

Division of Purchases
900 SW Jackson, Room 102N
Topeka, KS 66612-1286



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Dennis R. Taylor, Secretary
Chris Howe, Director

Department of Administration

Sam Brownback, Governor

AMENDMENT

Amendment Date: November 29, 2011

Amendment Number: 3

Contract ID: 10481

Procurement Officer: Greg Davis
Telephone: 785-296-2770
E-Mail Address: greg.davis@da.ks.gov
Web Address: <http://da.ks.gov/purch>

Agency: Dept. of Corrections
Location(s): Various KDOC Facilities

Period of Contract: December 17, 2007 through December 16, 2012

Contractor: CenturyLink Correctional Markets
Formerly (EMBARQ Payphone Services, Inc.)
SMART ID: 0000155806
9300 Metcalf Avenue
Overland Park, KS 66212
E-Mail: michael.p.hynes@embarq.com
Toll Free Telephone: 877-907-7774
Local Telephone: 913-534-5699
Fax: 913-397-3591
FEIN: 59-3268090
Contact Person: Mike Hynes
Telephone: 866-224-5139
Cell: 724-612-6249

Amendment No. 3

to

No. 10481

**Agreement Between
Kansas Department of Corrections (KDOC) and
CenturyLink Correctional Markets (CCM) for
Inmate Telephone Service**

This Amendment is made this 14th day of October, 2011 by and between the KDOC and CenturyLink Correctional Markets¹.

WITNESSETH:

WHEREAS, the parties entered into an Agreement for Inmate Telephone Service (Agreement) dated December 16, 2007; and,

WHEREAS, the parties entered into Amendment No. 1 to the Agreement dated January 15, 2009; and,

WHEREAS, the parties entered into Amendment No. 2 to the Agreement dated September 9, 2010; and,

WHEREAS, the parties have determined that the Agreement requires further amendment;

NOW, THEREFORE, the parties hereby agree to amend the Agreement as follows:

1. All terms and conditions of the Agreement, Amendment No. 1, Amendment No. 2 and Agreement shall remain in full force and effect except as specifically amended herein.
2. Section C. Agreement Term and Termination, Subsection 1. Agreement Term of the Agreement is amended to reflect that the Agreement is extended through December, 16, 2012, with the option to extend this Agreement on a month to month basis thereafter.

¹ Embarq Payphone Services changed its name to CenturyLink Correctional Markets effective June 1, 2009.

CONTRACT AWARD

Date of Award: September 21, 2007 (Updated November 29, 2011)

Contract Number: 10481

PR Number: 014621

Replaces Contract: 05221

Procurement Officer: Greg Davis (New Procurement Officer)
Telephone: 785-296-2770
E-Mail Address: greg.davis@da.ks.gov
Web Address: <http://da.ks.gov/purch>

Item: Telephone Services - Inmate

Agency: Dept. of Corrections
Location(s): Various KDOC Facilities

Period of Contract: December 17, 2007 through December 16, 2012

Contractor: CenturyLink Correctional Markets
Formerly (EMBARQ Payphone Services, Inc.)
SMART ID: 0000155806
9300 Metcalf Avenue
Overland Park, KS 66212
E-Mail: michael.p.hynes@embarq.com
Toll Free Telephone: 877-907-7774
Local Telephone: 913-534-5699
Fax: 913-397-3591
FEIN: 59-3268090
Contact Person: Mike Hynes
Telephone: 866-224-5139
Cell: 724-612-6249

Prices: See Attached

Payment Terms: Net 30

Political Subdivisions: Pricing **is** available to the political subdivisions of the State of Kansas.
Procurement Cards: Agencies **may** use State of Kansas Business Procurement Card for purchases from this contract.

Administrative Fee: **No** Administrative Fee will be assessed against purchases from this contract.

**AGREEMENT FOR INMATE TELEPHONE SERVICE
BETWEEN
KANSAS DEPARTMENT OF CORRECTIONS
AND
EMBARQ PAYPHONE SERVICES
CONTRACT NO. 10481**

AND NOW, on this 16th day of December, 2007, this Agreement is made by and between the Kansas Department of Corrections, by and on behalf of the State of Kansas, and as approved by the Kansas Department of Administration Division of Purchases, (hereafter, "State") and Embarq Payphone Services, a firm incorporated under the laws of the State of Kansas (hereafter, "Contractor").

WITNESSETH:

WHEREAS, the Kansas Department of Corrections (KDOC) desires to acquire inmate telephone service in order to replace an existing contract for its adult offender facilities, as listed in **Attachment B** of this Agreement, which may be increased or decreased by KDOC during the term of the contract; and

WHEREAS, State duly issued Request for Proposal No. 10481, on the date of June 13, 2007 soliciting bids from vendors for inmate telephone service; and

WHEREAS, Contractor, a qualified provider of telecommunications services for the corrections industry, submitted a proposal in response to the RFP; and

WHEREAS, ensuing negotiations between a Procurement Negotiating Committee representing KDOC, the Department of Administration, and the State of Kansas, and Contractor have resulted in a determination by State that it is in the best interest of KDOC and the State to enter into an agreement with Contractor for acquisition of inmate telephone service.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, it is mutually agreed as follows:

I. GENERAL TERMS

A. Scope:

State grants Contractor the exclusive right and privilege to install and operate prison inmate telephones and related telephone equipment at State's Facilities listed in **Attachment B** of this Agreement (hereafter, "Facilities"). Contractor shall, at no cost to State, provide all inside wiring for the inmate telephones, install the inmate telephones, and the related hardware and software/firmware specifically identified herein, to enable inmates at the Facilities to make auto-collect local and long distance calls, debit local, long distance and international calls, and/or pre-paid local, long distance and international calls from the Facilities pursuant to the terms set forth herein.

B. Agreement Formation - The Agreement between the parties consists of:

- a. Amendments to this Agreement;
- b. This Agreement;
- c. Request for Proposal No. 10481; and
- d. Contractor's written proposal to include the Best, Last and Final cost proposal.

C. Agreement Term and Termination:

1. **Agreement Term:** This Agreement shall commence upon December 16, 2007 (hereafter, "Effective Date") and remain in force for an initial term of three (3) years from the Effective Date stated above, with an expiration date of December 16, 2010 (hereafter, "Initial Term"). The Agreement shall not bind, nor purport to bind, State for any contractual commitment in excess of the Initial Term. However, State, at its sole option, shall have the right to renew this Agreement for two (2) additional one (1) year terms, with thirty (30) days written notice to Contractor prior to expiration of the Initial Term or renewal term of the Agreement. In addition, the State reserves the option to extend this Agreement on a month to month basis past the Initial term or renewal term(s) for a maximum extension of three (3) months to accommodate a transition of service for the Facilities. In the event State exercises either of these rights, all terms and conditions, requirements, and specifications of the Agreement shall remain the same and apply during the renewal and/or month to month extension term(s). This Agreement will not automatically renew.

2. Breach and Termination:

- a. In the event either party breaches the Agreement by failing to perform as agreed, the non-breaching party shall give the breaching party written notice of the failure stating what failure has occurred. The breaching party shall have thirty (30) days after the receipt of such notice to remedy the failure. If the breaching party does not remedy the failure in the allowed thirty (30) days, the non-breaching party may cancel this Agreement.
- b. Contractor is responsible for performing remote diagnostics, monitoring, and maintenance on the inmate telephone system. In the event that State experiences a service or equipment outage, Contractor shall repair any such outage or otherwise restore service within ten (10) days after it receives notice of or detects a service or equipment outage. If Contractor is unable to make the necessary repairs and/or restore service within this ten (10) day period, State may immediately terminate this Agreement upon providing written notice of termination to Contractor. The transition period referred to in **Section XI of Attachment A** of this Agreement will begin upon the termination of this Agreement.
- c. The Agreement between State and Contractor may be terminated by State upon thirty (30) days written notice from State to Contractor. The transition period referred to in **Section XI of Attachment A** of this Agreement will begin upon the termination of this Agreement. Contractor agrees that no penalty shall be allowed as a result of State's termination of this Contract prior to its expiration. Should State terminate the contract for convenience only prior to the Agreement anniversary date, State shall refund a portion of Contractor's pre-paid Minimum Annual Guarantee (described in **Section III, Paragraph A, Item 2**) on a daily pro-rated basis.

- d. Should Contractor for any reason, except in the case of force majeure (see **Section I, Paragraph T**), become unable to complete the work required by this Agreement, State may, at its sole discretion, call for the Surety Bond due, in full for such non-performance, and/or as liquidated damages. Notwithstanding the above, should State prevent Contractor from entering the premises to complete repair work on the inmate telephone equipment, Contractor shall have time to complete said repairs using the provisions under **Section XII, Item D of Attachment A** of this Agreement, after State allows Contractor access to the inmate telephone equipment.
- D. No Third Party Beneficiaries:** The parties do not enter into this Agreement for the benefit of any person other than the parties to this Agreement, nor do they intend that any person be or become a third party beneficiary to this Agreement.
- E. Assignment:** Contractor may not assign or transfer this Agreement or the services described herein without the express written consent of the State which consent will not be unreasonably withheld or unduly delayed. **Upon State's written consent, any such purchaser, assignee, successor, or delegate shall thereupon have all of the rights and responsibilities of the Contractor.** State may assign any and all of its rights and obligations hereunder without the written consent but upon written notice thereof to the Contractor (1) to any Affiliate; (2) pursuant to any sale or transfer of all or substantially all of its business or assets; (3) pursuant to any merger or reorganization; or (4) as part of a bona fide pledge to a third party lending institution of collateral of the assignor's rights hereunder.
- F. Transition Responsibilities of Contractor:** Upon the expiration or termination of this Agreement, should State award any succeeding contract for inmate telephone service to a vendor other than Contractor, Contractor agrees to cooperate fully and in all respects with State and the new contracted vendor in accomplishing an efficient and effective transfer of responsibilities.
- G. Notices:** Any notice required by this Agreement shall be given in writing and delivered in person, by courier, or by registered or certified mail addressed to the party's address listed below. Notice shall be presumed to have been received five (5) days after it is deposited in a U.S. Postal Service Depository.
- | | |
|--|---|
| State: Secretary of Corrections 900 S.W. Jackson, 4 th Floor Topeka, KS 66612-1284 ATTN: Chief Legal Counsel | Contractor: Embarq Payphone Services 9300 Metcalf Ave. Overland Park, KS 66212 ATTN: Paul Cooper |
|--|---|
- With a copy to:**
Division of Purchases
Department of Administration
900 S. W. Jackson, Room 102
Topeka, KS 66612-1286
RE: Contract 10481
- H. Copyrights Reserved to State:** No reports or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Contractor, with all rights reserved for State.

- I. Auditors' Access to Records:** Neither party to this Agreement shall prohibit or prevent the Legislative Division of Post Audit from having access pursuant to K.S.A. 46-1101, et seq. to any records, documents, or other information – confidential or otherwise – regarding or relating to the execution and/or performance of this Agreement.
- J. Sole and Exclusive Agreement; Modification:** This Agreement, together with any attachment(s) or exhibits(s), represents the sole and exclusive agreement between State and Contractor (collectively “Parties”) with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. Only a written instrument executed by the Party waiving compliance may waive or modify the terms of this Agreement. The failure of either Party at any time to require performance of any provision hereof shall in no manner affect the right at a later date to enforce the same. No waiver by either Party of any term of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be a further or continuing waiver of such term or of any other term of this Agreement.
- K. Governing Law; Jurisdiction and Venue for Contract Litigation:** This Agreement shall be governed and construed under the laws of the State of Kansas, without regard to its conflicts or choice of laws rules. Any litigation of this Agreement between the parties shall be commenced and maintained in Federal District Court, District of Kansas, sitting at Topeka, or in Shawnee County District Court, the parties waiving any objection that venue in any such forum is inconvenient or improper, and the parties further consenting to, and waiving any objections to, jurisdiction (subject matter or personal) of such courts.
- L. Limitation of Liability and Disclaimer of Warranties:**
- 1. Limitation of Liability.** Except as to claims brought by a third party against State that are covered by **Section II, Item M** of this Agreement, in no event shall State have any liability for indirect, incidental, special, or consequential damages, loss of profits or income, lost or corrupted data, or loss of use or other benefits (“Extraordinary Damages”) arising out of or in any way related to any equipment, product, or service provided by Contractor pursuant to this Agreement. In any event, Contractor’s liability for any damages shall be limited to the direct actual damages proven by State, excluding any amounts relating to State’s negligence or willful misconduct.
 - 2. Disclaimer of Warranties.** Contractor’s obligations under this Agreement are in lieu of all warranties, express or implied. Contractor disclaims all warranties, including, without limitation, any warranty of merchantability and fitness for a particular purpose with regard to any equipment, product or service provided by Contractor pursuant to this Agreement.
- M. Indemnification:**
- 1.** Contractor shall defend, indemnify, and hold State and its affiliates, Agents, employees, officers, directors, and successors harmless from loss, cost, expenses, damages or liability (including reasonable attorney’s fees) resulting from actions, causes of action or claims brought or threatened hereunder, for (a) any actual or alleged negligence or dishonesty of, or any actual or alleged act of commission or omission by, Contractor or any of its employees, agents or subcontractors; in providing the equipment and services hereunder, (b) the operation of Contractor’s business or Inmate Telephone System (hereafter “ITS”); (c) any breach by Contractor of its obligations hereunder; or (d) any alleged patent, copyright or trademark infringement or unauthorized use of trade secrets

- or other proprietary rights in connection with the ITS, except where such claims, demands or liabilities are due to the negligence of State, its agents or employees.
2. Contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by State, including its Agents, employees, and assigns.
 3. Contractor agrees that State shall not be responsible for any liability incurred by Contractor or Contractor's agents, employees, or assigns arising out of the performance of this Agreement. Subject to **Item M.2** above, Contractor further agrees to indemnify, defend, and hold State harmless from causes of action arising out of or relating to the services rendered by Contractor under this Agreement.
 4. State agrees to provide Contractor with reasonable and timely notice on any claim, demand, or cause of action made or brought against State arising out of or related to the services rendered by Contractor. Contractor shall have the right to defend any such claim as its sole cost and expense with its exclusive discretion. State agrees not to compromise or settle any claim or cause without the prior written consent of Contractor.
 5. In the event any infringement claim is made or threatened against State, or injunctive relief is granted to a Claimant, Contractor shall (i) obtain the right for State to continue use of the services; (ii) substitute other services of like capability, or (iii) replace or modify the services to render them non-infringing while retaining like capability. In the event Contractor is unable to perform any of the above, State may terminate Agreement upon prior written notice to Contractor. The remedies provided in this subsection are State's sole remedies for Contractor's failure to perform any obligation in this subsection.
- N. Work Stoppages:** In the event of a strike, slowdown or full or partial work stoppage of any kind by the employees of Contractor, Contractor hereby acknowledges its responsibility to continue to perform its obligations under this Agreement and will indemnify State for any reasonable losses it may incur in the event of a strike, slowdown, full or partial work stoppage by Contractor's employees.
- O. Access to Correctional Facilities; Training of Contractor's Employees; compliance with Applicable Law by Contractor and Any Approved Subcontractor:**
1. Any civilian employee of Contractor or approved subcontractor shall be subject to an initial and continuing security clearance by the Wardens of the respective correctional facilities. A security clearance is required before entrance into the security perimeter of the Facilities. Contractor shall submit the names of the civilian employees, together with an authorization for the release of information signed by the employee on forms provided by State.
 2. In recognition of the sensitive nature of correctional facilities, Contractor agrees that in the event that the Warden of any of the Facilities, in the Warden's discretion, is dissatisfied with any Contractor employee who is employed, whether full time or part time, at that facility, KDOC, acting through the warden, may deny access of such employee to the Facility. The facility warden shall give written notice to Contractor of such fact and the reasons therefore, and Contractor shall promptly remove the individual in question from employment at the facility and shall cover with other appropriate personnel until an approved replacement is found. Contractor shall include a provision of like effect in its agreement with any subcontractor providing services on the premises of a correctional facility.

3. All civilian personnel employed by Contractor or any approved subcontractor pursuant to this agreement shall attend an orientation program and annual training designed by the Wardens of the respective Facilities. Contractor's employees shall promptly notify staff at the Facilities of any security problems that come to their attention.
4. All personnel of Contractor and any approved subcontractor shall comply with the published and written regulations and policies and procedures of KDOC, with general orders from the Facility, and the laws of the State of Kansas and the United States of America. Contractor's personnel shall adhere to the same standards of personal appearance as are applicable to non-uniformed staff of KDOC. Contractor specifically agrees that its employees will comply with KDOC's policy regarding sexual harassment and discrimination.

P. Resolution of Problems and Disputes: In the event of an operational problem occurring at one or more of the Facilities, Contractor shall notify the Warden of the particular Facility and KDOC's Telecommunications Manager of such problem. In the event of an operational problem that is not facility-based, or any other problem concerning Agreement administration, Contractor shall notify the Telecommunications Manager. If either party believes the other party has violated the terms of this Agreement, the party having such belief shall notify the other party, in writing, of the alleged violation. The parties shall then meet and confer on the issue within five (5) days of receipt of the written notice.

Q. Unenforceability of Portion of Agreement and Separation of Other Provisions of Agreement: If any provisions contained in this Agreement are held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist, and the unenforceability of such provisions shall not be held to render any other provision or provisions of this Agreement unenforceable.

R. Effect of Headings: Section and paragraph headings used herein are provided solely for purposes of convenience, and are not intended to limit or define the meaning of the text to which they apply, or to be used in construing or interpreting this Agreement.

S. Mergers/Acquisitions:

1. Contractor expressly acknowledges that it is an independent contractor. Nothing in this Agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing State to exercise control or direction over the manner or method by which the Contractor or its subcontractors perform hereunder.
2. The services to be performed by the Contractor shall not be assigned, sublet, or transferred without prior written approval of State which consent shall not be unreasonably withheld or unduly delayed.
3. If the Contractor shall merge or be acquired by another firm, the following documents must be submitted to State:
 - a. Corporate resolutions prepared by the Contractor and new entity ratifying acceptance of the original contract, terms, conditions, and process.
 - b. New Contractor's Federal Identification Number (FEIN).

- T. Force Majeure:** Contractor shall not be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorists acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, or unusual weather conditions.

II. RESPONSIBILITIES OF CONTRACTOR

- A. General Responsibilities:** Contractor shall agree to all terms and conditions set forth in this Agreement, and Contractor shall agree to the specifications, including, but not limited to, the features and functionalities of the ITS listed in **Attachment A** of this Agreement. If State designates an Agent, Contractor shall follow State's direction in working with such Designated Agent.
- B. Surety Bond:** Contractor shall furnish a Surety Bond in the form of a bond issued by a Surety Company authorized to do business in the State of Kansas, a Cashier's Check, or Irrevocable Letter of Credit payable to State within ten (10) calendar days after the signing of the Agreement. The Surety Bond must be made payable to State in the amount of Twenty-Five Thousand Dollars (\$25,000.00) and will be retained during the full term of the Agreement and/or renewal term(s). No personal or company checks are acceptable. The Agreement number and the dates of performance must be specified on the Surety Bond. In the event the State exercises its option to extend the Agreement for an additional term, Contractor shall be required to maintain the validity and enforcement of the Surety Bond for the said term, pursuant to the provisions of this paragraph, in an amount stipulated at the time of the Agreement renewal.
- C. Insurance:**
1. During the period of this Agreement, Contractor agrees to carry and maintain at its expense a policy of public liability and property damage insurance acceptable to State, issued by a casualty company authorized to do business in the State of Kansas, in standard form approved by the Board of Insurance commissioners of the State of Kansas and with limits not less than those outlined below. The insurance company should have a Best Rating of no less than 13.6. Coverage provisions should insure the public from any loss or damage that may arise to any person or property by reason of services rendered by Contractor.
 2. Contractor agrees that State shall not be responsible for any liability incurred by Contractor or Contractor's employees, Agents, or assigns arising out of the performance of this Agreement. Contractor further agrees to indemnify, defend, and hold State harmless from any and all causes of action arising from this Agreement.

With respect to required insurance, **Contractor will be required to provide State with a Certificate of Insurance naming State as an additional insured. Annual renewals for the term of this policy should be submitted prior to the expiration date of any policy.**

Contractor shall:

- a. Within ten (10) days after receipt of Notice of Award, provide State with a Certificate of Insurance naming State as an additional insured.
 - b. Provide State a waiver of subrogation.
 - c. Provide State with a thirty (30) day advance written notice of cancellation to said insurance.
3. Contractor shall at its own expense be required to carry the following minimum insurance coverage and should submit a certificate of insurance reflecting coverage as follows:
- a. **Automobile Liability:**
 - (1) Bodily Injury (Each person) \$250,000
 - (2) Bodily Injury (Each accident) \$500,000
 - b. **General Liability (Including Contractual Liability):**
 - (1) Bodily Injury or Death \$1,000,000/\$500,000
 - (2) Property Damage \$100,000
 - c. **Excess Liability:**
 - (1) Umbrella Form \$1,000,000
 - d. **Workers Compensation** Statutory
4. Contractor shall provide and maintain general liability insurance with policy limits of \$1,000,000 for damages resulting in bodily injury or death of one person in any single accident. For damages resulting in bodily injury or death of more than one person in any single accident - \$500,000. Any single accident resulting in injury to or destruction of property - \$100,000. The insurance required shall be on either an occurrence basis or on claims made basis.
5. State agrees to provide Contractor with reasonable and timely notice on any claim, demand or cause of action made or brought against State arising out of or related to the utilization of equipment or services rendered by Contractor. Contractor shall have the right to defend any such claim at its sole cost and expense and with its exclusive discretion. State agrees not to compromise or settle any claim or cause without the prior written consent of Contractor.
6. Contractor agrees to carry and maintain Workers Compensation Insurance with at least statutorily required limits. The following must be provided by the Contractor and with any person or contractor with whom the Contractor enters into a contract with to provide services on a project:
- a. Provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements.
 - b. Provide a certificate of coverage showing Workers Compensation Coverage to State prior to provision of services or installation of the inmate telephone system

- c. Provide State, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project.
 - d. Obtain from each subcontractor providing services on a project, and/or each person/company with whom contracts are required to provide services on a project to State:
 - (1) A certificate of coverage, prior to that subcontractor beginning work on the project, so State will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) No later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - e. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - f. Notify State in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
 - g. Post a notice at the respective reporting work site of all persons providing services informing them that they are required to be covered and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the act of other State rules. This notice must be printed with a title in at least thirty (30) point bold type and text in at least nineteen (19) point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words or changes: **REQUIRED WORKERS COMPENSATION COVERAGE.** The law requires that each person working on this site or providing services related to this construction project must be covered by workers compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee.
7. Any subcontracts for the products/services described herein shall include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by Contractor and State and to ensure that State is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontractor in those matters described in this Agreement.
8. Contractor expressly understands and agrees that it assumes and is solely responsible for all legal and financial responsibilities related to the execution of a subcontract. Contractor agrees that utilization of a subcontractor to provide any of the products/services in the Agreement shall in no way relieve Contractor of the responsibility for providing the products/services as described and set forth herein. Contractor shall identify any subcontractors used by Contractor.

D. Contractor Status:

1. Contractor represents itself to be an independent contractor offering such services to the general public and shall not represent itself or its employees to be an employee of State. Therefore, Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold State, its officers, Agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters. Nothing in the Agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing State to exercise control or direction over the manner or method by which Contractor or its subcontractors perform hereunder.
2. Contractor has the power to enter into the transaction contemplated by this Agreement and to carry out its obligations hereunder, and is duly authorized or licensed and in good standing as a corporation to do business in the State of Kansas.
3. Contractor certifies that is has not been found guilty in a judicial or State administrative agency proceeding of unfair business practices within the year preceding the Effective Date of this Agreement. Contractor further certifies that no other officer of Contractor has served, within the past year, as an officer of another company which has been found guilty in a judicial or State administrative agency proceeding of unfair business practices. Contractor agrees that if the above certifications are false, then at the option of State, this Agreement is subject to termination, such false certifications being a material breach of this Agreement.

III. CALLING RATES, BASIS, GUARANTEE, AND PAYMENT OF COMMISSIONS

A. Compensation:

1. Collect, Pre-Paid and Debit :

- a. Contractor shall pay State a commission rate of **forty-one and three-tenths percent (41.3%)** calculated on all Gross Revenue generated by and through the ITS including but not limited to all collect, debit and pre-paid inmate telephone calls. Gross Revenue shall include, but not be limited to, all surcharges, per minute fees and any additional fees to be paid by the called party generated by the completion of all Local, Intralata/IntraState, Interlata/IntraState, Interlata/ InterState and International collect, debit and pre-paid inmate telephone calls placed from Contractor's equipment located at the Facilities. Contractor shall not charge a billing fee (also known as Bill Cost Recovery Fee) to the called party. In addition, Contract shall not charge any set-up fees (also known as processing or transaction fees) to the called party associated with pre-paid calls. Any new or additional fees and/or charges proposed by Contractor must be approved in advance by the State. State and Contractor shall mutually agree on whether the new or additional fees and/or charges shall be included in Gross Revenues, and if so, the level of commission to be paid on the additional fees and/or charges. Regulatory required charges and taxes that are intended to be paid by the called party and then remitted 100% by the billing party to the appropriate governmental agency are excluded from the Gross Revenue. Pre-paid calls include, but are not limited to, those calls completed by using a pre-paid card as well as all calls which have been pre-paid by any person or

entity and by any method of payment. Contractor shall pay commission on the Gross Revenue before any deductions are made for unbillable calls, bad debt, uncollectible calls, fraudulent calls, LEC adjustments, or any other Contractor expenses. A collect call is deemed to be complete and commission due when the called party accepts the call regardless if Contractor can bill or collect the revenue on the call. A debit call is deemed to be complete and commission due when a connection is made between the inmate and the called party, whether such connection be established by positive acceptance or by live or automated machine pick-up. Calls to telephone numbers that appear on the free call list supplied by State shall not generate revenue for Contractor and shall not be commissionable to State. Only those numbers designated by State on the free call list shall be marked as "Free" in the ITS.

- b. Additionally, State shall not be liable for any of Contractor's costs including, but not limited to, taxes, shipping charges, network charges, insurance, interest, penalties, termination payments, attorney fees, or liquidated damages. Any deviation from this process shall automatically cause the Contractor to forfeit their Surety Bond.
2. **Minimum Annual Guarantee.** Contractor shall pay the State an up-front Minimum Annual Guarantee ("MAG") of One Million Fifty-Seven Thousand Three Hundred and One dollars (\$1,057,301.00) for each year of this Agreement and any renewal terms. The MAG shall be due and payable to State on December 16th of each year of this Agreement or any renewal terms. If the sum of commissions calculated on the Gross Revenue (defined in **Section III, Item A.1.a** of this Agreement) from December 16th of the preceding year through December 15th of the current year is less than the MAG, the State shall not be responsible for refunding any portion of the MAG to Contractor. If the sum of commissions calculated on the Gross Revenue from December 16th of the preceding year through December 15th of the current year is greater than the MAG, Contractor shall calculate the additional commission due State as described in **Section III, Item A.1.a** of this Agreement. The additional commission shall be payable to the State as outlined in **Section III, Item B** of this Agreement.
3. **Pre-Paid Cards.** Contractor shall pay State **forty-one and three-tenths percent (41.3%)** of the face value of the pre-paid cards as commission. Commission shall be due when State purchases the pre-paid cards but shall be payable under **Section II, Item B** of this Agreement. All pre-paid cards ordered and received by State shall be billed to State for the full amount of the face value of the pre-paid cards. The pre-paid card invoice shall be payable within thirty (30) days of State's receipt. A pre-paid call is deemed to be complete when a connection is made between the inmate and the called party, whether such connection is established by positive acceptance or by live or automated machine pick up.
4. **Rates.** Contractor shall submit a request in writing to receive approval from State for any rate increases and/or decreases for inmate telephone calls before new rates are implemented. State will respond in writing to Contractor's request. Should Contractor decrease the calling rates without the express written approval of State, the Contractor shall be responsible for paying commissions on the Gross Revenue as determined by applying the calling rates prior to the unapproved change. Should Contractor increase the calling rates without the express written approval of State, Contractor must issue credits to all customers that are overcharged. No commission refund shall be due from State to Contractor for unapproved rate increases.

- a. Calling rates shall be defined as the combined cost of surcharges, any additional fees (other than taxes or regulatory required charges), and per minute rates charged to the called party.
- b. Both parties have mutually agreed upon the rates for inmate telephone calls, as detailed in **Attachment C** of this Agreement. Any and all charges and fees that will be assessed for all collect, debit and pre-paid inmate telephone calls shall be shown in **Attachment C** of this Agreement.
- c. For the life of the Agreement, any rate adjustments requested by Contractor for inmate telephone calls must be requested by Contractor in writing and approved by State in writing, prior to implementation.
- d. Rate adjustments requested by State will be implemented by Contractor within four (4) days of said request, subject to regulatory approval.

State shall have the option to review generated call volume and earned commission based on the calling rates specified on **Attachment C** every six (6) months throughout the life of the Agreement. The reviews shall be conducted by State and/or its Designated Agent and shall cover the preceding six (6) to twelve (12) months of traffic. If the commission earned by State exceeds the MAG, (or is projected to exceed the MAG when evaluating only six (6) months of traffic) State shall have the option, with Contractor's mutual agreement, to decrease the calling rates.

B. Payment and Reporting:

1. Payments and reports due State or its Designated Agent hereunder shall be made by Contractor no later than the twentieth (20th) day of the month following the month of traffic. Commission payments shall be sent via wire transfer and traffic detail reports shall be sent via electronic format to State or its Designated Agent.
2. Traffic detail reports shall include a detailed breakdown of the traffic for all collect, debit and pre-paid calls for each inmate telephone or inmate telephone station. Traffic detail shall include, at a minimum, each of the following items for each inmate telephone station broken down by collect, debit, and pre-paid call types: (a) Facility Name; (b) Facility Identification Number; (c) Facility Street Address, City, State, and Zip Code; (d) Automatic Number Identifier, or Inmate Telephone or Inmate Telephone Station Number; (e) Total Gross Local Revenue and Commission per Inmate Telephone or Inmate Telephone Station; (f) Total Gross Intralata/IntraState Revenue and Commission per Inmate Telephone or Inmate Telephone Station; (g) Total Gross Interlata/IntraState Revenue and Commission per Inmate Telephone or Inmate Telephone Station; (h) Total Gross Interlata/InterState Revenue and Commission per Inmate Telephone or Inmate Telephone Station; (i) Total Gross International Revenue per Inmate Telephone or Inmate Telephone Station; (j) Commission Rate; (k) Total Commission Amount (including, but not limited to, Local, Intralata/IntraState, Interlata/IntraState, and Interlata/InterState); (l) Period Dates; (m) Total Minutes of use per Inmate Telephone or Inmate Telephone Station for each call type; (n) Total Number of Calls per Inmate Telephone or Inmate Telephone Station for each call type; (o) Total Debit Usage for each call type; (p) Total Pre-Paid Usage for each call type.

3. Monthly raw Call Detail Records and Billing Files shall be delivered to State and/or its Designated Agent no later than the twentieth (20th) day of the month following the month of traffic.
 - a. The Billing Files shall contain all fields, with the contents of said fields in the exact format and exact content as those files prepared and submitted for billing to the called party. The billing files shall be accompanied by a complete file map and complete field legend. The billing files shall contain, but shall not be limited to, the following fields: (a) Site ID; (b) Site Name; (c) Batch ID; (d) Row ID; (e) From ANI; (f) To ANI; (g) Begin Time; (h) End Time; (i) Duration; (j) Call Amount; (k) Type of Call; (l) Originating City; (m) Bill City; (n) Bill State; (o) Revenue Period.
 - b. The raw Call Detail Records shall contain all calls (both attempted and completed) which originated from the Facilities for each day and each time of the day for the period for which said raw Call Detail Records are requested. The raw Call Detail Records shall contain the unedited data including all fields and all field content. When requested, these records shall be accompanied by a complete file map and complete file legend. The raw call detail records shall contain, but shall not be limited to, the following fields: (a) Origination Number; (b) Dialed Number; (c) Facility; (d) Facility Identifier; (e) Call Date; (f) Call Time; (g) Status; (h) Status Code; (i) Trunk; (j) Duration in Seconds; (k) Call Amount; (l) Route; (m) Station; (n) Completion Status; (o) Inmate ID; (p) Call Type; (q) Validation Result.
4. Commission discrepancies must be resolved by Contractor within thirty (30) days of written notification of a discrepancy by State or its Designated Agent to Contractor or such discrepancy is subject to late charges, as described below and/or termination of the Agreement at the sole discretion of State, and/or any other legal course of action State elects to pursue.
5. Payments and/or traffic detail reports received by State after the due date will be subject to late charges. The due date for all payments and reporting is the twentieth (20th) day of the month following the month of traffic. Late charges for commission payments shall be equal to five percent (5%) per month of the commission due. Late charges for traffic detail reporting shall be a fee of \$750.00 per month for each report not received by the twentieth (20th) day of the month following the traffic month. If both the commission payment and reporting are not received by the due date, the larger of the late charges will be imposed.

C. Audit Rights:

1. State, or its Designated Agent, shall have the right from the Effective Date of the Agreement and for a period of two (2) years after the termination date of the Agreement, upon ten (10) days written notice, to fully audit or examine any and all Contractor information pertaining to this Agreement one time per year.
2. Contractor shall maintain accurate, complete and auditable records fully reflecting the Gross Revenues from which commissions can be determined, including all call detail, Billing Files, pre-paid card and/or debit purchases, and commission reports during the term of the Agreement and for no less than two (2) years after the term of the Agreement covered thereby in accordance with generally accepted accounting principles. Failure by Contractor to comply with this full audit rights provision will be grounds for termination of the Agreement at State's sole discretion.

3. State may also employ at its cost and discretion any Agent or subcontractor of its choosing in the performance of such audits. If an audit reveals a shortage State and Contractor shall be notified promptly and the shortage will be paid immediately. Further, if a shortage occurs that is greater than 5% of the annual commission due, Contractor agrees to pay the reasonable cost for the annual audit.

IV. MISCELLANEOUS TERMS:

- A. Interpretation:** This Agreement shall be interpreted under, and governed by, the Laws of the State of Kansas. The parties hereto agree that any action relating to this Agreement shall be instituted in the State of Kansas.
- B. Severability:** If any part of this Agreement is contrary to any Federal, State or Local law, it is not applicable and such invalidity shall not affect the other provisions or applications of this Agreement which can be given effect without the invalid provision or applications. To that end, the provisions of this Agreement are declared to be severable. If any provision hereof is held invalid by a Court of competent jurisdiction that provision shall be automatically deleted and all remaining provisions shall remain in full force and effect.
- C. Discrepancy:** Should there be a discrepancy in the Agreement, the RFP, and the RFP response, the terms and conditions contained in the Agreement and its amendments will prevail over the RFP, and the RFP will prevail over the responses to the RFP. However, in the event of any conflict, forms DA-45 and DA-146a shall control over all other documents.
- D. Dispute Resolution by Executives.** All disputes will first be submitted for resolution to a top executive of each Party. Each such executive shall have authority to bind the Party in all matters in connection herewith. Within thirty (30) days of such submission, the executives will meet to resolve the dispute and may decide to hear additional arguments that a party may wish to make in connection therewith. If the executives reach agreement on the disposition of the dispute, they will promptly issue their joint written decision resolving the dispute. Any dispute dealt with in this manner will be considered conclusively resolved and may not be the subject of any arbitration or litigation between the Parties. Any dispute that cannot be promptly decided in this manner by the executives may be taken by the aggrieved party to arbitration as described below.

ADDENDUM

June 8, 2009

Addendum Number: 1

Contract Number: 10481

PR Number: 014621

Item: Telephone Services-Inmate

Agency: Kansas Department of Corrections

Period of Contract: December 17, 2007 through January 1, 2010
With two (2) one (1) year renewal options

Contractor: EMBARQ Payphone Services, Inc.
9300 Metcalf Avenue
Overland Park, Kansas 66212
Toll Free Telephone: 877.907.7774
Local Telephone: 913.534.5699
Fax: 913.397.3591
FEIN: 59.3268090

Contact Person: Mike Hynes
michael.p.hynes@embarq.com
Telephone: 866.224.5139
Cell: 724.612.6249

Conditions:
Please see the attached

Charles E. Miller
Procurement Officer

CEM:nl

Amendment No. 1
to
Agreement #10481 Between
Kansas Department of Corrections and
Embarq Payphone Services for
Inmate Telephone Service

This First Amendment ("Amendment") has an effective date of January 15, 2009 ("Amendment Effective Date") by and between Kansas Department of Corrections with its principal place of business located at 900 SW Jackson Street, 4th Floor, Topeka, KS 66612 ("KDOC") and Embarq Payphone Services, Inc. with its principal place of business located at 9300 Metcalf Avenue, Overland Park, KS ("Contractor").

WITNESSETH:

WHEREAS, on December 16, 2007, KDOC and Contractor entered into an Agreement for Inmate Telephone Service ("Agreement") under which Contractor agreed to install and operate prison inmate telephones, related equipment and additional/optional services further described in **Section II** upon the premises of KDOC's Facilities; and,

WHEREAS, the parties have determined that the Agreement requires Amendment;

NOW, THEREFORE, in consideration of the mutual covenants herein, and other good and valuable consideration, KDOC and Contractor (through its subcontractor, JPay Inc.) hereby agree as follows:

1. **Attachment D**, Contractor Responsibilities for Kiosk Features and Functionalities and Related Applications, and **Attachment E**, Required Equipment, Transaction Fees and Compensation, are hereby added to the Agreement.

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DIVISION OF PRISONS

ATTACHMENT D

**CONTRACTOR RESPONSIBILITIES FOR KIOSK FEATURES AND
FUNCTIONALITIES AND RELATED APPLICATIONS**

I. General Requirements

- A. Contractor will provide all services described in this Amendment through its subcontractor, JPay, Inc. ("JPay").

- B.** Contractor agrees to install and operate prison inmate kiosks and related applications at no cost to KDOC. If KDOC designates an Agent, Contractor shall follow KDOC's direction in working with such Designated Agent.
- i.** The applications and services shall be provided in accordance with this section and to all of the KDOC Facilities listed in **Attachment B** of the Agreement.
 - ii.** The applications and services ("Applications") shall be implemented as specified in **Section II** below and at no cost to KDOC. The Applications shall include, but not be limited to the following:
 - a.** Electronic Deposits;
 - b.** Trust Account Lock-Up,
 - c.** Inbound Electronic Messaging with Attachments,
 - d.** Printouts of Inbound Electronic Messages and Attachments,
 - e.** Outbound Electronic Messaging with Attachments,
 - f.** Storage Gallery,
 - g.** Inmate Pre-Pay/Debit Account Purchases,
 - h.** Video Visitation,
 - i.** Electronic Grievances,
 - j.** Electronic Calling List Submissions, and
 - k.** Electronic Media.
- C.** Contractor shall notify KDOC of any new software or hardware upgrades available for installation for the Applications within thirty (30) days of the introduction of the new software or hardware into the market by Contractor.
- i.** Contractor shall provide written detailed information about the change and/or upgrade, specifically identifying additional features and functionalities that shall be made available and installed, if so desired by KDOC.
 - ii.** Contractor shall receive written notification from KDOC and/or its Designated Agent, before scheduling or proceeding with any changes.
 - iii.** All upgrades/changes shall be made by Contractor at no cost to KDOC.
- D.** Failure to perform under this Amendment shall not constitute breach of the Agreement. Should JPay fail to adequately perform the services described, Contractor will use its best effort to identify a replacement service with equivalent functionality for KDOC.

II. Initial and Ongoing Service/Applications Installation

- A.** Contractor agrees to complete the initial installations within one hundred and twenty (120) days of the Amendment Effective date ("Implementation Period"), and implement the following Applications selected by KDOC under this Amendment for KDOC Facilities/locations with existing data and power networks ("Existing Wiring"). Contractor shall work to complete the additional installations for the KDOC Facilities/locations requiring data and power networks within thirty (30) days of the completion of the Implementation Period.

- i. Electronic Deposits,
 - ii. Trust Account Look-Up,
 - iii. Inbound Electronic Messaging with Attachments,
 - iv. Printouts of Inbound Electronic Messages and Attachments,
 - v. Outbound Electronic Messaging with Attachments,
 - vi. Storage Gallery, and
 - vii. Inmate Pre-Pay/Debit Account Purchases.
- B.** Upon mutual agreement between KDOC and Contractor, Contractor shall implement **Items h – k of Section I** above within ninety (90) days.
- C.** Contractor agrees to obtain KDOC's written permission before proceeding with any work that requires cutting into or through beams, concrete or tile floors, partitions or ceilings, or any work that may impair fireproofing or moisture proofing, or potentially cause any structural damage.
- D.** KDOC agrees to assist Contractor with the file integration, network set-up, banking integration and provide Contractor with physical access to the Facilities so that Contractor can install and implement the Applications within the Implementation Period.
- E.** KDOC agrees to allow Contractor the use of KDOC's Existing Wiring available at the Facilities. Existing Wiring shall include all data connectivity from the data ports to the Contractor's servers including all switches and required power. Contractor shall be responsible for installing additional network circuits at no cost to KDOC, as determined necessary, to support the provision of the outlined services/applications.
- i. Ownership of any wiring or conduit placed at the Facilities under this Amendment by Contractor becomes KDOC's property upon the termination and/or expiration of the Agreement.
 - ii. Contractor agrees that if any cabling work is required, all new cables shall be used and marked clearly and legibly at both ends and must meet all applicable EIA/TIA wiring standards for commercial buildings.
- F.** Contractor may be, upon receipt of written approval from KDOC, allowed to use inmate labor to assist with any cabling/wiring installation; however, Contractor shall be responsible for utilizing its own crews for the kiosks and other hardware equipment.
- G.** Installation of all equipment shall be accomplished during normal business hours at each Facility or as directed by the individual Facility's Warden.
- H.** Contractor shall clean and remove all debris and packaging material resulting from work performed.
- I.** Contractor shall restore to original condition any damage to KDOC's property caused by maintenance or installation by personnel associated with Contractor, including repairs to walls, floors, ceilings, etc., reasonable wear and tear excepted.
- J.** Contractor agrees to install, repair and maintain all Contractor provided equipment at no cost to KDOC. All Contractor provided equipment, installation, maintenance, and repair

costs as well as costs or losses due to normal wear and tear and/or vandalism shall be the total responsibility of the Contractor.

- K. Upon the completion of the initial installation and ongoing installations, Contractor must provide KDOC with a list of all serial numbers and identifiers for each installed kiosk.

III. Specifications for Services Provided

A. Electronic Deposits

- i. Electronic deposit functionality shall be made available to the general public via the internet, telephone (live representative), lobby kiosks installed at the Facilities, and walk-in locations. The electronic deposit functionality will enable the general public to submit funds to Contractor or Contractor's designee. The Contractor or Contractor's Designee shall then submit funds to KDOC for posting to the corresponding inmate's trust fund account.
- ii. Contractor agrees to interface with KDOC's inmate booking/offender management system and central banking system at no cost to KDOC to facilitate and complete the Electronic Deposit service.
- iii. The transaction fees charged to the general public for Electronic Deposits are outlined in **Attachment E**.
- iv. KDOC retains the right to continue its existing coupon program to allow the general public to submit deposits to inmate accounts.
- v. Contractor agrees that all deposited funds during a 24 hour period will be initiated via ACH to KDOC's banking institution within one (1) banking day of Contractor's or Contractor designee's receipt of said funds and at no cost to KDOC.
- vi. Contractor shall provide KDOC a daily report indentifying all funds that were deposited for each KDOC banking section. Except for lobby kiosk deposits, the name and billing address (including the zip code) of the person making the deposit as well as the name of the inmate and corresponding KDOC number receiving the deposit shall be provided by Contractor, at a minimum, in the report provided to KDOC. Other specific information included in the daily report shall be agreed upon by Contractor and KDOC.
- vii. Contractor shall assume responsibility for all funds deposited by the general public. KDOC shall not be held responsible for any charge-backs or fraud.
- viii. Contractor shall configure its Electronic Deposit application in accordance with KDOC's deposit/banking rules and regulations.
- ix. At a minimum, Contractor shall be responsible for obtaining and validating the name and billing address (including the zip code) of the party depositing the funds as well as the name and KDOC number of the inmate for which the general public is depositing funds.

B. Kiosks and Featured Applications

- i. Contractor agrees to install tamper-resistant and durable kiosk units suitable for a correctional environment. Each kiosk, at a minimum, shall be equipped with a monitor with tempered glass and a built-in keyboard and mouse, at no cost to KDOC. However, Contractor may install a "soft-kiosk" model at select minimum security locations designated by KDOC and only upon KDOC's request/approval.
- ii. The kiosks shall be video-visitation-ready at no cost to KDOC. The kiosks shall include a connection for a handset should KDOC choose to implement the video visitation application at a later time.
 - a. KDOC acknowledges that Contractor's primary line of business is inmate telephone service, and that video visitation has the potential to negatively impact that business. Before implementing video visitation, KDOC and Contractor agree to work together to develop a written, mutually agreed upon scope of services that meets the needs of both parties and maintains the economic benefits of the Agreement for both parties.
- iii. The kiosks shall not include any removable parts.
- iv. Contractor agrees to install the quantity of kiosk units specified in **Attachment E**. Contractor agrees to install additional kiosks and necessary cabling/equipment at no cost in locations specified by KDOC (including outdoors) throughout the life of the Agreement and/or any renewal terms.
- v. The kiosks shall be configured to only allow inmates access to the Applications approved by KDOC. Inmates shall be prohibited from having any access to the internet or any external applications, unless specified in this section. The kiosks must communicate with pre-defined applications and servers only.
- vi. The kiosks shall not compromise KDOC's network or security provided that the kiosks are placed on a virtual or separate network with port locks and firewall rules in place.
- vii. Each kiosk unit shall include a card reader mechanism to allow for the inmate's ID card to be swiped for verification of the inmate's identity. In addition, Vendor's system shall be capable of auto-generating a unique password for each inmate upon initial login to be used in conjunction with the inmate's ID card.
- viii. The kiosks shall be capable of allowing a set number of login sessions per inmate, per kiosk or group of kiosks. The duration for each session is configurable and shall be designated by KDOC.
- ix. The kiosks shall be capable of allowing a set number of login sessions per day, week, month or year.

- x. The kiosks shall be configured to discontinue an inmate's session after ten (10) seconds of inactivity during login and after one (1) minute of inactivity while utilizing the Applications outlined in this Amendment.
- xi. The kiosks shall be configured with an automatic schedule dictating the time of day the kiosks are available for use. The schedule shall be configurable per kiosk or group of kiosks.
- xii. The kiosks shall have the capability to allow incoming and outgoing electronic messaging.
 - a. Each message/stamp shall be limited to six thousand (6,000) characters if the message is sent in medium font (default). Additionally, inmates may request a printout of a message via the kiosk and while logged into his/her individual account. The transaction fees per message/stamp and message/stamp printout are outlined in **Attachment E**.
 - 1. Message printouts shall be processed through the Facility's mailroom, following KDOC's processes and procedures for mail received by the facility.
 - 2. Each message printout, at a minimum, shall include the inmate's first and last name as well as the inmate's KDOC number.
 - b. Incoming messages may include an attachment. The file size per attachment shall not exceed one (1) megabyte (MB). Each message shall be limited to a maximum of five (5) attachments. Additionally, inmates may request a printout of a received attachment. The transaction fees charged to the general public for each attachment and transaction fees charged to the inmates for each attachment printout are outlined in **Attachment E**. Inmates shall not incur a cost for viewing an attachment.
 - 1. Attachment printouts shall be processed through the Facility's mailroom following KDOC's processes and procedures for mail received by the facility.
 - 2. Each attachment printout, at a minimum, shall include the inmate's first and last name as well as the inmate's KDOC number.
 - c. The Contractor shall submit a request in writing to receive approval from KDOC for any transaction fee increases and/or decreases for any application supplied by Contractor prior to any new transaction fees being implemented. KDOC will respond in writing to Contractor's request within a reasonable timeframe. Should Contractor increase the transaction fees without the express written approval of KDOC, the Contractor shall issue credits to all customers and inmates that were overcharged.
 - d. Inmates shall be limited to responding to received messages or writing new messages to a party from which an inmate has previously received a

message. Inmates shall be prohibited from initiating a message to a customer from whom the inmate has never received a message.

- e. The kiosks shall allow for electronic messages from staff to the inmates or a group of inmates as designated by KDOC; inmates shall not be allowed to reply/respond to the staff messages via the kiosks. Any messages from the staff to the inmate or group of inmates shall not be charged the per stamp fee and shall not be commissionable to KDOC but shall be reported to KDOC on the monthly transaction report .
 - f. The kiosk units shall allow inmates at the Facilities to retain an inbox of received messages. The inbox limit for read and unread messages is configurable and shall be designated by KDOC. Upon an inmate's release or transfer out of KDOC custody, the inmate's account must be deactivated for access through the kiosks. However, the inmate's activity and data shall be stored as specified in **Section C, item v** to allow for monitoring and administration by KDOC.
 - g. A chart of all transaction fees shall be created and posted by each kiosk by the Contractor.
- xiii. Contractor shall interface with KDOC's central banking system for the purpose of validating inmate account balances.
 - xiv. The kiosk, upon each login, shall provide the inmate with an option to obtain his/her account balance. Contractor shall work with KDOC to configure the account balance window to mirror KDOC's inmate banking screen.
 - xv. If an inmate does not have sufficient funds to process a transaction, the kiosk shall provide the inmate with a decline message stating there are insufficient funds in the account to process a transaction.

C. Monitoring and Administration of Kiosks/Featured Applications

- i. Contractor shall provide KDOC and its Designated Agent with remote access to its centralized system for the purpose of administering, monitoring, overseeing and reviewing transactions associated with the applications/services provided in this Amendment. Remote access shall be provided by Contractor at no cost to KDOC or its Designated Agent.
- ii. Contractor shall provide and install the number of workstations and color printers specified in **Attachment E** for each Facility mailroom. Contractor shall be responsible for providing the supply of paper and toner at no cost to KDOC throughout the life of the Agreement and any renewal term(s).
- iii. Access to Contractor's system shall require the use of a username and password. The access levels shall be designated by KDOC and/or its Designated Agent.
- iv. The kiosk shall have the capability to record all activity of the user in an auditable format which may be tracked through Contractor's system.

- v. Contractor shall store all messages, reports and data online for a period of 3 months and offline for a period of six (6) months beyond the last date of service under the Agreement and any extensions. Archived and/or offline messages, reports and data shall be retrieved and provided by Contractor to KDOC within two (2) business days upon receipt of the requested messages, reports and/or data.
- vi. Each incoming and each outgoing message and/or attachment shall be routed by Contractor's system to the Facility's mailroom workstation(s) for review and approval in accordance with KDOC's censorship's rules and regulations. Contractor shall ensure no messages can be viewed by the inmates prior to approval by KDOC and/or the mailroom staff.
 - a. Should KDOC reject a message and/or an attachment, Contractor's system shall transmit a notification message to the party initiating the message and/or attachment that the message and/or attachment has not been approved for delivery as well as the reason for which the message and/or attachment was not approved.
- vii. Contractor's system shall have the capability to view all stored passwords for inmate kiosks accounts as well as the capability to reset an individual password.
- viii. Contractor's system shall have the capability to allow KDOC to query all messages, attachments and data stored for the Facilities.
- ix. Contractor's system shall have the capability to alert KDOC personnel of specific activity based on pre-set criteria in Contractor's system, through email.
- x. Contractor's system shall have the capability to translate messages. The preferred languages are Spanish and English.
- xi. Contractor's system shall have the capability to disable and/or shut off service to a kiosk or group of kiosks based on the user level and password.
- xii. Contractor's system shall have the capability to track certain activities and patterns. The following reports (at a minimum) shall be made available for monitoring and investigative purposes. New reports, as requested by KDOC, shall be produced by Contractor at no cost to KDOC.
 - a. Deposits by inmate;
 - b. Deposits by sender;
 - c. Messages by inmates;
 - d. Messages by sender;
 - e. Messages by kiosk or group of kiosks;
 - f. Unified inmate data sets;
 - g. Daily, weekly and monthly statistics;
 - h. Totals by inmate;
 - i. Totals by kiosk;
 - j. Totals by Facility;
 - k. Totals by transaction type;

- xiii. Contractor's system shall provide the capability to customize reports in a format mutually agreed upon by KDOC and/or its Designated Agent and Contractor.
- xiv. Contractor's system shall have the capability to capture all activity and tasks performed by each system user.

IV. Compensation, Invoicing, Payment and Reporting

A. Compensation

- i. Contractor shall pay KDOC commission at the rate specified in **Attachment E** for all transactions generated by and through Contractor's kiosks, internet, live operators, cash locations, and featured applications. Transactions shall include, but not be limited to, all deposits to inmate accounts, incoming messages and attachments, outgoing messages, printouts of messages and printouts of attachments. Any new or additional fees and/or charges proposed by Contractor must be approved in advance by KDOC. KDOC and Contractor shall mutually agree on the increased commission to KDOC relative to the new or additional fees added to each of the services/applications.
- ii. Contractor shall pay commission on each completed transaction before any deductions are made for unbillable transactions, bad debt, rejected messages, rejected attachments rejected printouts, uncollectible transactions, fraudulent transactions, merchant adjustments, or any other Contractor expenses. A completed transaction shall be defined as the transmittal of funds by the general public to Contractor, receipt of messages/attachments by Contractor's system for processing to the Facility workstations, sending an outgoing message by the inmate to the facility mailroom, request by the inmate via the kiosk for a printout of the message and request by the inmate via the kiosk for a printout of the attachment(s).
- iii. Additionally, KDOC shall not be liable for any of Contractor's costs including, but not limited to, taxes, shipping charges, network charges, insurance, interest, penalties, termination payments, attorney fees, or liquidated damages.

B. Invoicing

To complete the reporting and commissioning processes as outlined in **Section IV**, Contractor shall, by the 15th day of the month following the activity month, submit an inmate transaction fee invoice for payment by KDOC. This invoice will be generated by and received directly from JPay. The invoice shall contain all transaction fees for inmate messages, printouts of messages and printouts of attachments collected by KDOC from the inmates for the usage associated with Contractor's kiosks at the Facilities for the previous calendar month. The invoice shall be due and payable by KDOC within thirty (30) days of receipt of the invoice. KDOC shall make such payments only from a special transaction fees account established for this purpose, and in no case shall KDOC be independently responsible for payment of transaction fees.

C. Payment and Reporting

- i. Payments and reports due KDOC or its Designated Agent hereunder shall be received by KDOC and/or its Designated Agent no later than the twentieth (20th) day of the month following the month of activity. Commission payments shall be sent via wire transfer and transaction detail reports shall be sent via electronic

format to KDOC and/or its Designated Agent. KDOC and/or its Designated Agent will receive commission payments directly from JPay.

- ii. Transaction detail reports shall include a detailed breakdown of the activity for all transaction types, including but not limited to, electronic deposits, electronic messages, attachments and message/attachment printouts for each kiosk unit. Transaction detail shall include, at a minimum, each of the following items for each kiosk and/or each transaction type: (a) Facility Name; (b) Facility Identification Number; (c) Facility Street Address, City, State, and Zip Code; (d) Kiosk Identifier (where applicable) (e) Transaction Period Dates; (f) Gross Revenue Per Transaction Type, Per Inmate, Per Kiosk; (g) Commission Rate (h) Total Commission Amount Transaction Type, Per Kiosk per Inmate (i) Total Number of Transactions per Transaction Type, Per Kiosk, Per Inmate.
- iii. Commission, invoicing and/or reporting discrepancies must be resolved by Contractor within thirty (30) days of written notification of a discrepancy by KDOC or its Designated Agent to Contractor or such discrepancy is subject to late charges, as described below and/or termination of the Agreement at the sole discretion of KDOC, and/or any other legal course of action KDOC elects to pursue. The parties agree that any non-performance by Contractor under this Amendment shall not constitute a breach of the Agreement.
- iv. Payments and/or transaction detail reports received by KDOC and/or its Designated Agent after the due date specified above will be subject to late charges. Late charges for commission payments shall be equal to two percent (2%) per month of the commission due. Late charges for transaction detail reporting shall be a fee of \$250.00 per month for each report not received by the twentieth (20th) day of the month following the activity month. Late charges for resolution of an invoicing discrepancy shall be a fee of \$25.00 for each day that the discrepancy remains unresolved past the initial thirty (30) day period.

V. General Maintenance

- A. Contractor shall provide the necessary labor, parts, materials and transportation to maintain all proposed kiosks in good working order and in compliance with the equipment manufacturer's specifications throughout the life of the Agreement. No charge shall be made to KDOC for maintenance of the kiosks or featured applications.
- B. Contractor shall have the capability to perform remote diagnostics to determine if a problem is associated with the kiosk unit, network or featured application.
- C. Contractor must exhibit to KDOC a best effort approach towards the completion of software service issues within one (1) business day of the trouble reported and two (2) business days if the service issue requires repair/replacement to the hardware/kiosk.
- D. KDOC shall be notified of progress and/or delays until there is a resolution of the problem. Contractor shall notify KDOC or its Designated Agent any time a technician will be dispatched to the Facilities.
- E. Either party shall report to the other party any misuse, destruction, damage, vandalism, etc. to the kiosk units. Contractor must assume all liability for any and all such damages.

In addition, Contractor shall ensure that all kiosks are operable at least 98% of the time on a daily, weekly and monthly basis. This requirement excludes down-time associated with regularly scheduled maintenance/upgrades or facility lock-downs which require the kiosks to be shut-off. Contractor shall cooperate with KDOC to ensure maintenance/upgrades do not take all kiosks out of service at one time unless the work is completed at a time when inmates are not allowed access to the kiosks.

- F. All issues surrounding the kiosks and featured applications shall be reported by Contractor to KDOC and/or its Designated Agent promptly.
- G. Contractor shall provide KDOC or its Designated Agent a monthly report identifying the repair and maintenance items for each kiosk.
- H. KDOC may cancel this Amendment with Contractor if Contractor has not cured a service problem which renders the Kiosk inoperable within fifteen (15) days of Contractor receiving notice of the problem from KDOC or its Designated Agent.

VI. Transition

- A. Contractor shall work with KDOC, its Designated Agent, and the new Contractor to ensure an orderly transition of services and responsibilities under the Agreement and this Amendment and to ensure the continuity of the services required by KDOC.
- B. Upon expiration, termination, or cancellation of the Agreement, Contractor shall cooperate in an orderly transfer of responsibility and/or the continuity of the services required under the terms of the Agreement and this Amendment to an organization designated by KDOC. KDOC shall provide and/or perform any or all of the following responsibilities:
 - i. Contractor acknowledges that all messages, reports and data are the property of KDOC. Further, the messages, reports and data, shall be provided to KDOC by Contractor in a workable, software-compatible format at no cost to KDOC.
 - ii. Contractor shall discontinue providing service or accepting new assignments under the terms of the Agreement and this Amendment, on the date specified by KDOC. Contractor agrees to continue providing all of the services in accordance with the terms and conditions, requirements and specifications of the Agreement and this Amendment for a period not to exceed ninety (90) calendar days after the expiration, termination or cancellation date. Commissions will be due and payable by Contractor to KDOC at the compensation rate specified in **Attachment E** until the Applications and services outlined in this Amendment are no longer handled by Contractor.

VII. Training

- A. Contractor shall provide training to KDOC staff and the Facilities as directed by KDOC. Additional training shall be provided during the Agreement period and any renewals at no cost to KDOC. Training manuals shall be provided to KDOC at all training meetings and will become the property of KDOC.

- B.** Contractor shall provide informational pamphlets and marketing materials for inmates and the general public relative to Contractor's applications/services under this Amendment as requested by KDOC.

ATTACHMENT E

Required Equipment, Transaction Fees and Compensation

Inmate Kiosks Required

| Facility Name | Number of Kiosks |
|--|-------------------------|
| Lansing Correctional Facility | 30 |
| Topeka Correctional Facility | 13 |
| Winfield Correctional Facility | 9 |
| Wichita Work Release Facility | 1 |
| Ellsworth Correctional Facility | 12 |
| El Dorado Correctional Facility - Central | 10 |
| El Dorado Correctional Facility - North | 1 |
| Larned Correctional Mental Health Facility | 7 |
| Hutchinson Correctional Facility - Central | 13 |
| Hutchinson Correctional Facility - East | 2 |
| Hutchinson Correctional Facility - South | 4 |
| Norton Correctional Facility | 11 |

Workstations Required

| Facility Name | Number of Workstations and Printers |
|--|--|
| Lansing Correctional Facility | 2 |
| Topeka Correctional Facility | 1 |
| Winfield Correctional Facility | 1 |
| Wichita Work Release Facility | 1 |
| Ellsworth Correctional Facility | 1 |
| El Dorado Correctional Facility - Central | 1 |
| El Dorado Correctional Facility - North | 1 |
| Larned Mental Health Correctional Facility | 1 |
| Hutchinson Correctional Facility - East | 1 |
| Norton Correctional Facility | 1 |

**ATTACHMENT E
(Continued)**

Transaction Fees and Compensation

Electronic Payments – Transaction Fees to be charged to the Depositor

| Deposit Amount | Fee - Internet | Fee – Live Representative | Fee – Lobby Kiosk | Fee – Cash Locations | Fee – Cash Locations (Wal Mart only) |
|-----------------------|-----------------------|----------------------------------|--------------------------|-----------------------------|---|
| \$0.01-\$20.00 | \$3.95 | \$4.95 | \$3.00 | \$6.95 | \$8.95 |
| \$20.01 - \$100.00 | \$6.95 | \$7.95 | \$3.00 | \$6.95 | \$8.95 |
| \$100.01 - \$ 200.00 | \$8.95 | \$9.95 | \$3.00 | \$6.95 | \$8.95 |
| \$200.01 - \$300.00 | \$10.95 | \$11.95 | \$3.00 | \$6.95 | \$8.95 |
| Over \$300.00 | n/a | n/a | n/a | \$6.95 | \$8.95 |

Electronic Payment – Compensation to be paid to KDOC

| Number of Monthly Transactions | Commission Amount per Transaction |
|---------------------------------------|--|
| 0 - 2,500 | \$0.30 |
| 2,501 – 5,000 | \$0.35 |
| 5,001 – 7,500 | \$0.40 |
| Over 7,500 | \$0.45 |

Electronic Messaging and Attachments – Transaction Fees to be charged to the inmate or person sending the message and/or attachment.

Commission to be paid to KDOC.

| Service / Application Name | Fee Amount | Commission Amount Per Transaction |
|---|-------------------|--|
| Each Message with or without an Attachment or Attachments | \$0.43 | \$0.05 |
| Each Message Printout | \$0.43 | \$0.05 |
| Each Attachment – Color Printout | \$1.00 | \$0.05 |

2. Complete Agreement. Except as expressly modified by this Amendment, the terms and conditions of the Original Agreement are unchanged and remain in full force and effect. The Original Agreement, as amended hereby, is the complete agreement of the parties concerning its subject matter and supersedes all prior or contemporaneous agreements and representations, whether written or oral, concerning its subject matter. The Original Agreement may not be further modified or amended except by written amendment in accordance with the Original Agreement.

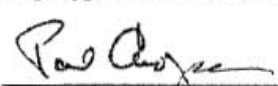
IN WITNESS WHEREOF, and intending to be bound as of the Amendment Effective Date, each of the parties has caused this Amendment to be signed by its duly authorized representative, in duplicate original, on the date(s) shown below. .

Kansas Department of Corrections

By: 
Roger Werholtz, Secretary

Date: 2/2/09

Embarq Payphone Services, Inc.

By: 
Paul N. Cooper, General Manager & Assistant Secretary

Date: January 27, 2009

ATTACHMENT A

CONTRACTOR RESPONSIBILITIES & INMATE TELEPHONE SYSTEM FEATURES AND FUNCTIONALITIES

I. General Requirements

Contractor shall furnish, install and maintain telephones for use by inmates at the Facilities operated by State shown in **Attachment B** of this Agreement. Contractor shall provide all telephone services to the inmates utilizing Contractor's ITS in accordance with those requirements and provisions set forth in this section.

- A. Contractor shall notify State of any new software upgrades within thirty (30) days of the introduction of the new software into the market by Contractor. Contractor shall upgrade the ITS with new software versions and new hardware as required by State at no cost to State.
- B. Contractor shall comply with all applicable laws, rules, regulations, and orders of any authorized agency, commission, unit of the federal government, State, county, or municipal government at no cost to State. The Contractor shall be authorized by the appropriate governing body and/or regulatory agency to be an Inmate Telephone Service Provider.

II. Security

All Contractor employees shall obtain, at Contractor's cost, the appropriate personnel background security clearances prior to arrival at the Facilities. All Contractor employees will comply with State policy and procedures. Entry to the Facilities is subject to the approval of State and/or the individual Facility Wardens.

III. Single Point of Contact

Contractor shall appoint an Account Executive ("AE") who will act as a single point of contact for all inmate telephone-related activities, inquiries, service requests and issues. Contractor will provide a toll free telephone number for inmate telephone service issues. Contractor shall also provide a fax number and an Internet email address.

IV. Initial and Ongoing Installations

- A. For each installation, Contractor shall submit an implementation plan that shall include an installation schedule. Any initial installations must be completed within seventy-five (75) days of the date Customer awards the Facilities to the Contractor. This implementation plan will become a part of the Agreement and must be followed.
- B. Contractor agrees to obtain State's written permission before proceeding with any work that requires cutting into or through girders, beams, concrete or tile floors, partitions or ceilings, or any work that may impair fireproofing or moisture proofing, or potentially cause any structural damage. State does not anticipate that such work will be required for the initial installation of the ITS.
- C. Contractor agrees to assume responsibility for all installation of equipment in accordance with the specifications contained in the manufacturer's installation instructions.
- D. The Contractor shall provide a signed Statement indicating that all circuits have been tested, and that all cables, pairs, blocks, frames, and terminals are legibly marked after completion of each installation.
- E. Use of existing or in-place conduit, raceways, cable ways, cable, inside wiring, telephone set mountings, switches, terminal boxes, enclosures, and terminals within the Facilities are at the risk of the Contractor. No exposed wiring will be permitted. Ownership of any wiring or conduit placed under this Agreement

by the successful Contractor becomes State's property upon termination and/or expiration of the Agreement.

- F. Contractor agrees that if any cabling work is required as part of any installation, all new cables shall be used and marked clearly and legibly at both ends, and must meet all applicable EIA/TIA wiring standards for commercial buildings.
- G. Contractor shall install additional telephones and monitoring and recording equipment as needed at no cost to State. This includes expansion to the existing Facilities and any newly constructed Facilities. This shall be done throughout the Agreement period and all subsequent renewal terms.
- H. Contractor shall provide and install adequate surge and lightning protection equipment on all lines used for the ITS.
- I. Installation of all telephones and related equipment shall be accomplished during normal business hours at each Facility or as directed by the individual Facility's Warden.
- J. Contractor shall clean up and remove all debris and packaging material resulting from work performed.
- K. Contractor shall restore to original condition any damage to State's property caused by maintenance or installation by personnel associated with the Contractor, including repairs to walls, ceilings, etc.
- L. Contractor agrees to install, repair and maintain all Contractor provided equipment and lines at no cost to State. All Contractor provided equipment, installation, maintenance and repair costs as well as all costs or losses due to vandalism shall be the total responsibility of the Contractor.
- M. Upon completion of initial installation and ongoing installations, Contractor must provide State with a list of telephone numbers, serial numbers, and the location of each unit.

V. Station Equipment Specifications

The ITS shall be capable of providing all operational features and system requirements applicable to all calls placed through the system, including local, long distance, and international calling.

- A. Each call, having been identified as being placed through the Contractor's ITS, shall be delivered to the called party as a collect call, pre-paid and/or a debit call, if the pre-paid and/or debit application is in effect and chosen as the means to place the call.
- B. Telephone station equipment shall be powered by the telephone line and require no additional power source. A power source will be available at the demarcation location at each Facilities.
- C. The ITS shall comply with all Federal Communication and/or Utility Commissions regulations. The ITS and telephone stations shall be sturdy, non-coin, tamper-free, durable, vandal resistant, steel armored and suitable for a detention environment. The equipment must contain no removable parts.
- D. Contractor shall provide a sufficient number of telephone lines to the ITS to prevent inmates from receiving busy signals more than 0.5% of the time.
- E. Contractor shall provide telephone reception quality at least equal to the toll quality offered to the general public and shall meet telecommunication industry standards for service quality. A minimum of twenty (20%) percent of the telephone sets must be of the "amplified" or volume controlled sort. Contractor shall accept State's decision regarding whether the reception quality meets industry quality standards.
- F. Call acceptance by the called party shall be accomplished for all collect, debit, and pre-paid calls through caller confirmation (positive acceptance). Voice recognition is not an acceptable method for positive call acceptance. The ITS shall be able to recognize and distinguish standard or irregular

busy signals, standard or irregular ringing signals, answering machines, cellular telephones, pagers, operator intercepts, quick disconnects, chain dialing, no voice from called party, etc.

G. Contractor must assume all responsibility for fraud.

II.

A. During the call set up process, the ITS shall provide a pre-recorded announcement identifying that the call is coming from a specific inmate at the Facilities listed in **Attachment B** of this Agreement. All calls must be clearly identified as collect, debit or pre-paid calls to the called party. The announcement heard by the called party must be free of any toll charges and shall also include: "This call may be recorded and may be subject to monitoring."

B. The ITS shall process calls on a selective bilingual basis: English and Spanish. The inmate must be able to select the preferred language utilizing a simple code. Written dialing instructions in both English and Spanish must be permanently and prominently displayed on each inmate telephone.

C. Contractor shall subscribe to the Local Exchange Carrier Line Information Screening Data Base (LIDB). Contractor shall query this database for each inmate call and process only those calls which do not have Billed Number Screening (BNS). Contractor must assume all responsibilities for the cost and the accuracy of validation.

D. The ITS shall provide a recording back to the inmate which details why a call was not completed.

E. The ITS shall have the capability to allow free, local telephone calls per inmate as required by State.

F. The ITS shall have the capability to program a specific speed dial code to selected numbers as determined by State.

G. The ITS shall, upon request by State, provide specific information for tracking inmate calling activities and calling patterns by individual telephone numbers. The following reports shall be available for monitoring and billing purposes:

1. Monitoring reports that can be provided or sorted by any or all of the following criteria:
 - a. Daily statistical reports;
 - b. Facilities name;
 - c. Originating number;
 - d. Terminating number;
 - e. Date of call;
 - f. Time of day;
 - g. Length of call;
 - h. Type of call;
 - i. PIN number;
 - j. Frequently called numbers (for all numbers called more than 5 times in one day);
 - k. Common numbers called (for all numbers called by more than one inmate);
 - l. Originating station;
 - m. Reason for call termination; and
 - n. Bill type
2. Billing reports that can be provided or sorted by any or all of the following criteria:
 - a. Call detail report;
 - b. Amount charged per call;
 - c. Gross revenue;
 - d. Daily statistics;
 - e. Monthly statistics;
 - f. Called party/number accepting report;
 - g. Fraud/velocity report;
 - h. Separate Facilities totals and statistics;

- i. All Facilities totals and statistics;
 - j. Total calls;
 - k. Calls by date;
 - l. Time of day; and
 - m. Length of a call.
- H. The ITS shall also provide the capability to customize reports in a form mutually agreed upon by State and/or its Designated Agent and Contractor.
- I. The call detail records shall be stored in a minimum of three (3) locations to avoid any possibility of call detail records being lost.
- J. The ITS shall store all call detail records, including all attempted and completed calls from the Facilities for the life of the agreement including all additional terms. State shall have access to all call detail records from the workstations or remote computers. The workstations shall provide the capability to print a call detail report and/or copy the call detail records onto a Compact Disc (CD).
- K. Contractor shall have the ability to perform remote diagnostics to the ITS to determine if a problem is with the telephone unit or with the telephone line.
- L. The ITS shall be TCP/IP compatible and allow multiple operators simultaneous access while maintaining adequate security to prevent unauthorized use and access.
- M. Contractor shall provide accommodations necessary to comply with Americans with Disabilities Act (ADA) requirements, including but not limited to providing telephones which are accessible to persons in wheelchairs and providing systems that are compatible with Telephone Devices for the Deaf (TDD). Contractor shall ensure security and control of all calls placed with the TDD units provided under this RFP. Contractor shall provide the requested number of TDD units as specified in **Attachment B** of this Agreement.
- N. The ITS must offer the called party an option to receive a rate quote at the time of the call.
- O. Pro bono calls to Consulates of all countries are required for ICE detainees and shall be provided at no cost to State.
- P. Contractor shall have the capability to establish an "informant" line. Calls to the "informant" line shall be free and shall be routed via the ITS to a destination designated by State. If so requested by State, the destination for the "informant" line may be an automated voicemail box.

VI. Security Features

- A. The ITS shall prohibit direct-dialed calls of any type.
- B. The ITS shall prohibit access to "411" information service.
- C. The ITS shall prohibit access to 800 and 900 type services.
- D. The ITS shall prohibit access to multiple long distance carriers via 950, 800 and 10 10-XXX numbers.
- E. The ITS must be able to be shut down quickly and selectively. State must be able to shutdown the ITS by cut-off switches at several locations including, but not limited to:
 - 1. At demarcation location - total Facilities telephones;
 - 2. By central control center - select telephones; and,
 - 3. By select housing units - control center.

- F. The ITS shall be able to take an individual station out of service without affecting other stations or units.
- G. The ITS shall prevent any inmate telephone from receiving any incoming calls. Contractor agrees that no inmate telephone shall be capable of receiving an incoming call and Contractor shall work with the local exchange carriers (LECs) to ensure such control.
- H. The ITS shall have a fraud prevention feature. This feature will randomly interject pre-recorded announcements throughout the duration of the conversation to the called party indicating the source of the call. The inmate must not be able to interfere with these announcements.
- I. The ITS, upon detection of a three way call (call forwarding and conference calls, etc.), shall have the capability to terminate the call immediately.
- J. Contractor shall notify State once the ITS has the capability to detect and terminate Remote Call Forwarding calls.
- K. The ITS shall have the ability of answer detection.
- L. The ITS shall be capable of denying certain telephone numbers from inmate dialing.
- M. The inmate's call shall be muted until the called party has positively accepted the collect, debit or pre-paid call.
- N. The ITS shall be capable of limiting the length of a call, providing the dial tone at certain times of the day and allowing a maximum number of minutes per inmate, per month.
- O. In all circumstances, the service shall limit the inmate to a single call request. The service shall always require the inmate to disconnect and initiate another call.

VII. Personal Identification Number (PIN) Application

This application may or may not be implemented by State.

- A. The PIN application shall work with the ITS using all the features and functionalities described herein.
- B. The ITS shall have the capability to provide collect, debit and pre-paid station-to-station calling utilizing a PIN.
- C. The ITS shall provide Personal Allowed Numbers (PANs) associated with each PIN. These PANs shall store a set quantity of allowed telephone numbers for each inmate.
- D. The ITS shall be capable, upon request by State, to provide specific information for tracking inmate calling activities and calling patterns by individual telephone numbers. The following reports shall be available for monitoring purposes:
 - 1. PANs per inmate or identifying number;
 - 2. Calls by PIN or other identifying number.
- E. The ITS shall have the capability to generate PINs for inmates through the inmate telephones by randomly generating some number unique to the inmate.
- F. The ITS shall have the capability to interface with the State booking system so that the inmate PIN will be automatically transferred to the ITS. If State elects the interface option, the Facilities shall not be responsible for entering PIN numbers into the ITS when new inmates are added.

- G. The PIN numbers shall be stored in a database that is accessible to designated users, depending upon the user's password level.
- H. The ITS shall include, at a minimum, an alert system that will detect and prohibit an attempted call made to a restricted number, an attempted call using a restricted PIN, or an attempted call made from a restricted telephone.
- I. The ITS shall be capable of transferring inmate information (PINs, PANs, etc.) from one Facility to another Facility without requiring manual re-entry of the inmate information.
- J. Once an inmate's account has been activated in the ITS, the inmate shall be allowed to place calls from any of the Facilities listed in **Attachment B** of this Agreement.

VIII. Monitoring and Recording Requirements

- A. The ITS shall allow State staff at the Central Office in Topeka, KS to remotely monitor live conversations and to access call recordings for all of the Facilities listed in **Attachment B** of this Agreement.
- B. The ITS shall be capable of permitting full monitoring and recording of all calls from any telephone within the Facilities unless there are restrictions that prohibit the recording and monitoring of certain calls such as attorney-client restrictions. The ITS shall have the capability to exclude those calls.
- C. The ITS shall comprehensively record all calls. At a minimum, the Facilities and State shall have the capability of playing back a recorded call. All call recordings shall be stored online for the life of the contract and any additional terms and shall be stored offline indefinitely. Contractor will be responsible for supplying all CDs/media for the storage of call recordings at no cost to State throughout the life of the Agreement and any renewal terms.
- D. The monitoring and recording of calls shall be selectively programmable by one or all of the following:
 - 1. Housing Unit;
 - 2. Start and Stop Time and Date of Call;
 - 3. Called Number; and
 - 4. PIN.
- E. The ITS shall be capable of showing real time call activity on a workstation. This activity shall be detailed by date of call, start time of call, stop time of call, originating telephone station number and called number.
- F. The ITS shall allow the manual set up of the monitoring and recording connection on an as needed basis on the workstations provided by Contractor and located at the Facilities. The ITS shall have the ability to select a particular telephone number for recording or monitoring while a call is in progress.
- G. The ITS shall have the capability of automatically calling and alerting investigators and offering live monitoring of calls. Contractor shall include detailed information on its alert application detail, at the minimum, the types of alerts available (cell phone, pager, email, etc.), required security PIN for accessing the real-time call, etc.
- H. The ITS shall provide for simultaneous playback of recorded calls and continuous recording of live conversations. It is mandatory that the playback of any selected channel must be accomplished while continuing to record all input channels.
- I. The ITS shall provide for continuous on-line diagnostics and continuous supervision, as well as local remote offline system control access for advanced programming and diagnostics. Access to the built-in advanced diagnostics and program control shall be accessible via modem by service center personnel and shall provide failure reports, service history and other diagnostics.

- J. The ITS shall provide the capability to copy call recordings onto a compact disc (CD) or other storage media in audio or MP3/data format. The storage device shall be provided by Contractor and located with the recording equipment in the area designated by State. The storage device shall be capable of transferring recordings with virtually no loss in quality and shall be capable of placing either a visual or an audio time and date stamp within the recording or call record. The storage device shall have a monitor amplifier and speaker so that the system user may confirm accurate transfers of the recorded information.
- K. Time and date entries for each recorded conversation shall be displayed on a per channel basis. The ITS shall display all conversations in chronological order to facilitate research and playback.
- L. Contractor shall provide the requested number of workstations as specified in **Attachment B** of this Agreement, working real-time with the ITS, for such monitoring, recording, and reporting. The workstations shall include a CD burner and printer. At the request of State, Contractor shall provide remote access to the ITS. The provision of remote access shall allow State the same features and functionalities, permitted by the user's level of access, available on the workstations supplied by Contractor under this Agreement.
- M. Contractor must describe how alarms and printed information will be provided.
- N. Contractor shall provide an uninterrupted power supply source to ensure there is no loss of recordings or real time call data in the event of a power failure.

IX. Inmate Based Pre-Paid or Debit Application

State plans to implement an inmate based pre-paid and/or debit application at each of the Facilities. The application must include, but not be limited to, the following:

- A. The inmate based pre-paid and/or debit application shall work with the ITS provided.
- B. The debit application shall interface with the current Commissary System for ease of transfer of money from the commissary account to the Inmate ITS account.
- C. The inmate based pre-paid or debit application shall allow for prepayment to a specific inmate's account by an inmate or a member of inmate's PAN.
- D. The ITS shall provide the inmate with the balance of their inmate based pre-paid or debit account at the time of the call.
- E. The inmate based pre-paid or debit application shall allow international calls.
- F. The inmate based pre-paid or debit application shall have the capability to terminate a debit account and refund income to the inmate or participant on the inmate's allowed PAN.
- G. The inmate based pre-paid or debit calling rates are specified in **Attachment C** of this Agreement.

X. Training

- A. Contractor shall provide training to State's staff and the Facilities as directed by State. Additional training shall be provided during the Agreement period at no cost to State. Training manuals shall be provided to State at all training meetings and will become the property of State.
- B. Informational pamphlets shall be available for inmates relative to the applicable features and functionalities of the ITS, when requested by State.

XI. Transition or Responsibilities of Contractor

- A. Contractor shall work with Customer, its Designated Agent, and the new Contractor to ensure an

orderly transition of services and responsibilities under the Agreement and to ensure the continuity of the services required by Customer.

- B. Upon expiration, termination, or cancellation of the Agreement, Contractor shall cooperate in an orderly transfer of responsibility and/or the continuity of the services required under the terms of the Agreement to an organization designated by State. Contractor shall provide and/or perform any or all of the following responsibilities:
1. Contractor acknowledges that the call records, call recordings, documentation, reports, data, etc., contained in the ITS are the property of State. Further, the call detail records, documentation, reports, data, etc. shall be provided to State by Contractor in a workable, software-compatible format at no cost to State.
 2. Contractor shall discontinue providing service or accepting new assignments under the terms of the Agreement, on the date specified by State. Contractor agrees to continue providing all of the services in accordance with the terms and conditions, requirements and specifications of the Agreement for a period not to exceed ninety (90) calendar days after the expiration, termination or cancellation date. Commissions will be due and payable by Contractor to State at the compensation rate provided in the Agreement until collect, debit and/or pre-paid calls are no longer handled by Contractor.
 3. All ITS inside wiring shall become the property of State at the conclusion of the Agreement. The Contractor agrees to remove its equipment at the conclusion of the Agreement in a manner that will allow the reuse of that wire distribution.

XII. General Maintenance

- A. Contractor shall provide the necessary labor, parts, materials, and transportation to maintain all proposed telephones in good working order and in compliance with the equipment manufacturer's specifications throughout the life of the Agreement. No charge shall be made to State for maintenance of the ITS.
- B. Contractor shall maintain all cable related to the ITS, whether reused or newly installed.
- C. Contractor shall respond to repair requests from State or its Designated Agent by arriving at the site promptly after reasonable notice has been given on a twenty-four (24) hours a day, seven (7) days a week basis, 365 days a year.
- D. Repairs or replacement shall be started by a qualified technician within four (4) hours following notification of a service request or ITS failure. Contractor must exhibit to State a best effort approach to completion of the repairs or replacement during the first twenty-four (24) hours following notification of a problem for normal maintenance and within twelve (12) hours following notification of a problem for emergency outages. State shall be notified of progress and/or delays in progress until there is resolution of the problem. Contractor shall notify State and/or its Designated Agent any time a technician will be dispatched to the Facilities.
- E. State may cancel the Agreement with Contractor if Contractor has not cured a material service problem within ten (10) days of Contractor receiving notice of the problem from State or its Designated Agent.
- F. A complete list of contractors/subcontractors, managers, administrators, technicians, etc. must be provided to State. This includes a complete list of business, cellular and beeper numbers; the Contractor's management home and emergency telephone numbers must also be furnished. Provide a copy of the current repair procedure policy for both normal maintenance and emergency outages.

- G. Either party shall report to the other party any misuse, destruction, damage, vandalism, liability, etc. to the ITS. Contractor will assume liability for any and all such damages. In addition, Contractor shall ensure that all inmate telephones are operable and maintained at an acceptable level.
- H. All issues surrounding the ITS service shall be reported by Contractor to State or its Designated Agent promptly.

ATTACHMENT B

Main Facilities:

El Dorado Correctional Facility
1737 SE Hwy 54, PO Box 199
El Dorado, KS 67042-8264

Hutchinson Correctional Facility
500 Reformatory Road
Hutchinson, KS 67501-1628

Lansing Correctional Facility
301 E. Kansas
Lansing, KS 66043-1619

Norton Correctional Facility
Route 1, PO Box 546
Norton, KS 67654

Winfield Correctional Facility
1806 Pinecrest Circle
Winfield, KS 67156

Ellsworth Correctional Facility
1607 State Street
Ellsworth, KS 67439-1628

Larned Correctional Mental Health Facility
Route 3, PO Box E
Larned, KS 67550

Topeka Correctional Facility
815 SE Rice Road
Topeka, KS 66607

Satellite Facilities:

El Dorado Correctional Facility –
North Unit
Rt. 3, Box 45A
El Dorado, KS 67042

Toronto Correctional Facility
Route 1, Box 41
Toronto, KS 66777

Hutchinson Correctional Facility –
East Unit
500 Reformatory Road
Hutchinson, KS 67501-1628

Osawatomie Correctional Facility
Carmichael Bldg.
Osawatomie, KS 66064

Stockton Correctional Facility
1210 E. Cedar
Stockton, KS 67669

Wichita Work Release Facility
401 S. Emporia
Wichita, KS 67202

ATTACHMENT B (Continued)

Inmate Telephones Required

| Facility Name | # of Inmate Telephones |
|--|-------------------------------|
| El Dorado Correctional Facility (including North Unit) | 418 |
| Ellsworth Correctional Facility | 78 |
| Hutchinson Correctional Facility (including East Unit) | 113 |
| Lansing Correctional Facility | 150 |
| Larned Correctional Mental Health Facility | 23 |
| Norton Correctional Facility | 56 |
| Osawatomie Correctional Facility | 6 |
| Stockton Correctional Facility | 7 |
| Topeka Correctional Facility | 35 |
| Toronto Correctional Facility | 4 |
| Wichita Work Release Facility | 28 |
| Winfield Correctional Facility | 63 |

Workstations Required

| Facility Name | # of Workstations |
|--|--------------------------|
| El Dorado Correctional Facility (including North Unit) | 2 |
| Ellsworth Correctional Facility | 1 |
| Hutchinson Correctional Facility (including East Unit) | 2 |
| Lansing Correctional Facility | 2 |
| Larned Correctional Mental Health Facility | 1 |
| Norton Correctional Facility | 1 |
| Osawatomie Correctional Facility | 0 |
| Stockton Correctional Facility | 0 |
| Topeka Correctional Facility | 1 |
| Toronto Correctional Facility | 0 |
| Wichita Work Release Facility | 1 |
| Winfield Correctional Facility | 1 |
| KDOC Central Office | 1 |

Portable and TDD Telephones Required

| Facility Name | # of Portable Telephones | TDD Units |
|--|---------------------------------|------------------|
| El Dorado Correctional Facility (including North Unit) | 2 | 2 |
| Ellsworth Correctional Facility | 2 | 2 |
| Hutchinson Correctional Facility (including East Unit) | 2 | 2 |
| Lansing Correctional Facility | 2 | 2 |
| Larned Correctional Mental Health Facility | 1 | 1 |
| Norton Correctional Facility | 1 | 1 |
| Osawatomie Correctional Facility | 1 | 1 |
| Stockton Correctional Facility | 1 | 1 |
| Topeka Correctional Facility | 2 | 2 |
| Toronto Correctional Facility | 1 | 1 |
| Wichita Work Release Facility | 0 | 0 |
| Winfield Correctional Facility | 1 | 1 |

ATTACHMENT C

CALLING RATES

| CALL TYPE | COLLECT | | PRE-PAID COLLECT | | INMATE BASED PRE-PAID/DEBIT | |
|----------------------|------------------|------------------------|------------------|------------------------|-----------------------------|------------------------|
| | <u>Surcharge</u> | <u>Per Minute Rate</u> | <u>Surcharge</u> | <u>Per Minute Rate</u> | <u>Surcharge</u> | <u>Per Minute Rate</u> |
| Local | \$2.61 | \$0.00 | \$2.19 | \$0.00 | \$1.96 | \$0.00 |
| Intralata/Intrastate | \$2.30 | \$0.10 | \$1.86 | \$0.09 | \$1.73 | \$0.07 |
| Interlata/Intrastate | \$1.96 | \$0.41 | \$1.27 | \$0.38 | \$1.47 | \$0.31 |
| Interlata/Interstate | \$1.70 | \$0.40 | \$1.30 | \$0.35 | \$1.28 | \$0.30 |
| International | N/A | N/A | \$1.30 | \$0.35 | \$1.28 | \$0.30 |