing	<u>AG</u>	<u>3/11/11</u>
Contract Manager	_____	_____
Contractor	_____	_____
A&I Procurement	_____	_____
Other	_____	_____
Other	_____	_____
Notes:		

**AMENDMENT FOUR TO THE CONTRACT BETWEEN THE
STATE OF WYOMING, DEPARTMENT OF CORRECTIONS
AND INMATE CALLING SOLUTIONS, LLC DBA ICSOLUTIONS**

1. **Parties.** This Fourth Amendment is made and entered into by and between the State of Wyoming, Department of Corrections (“WDOC”), whose address is 1934 Wyott Drive, Cheyenne, WY 82002, and Inmate Calling Solutions LLC, d/b/a ICSolutions (“Contractor”), whose address is 2200 Danbury, San Antonio, TX 78217.
2. **Purpose of Amendment.** This Amendment shall constitute as the Fourth Amendment to the Contract between WDOC and Contractor which was executed and became effective on July 27, 2012. The purpose of this Fourth Amendment is to a) implement an internal automated voicemail messaging system via the Inmate Telephone System (ITS) at no cost to WDOC; b) further revise the calling rates and fees in accordance with the Federal Communications Commission (FCC) 2015 Second Report and Order, and the Third Further Notice of Proposed Rulemaking, WC Docket No. 12-375, FCC 15-136 and c) further revise the commission percentage.

The original Contract, dated July 27, 2012, granted the Contractor the exclusive right and privilege to install and operate prison inmate telephones and related telephone equipment at WDOC’s Facilities at no cost to WDOC, with an expiration date of June 30, 2015.

The First Amendment, dated February 11, 2014, reduced interstate calling rates to be in compliance with the Federal Communications Commission (FCC) Docket No. 12-375 with an expiration date of June 30, 2015.

The Second Amendment, dated June 30, 2015, reduced the calling rates and commission percentage and extended the contract term for an additional two (2) years with an expiration date of June 30, 2017.

The Third Amendment, dated September 8, 2015, further amended the calling rates with an expiration date of June 30, 2017.

3. **Term of the Amendment.** This Fourth Amendment shall be effective on February 1, 2016, or upon the date the last required signature is affixed hereto, whichever is later, and shall remain in full force and effect through the term of the Contract, unless terminated at an earlier date pursuant to the provisions of the Contract, or pursuant to federal or state statute, rule or regulation.
4. **Amendments.**
 - A. The first sentence in Section 4.A.i. of the original Contract, and as amended by the Amendment Two, is hereby further amended to read as follows:

“The ITSP shall pay Customer sixty percent (60%) commission on all Gross Revenue generated by and through the ITS.”

B. Section 4.C. of the original Contract is hereby amended to add Subsection 4.C.vi., as defined below:

vi. “Amendment or Termination of Agreement Due to 2015 the FCC Order.

a. 2015 FCC Order. The Federal Communications Commission (FCC) adopted certain reforms to the federal regulatory framework governing inmate telephone services on November 5, 2015. *See Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, WC Docket No. 12-375, FCC 15-136 (rel. Nov. 5, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-136A1.pdf (“2015 FCC Order”). The 2015 FCC Order was published in the Federal Register on December 18, 2015, and currently is in effect, in whole or in part.

1. The individual new requirements set forth in the 2015 FCC Order (each a “Requirement,” multiple “Requirements”) apply to inmate telephone services, except that certain such Requirements are subject to a transition period that is specific to such Requirement (“Transition Period”). Pursuant to the 2015 FCC Order, the length of the Transition Period for WDOC is ninety (90) calendar days.
2. WDOC and Contractor agree and acknowledge that, during any period in which the 2015 Order is in effect, in whole or in part, and subject to any applicable Transition Period, the 2015 FCC Order may cause the performance of certain provisions of this Contract to violate applicable law or to be impracticable or impossible. Therefore, the 2015 FCC Order may require WDOC and Contractor to amend certain terms of this Contract that are inconsistent with the Requirements imposed by the FCC in the 2015 FCC Order.
3. Pursuant to the anti-gaming provision set forth in paragraphs 261-262 of the 2015 FCC Order (“Anti-Gaming Rule”), WDOC and Contractor are prohibited from including in this Contract any inmate calling rates and any ancillary fees (as such term is defined in the 2015 FCC Order) that are inconsistent with the Requirements (“Inconsistent Rates”) even if such Requirement has not otherwise yet become effective as a result of an applicable Transition Period. Accordingly, WDOC and Contractor agree and acknowledge that the 2015 FCC Order may cause Inconsistent Rates set forth in this Contract to violate the 2015 FCC Order as a result of the Anti-Gaming Rule even though such Inconsistent Rates may not otherwise be prohibited by a Requirement because such Requirement is not yet otherwise effective as a result of an applicable Transition Period.

- b. **Inconsistent Rates.** Inconsistent Rates set forth herein shall automatically conform to the 2015 FCC Order during any period that such Inconsistent Rate is required to do so by the Anti-Gaming Rule, even if, absent the effectiveness of the Anti-Gaming Rule, such Inconsistent Rate would not otherwise violate the 2015 FCC Order (for example, because the applicable Requirement is not otherwise effective due to an applicable Transition Period). At any time that the Anti-Gaming Rule is not in effect for any reason, such Inconsistent Rate shall automatically and without any formal amendment hereto by the parties spring back into effectiveness, provided that it is not noncompliant at that time with any Requirement then in effect. The parties agree to negotiate and execute an Amendment as defined in Subsection 4.B.c below in order to become compliant with any Requirement regarding Inconsistent Rates. For the avoidance of doubt, any payments or other tangible or intangible benefits required by this Contract to be provided by the Contractor shall remain unchanged during any period in which an Inconsistent Rate is not in effect as a result of the application of the Anti-Gaming Rule.
- c. **Amendment.** If at any time during the term of this Contract either WDOC or Contractor believes in good faith that its performance pursuant to this Contract will violate a Requirement or be impracticable or impossible as a result of such Requirement, the determining party shall provide prompt written notice (“Amendment Notice”) to the other party and such notice shall identify with specificity the Requirement that is inconsistent with the terms of this Contract. Promptly following the delivery of such Amendment Notice, executives of each party who have primary managerial responsibility for such matters and who have authority to act on behalf of the party shall meet in person or telephonically to negotiate in good faith an appropriate amendment to this Contract (“Amendment”). Any such Amendment shall establish an alternative means of achieving the same or substantially the same result as that contemplated by the Contract provision that is inconsistent with a Requirement. The parties shall use commercially reasonable best efforts to agree upon and execute the Amendment no later than sixty (60) calendar days following the delivery of the Amendment Notice. Any such Amendment of this Contract executed by the parties shall, by its terms, not take effect until such time as the Requirement addressed by such amendment is applicable to this Contract in light of any applicable Transition Period permitted by the 2015 FCC Order. This Section shall not apply to an Inconsistent Rate until such time as the Inconsistent Rate is inconsistent with an effective Requirement without the application of the Anti-Gaming Rule. During any period in which the Inconsistent Rate is inconsistent with the 2015 Order solely as a result of the Anti-Gaming Rule, neither party shall be required to negotiate an Amendment to reform the Inconsistent Rate.

d. Automatic Contract Reform Until Amendment is Executed. If the parties are unable to agree upon and execute an Amendment prior to the earlier to occur of (i) the expiration of such sixty (60) calendar day-period and (ii) the effective date of any requirement set forth in the 2015 FCC Order that is inconsistent with a provision of this Contract (“Inconsistent Provision”), then all provisions of this Contract shall remain in effect, except that any Inconsistent Provision shall automatically conform to the applicable Requirement as of the effective date of such Requirement taking into account any applicable Transition Period and only for so long as such Requirement remains effective without additional action required by the parties. The Parties agree to continue negotiations in order to become compliant with any Requirement until such time an Amendment can be agreed upon and executed. For the avoidance of doubt, any payments or other tangible or intangible benefits required by this Contract to be provided by the Contractor shall remain unchanged during any period in which it is not an Inconsistent Provision. This Section shall not apply to an Inconsistent Rate until such time as the Inconsistent Rate is inconsistent with an effective Requirement without the application of the Anti-Gaming Rule.”

C. Section 5, of the Attachment A to the Original Contract, is hereby amended to add Subsection II. as defined below:

II. “Contractor shall provide WDOC with an internal automated voicemail messaging system (“Communicator”) via the ITS at no cost to WDOC. The internal voicemail messaging system shall be available to the inmates to file grievances, request medical/ dental, and crime tips, or file telephone complaints via the ITS. The internal voicemail feature shall allow WDOC users to respond (using text-to-speech technology or voice messaging) to an inmate, a group of inmates, or to all Facilities as a message of the day.

i. The ITS shall record and store all messages. All recordings shall be maintained as described in **Attachment A, Section 8 – Monitoring and Recording Requirements.**”

D. The calling rates and fees as amended by the First, Second, and Third Amendments and as further modified by this Fourth Amendment to the original Contract, are hereby amended as set forth in Attachment B-4, which is attached to and incorporated by this reference.

5. **Additional Responsibilities of WDOC.** Responsibilities of WDOC have not changed.

6. **Additional Responsibilities of the Contractor.** Responsibilities of Contractor have changed and are hereby amended as stated in Section 4 of this Amendment.

7. **Special Provisions.**

- A. **Same Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Contract, and any previous amendments, between the WDOC and the Contractor, including but not limited to sovereign immunity, shall remain unchanged and in full force and effect.

8. **General Provisions.**

- A. **Entirety of Contract.** The original Contract, consisting of eighteen (18) pages; Attachment A, consisting of twenty (20) pages; Attachment B, consisting of two (2) pages; Amendment One, consisting of three (3) pages, Attachment B-1, consisting of one (1) page; Amendment Two, consisting of three (3) pages, Attachment B-2, consisting of one (1) page; Amendment Three, consisting of three (3) pages, Attachment B-3, consisting of one (1) page; Amendment Four, consisting of six (6) pages, and Attachment B-4, consisting of one (1) page, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

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9. **Signatures.** IN WITNESS THEREOF, the parties to this Fourth Amendment through their duly authorized representatives have executed this Fourth Amendment on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Fourth Amendment as set forth herein.

This Fourth Amendment is not binding on either party until approved by A&I Procurement and the Governor of the State of Wyoming or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

The effective date of this Fourth Amendment is the date of the signature last affixed to this page.

STATE OF WYOMING, DEPARTMENT OF CORRECTIONS



Robert O. Lampert, Director

3-1-16

Date

INMATE CALLING SOLUTIONS



Brendan Philbin, Vice President

2/24/16

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM



Susan G. O'Brien, Senior Assistant Attorney General

2-18-16

Date

AMENDMENT FOUR - ATTACHMENT B-4

Calling Rates

CALL TYPE	COLLECT/PRE-PAID COLLECT		DEBIT	
	<u>Surcharge</u>	<u>Per Minute</u>	<u>Surcharge</u>	<u>Per Minute</u>
Local	\$0.00	\$0.11	\$0.00	\$0.05
IntraCell	\$0.00	\$0.11	\$0.00	\$0.05
Intralata/Intrastate	\$0.00	\$0.11	\$0.00	\$0.05
Interlata/Intrastate	\$0.00	\$0.11	\$0.00	\$0.05
Interlata/Interstate	\$0.00	\$0.11	\$0.00	\$0.05
International	N/A	N/A	\$0.00	\$0.50

Note: The calling rates listed above are not inclusive of any applicable taxes.

- | | | |
|----|--|---------------|
| 1. | <u>Pre-Paid Transaction Fee (Live Agent):</u> | <u>\$5.95</u> |
| 2. | <u>Pre-Paid Transaction Fee (Automated Payment):</u> | <u>\$3.00</u> |
| 3. | <u>Billing Statement Fee:</u> | <u>\$0.00</u> |
| 4. | <u>Pre-Paid Refund Fee:</u> | <u>\$0.00</u> |