

CONTRACT AWARD

Date of Award: February 1, 2013

Contract ID: 0000000000000000000037748
Event ID: EVT0001446

Replaces Contract: 10481

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

Item: Inmate Telephone Services

Agency/Business Unit: Department of Corrections

Period of Contract: February 1, 2013 through January 31, 2016
(With the option to renew for two (2) additional one (1) year periods)

Contractor: EMBARQ PAYHONE SERVICES INC
dba CenturyLink
5454 West 110th Street
OVERLAND PARK, KS 66211

Vendor ID: 0000155806
Local Telephone: 913-534-6002
Fax: 913-397-3523
FEIN: 59-3268090
Contact Person: Paul Cooper
E-Mail: Paul.N.Cooper@centurylink.com

Payment Terms: Net 30 Days

Political Subdivisions: Pricing is not available to the political subdivisions of the State of Kansas.

Procurement Cards: Agencies may not use a P-Card for purchases from this contract.

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

The above referenced contract award was recently posted to Procurement and Contracts website. The document can be downloaded by going to the following website:

<http://www.da.ks.gov/purch/Contracts/>

**AGREEMENT FOR INMATE TELEPHONE SERVICE
BETWEEN
KANSAS DEPARTMENT OF CORRECTIONS
AND
EMBARQ PAYPHONE SERVICES, INC. DBA CENTURYLINK
CONTRACT NO. 00000000000000000037748**

AND NOW, on this 1st day of February, 2013, 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, Inc. dba CenturyLink, (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 ("Facilities"), as listed in Attachment B of this Agreement, which may be modified by KDOC during the term of the contract; and

WHEREAS, State duly issued Request for Proposal No. EVT0001446, on the date of May 15, 2012 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.

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

Contractor shall provide a turnkey inmate calling solution which shall include, without limitation, collect, pre-paid collect, debit and free calls. Contractor shall install and operate inmate telephones and related equipment. Contractor shall, without cost to KDOC, provide all wiring for the inmate telephones and related equipment, install the inmate telephones and the related hardware and software specifically identified herein, to enable inmates at the Facilities to complete without limitation, local, long distance and/or international collect, pre-paid collect, debit and/or free calls from the Facilities.

B. Agreement Formation

The Agreement between the parties consists of:

1. **DA146 (Attachment D)**
2. Amendments to this Agreement;
3. This Agreement;
4. Request for Proposal No. EVT0001446; and
5. Contractor's written proposal.

In the event of a conflict in terms of language among the documents, the above order of precedence shall govern.

C. Notices

Any notice required by this Agreement shall be given in writing and delivered in person, by registered, certified or overnight mail delivery service to the party's address listed below.

State:

Secretary of Corrections
900 S.W. Jackson, 4th Floor
Topeka, KS 66612-1284
ATTN: Chief Legal Counsel

Contractor:

Embarq Payphone Services, Inc. dba
CenturyLink
5454 W. 110th Street
Overland Park, KS 66211
ATTN: Paul Cooper

With a copy to:

Kansas Department of Administration
Procurement and Contracts
800 SW Jackson St, Suite 600
Topeka, Kansas 66612-1286
RE: EVT0001446

D. Agreement Term and Termination

This Agreement shall commence upon February 1, 2013(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 January 31, 2016 (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) 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.

1. 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.

2. Termination for Cause

- a. The State may terminate the Agreement, or any part of the Agreement, for cause under any one of the following circumstances:

1. Contractor fails to make delivery of goods or services as specified in this Agreement;
 2. Contractor provides substandard quality and/or workmanship;
 3. Contractor fails to perform any of the provisions of this Agreement, or
 4. Contractor fails to make progress as to endanger performance of this Agreement in accordance with its terms.
- b. The State shall provide Contractor with written notice of the conditions endangering performance. If Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as KDOC may authorize in writing), the State shall issue Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.
3. **Termination for Convenience**
- a. The Director of Purchases may terminate performance of work under this Agreement in whole or in part whenever, for any reason, the State shall determine that the termination is in the best interest of the State. In the event that the State elects to terminate this Agreement pursuant to this provision, it shall provide Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. Contractor shall continue to perform any part of the work that may have not been terminated by the notice.
 - b. The transition period referred to in **Section III of Attachment A** of this Agreement will begin upon termination. 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.

E. Rights and Remedies

1. If the awarded Agreement is terminated, the State, in addition to any other rights provided for in the contract, may require Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.
2. The rights and remedies of the State provided for in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

F. Force Majeure

Contractor shall not be held liable if the failure to perform under this Agreement arises out of causes beyond the control of Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.

G. Waiver

Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by the State shall not constitute a waiver.

H. Independent Contractor

1. Contractor and State, in the performance of the Agreement, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.
2. Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

I. Staff Qualifications

1. Contractor shall warrant that all persons assigned by it to the performance of the Agreement shall be employees of Contractor (or specified subcontractor) and shall be fully qualified to perform the work required. Contractor shall include a similar provision in any contract with any subcontractor selected to perform work under this contract.
2. Failure of Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of the Agreement and/or damages.

J. Subcontractors

Contractor shall be the sole source of contact for this Agreement. The State will not subcontract any work under the Agreement to any other firm and will not deal with any subcontractors. Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of this Agreement shall apply without qualification to any services performed or goods provided by any subcontractor.

K. Conflict of Interest

Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the State and who are providing services involving this Agreement or services similar in nature to the scope of this contract to the State. Furthermore, Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

L. Confidentiality

Contractor may have access to private or confidential data maintained by the State to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 et seq.) in providing services under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of this Agreement or thereafter. Contractor must agree to return any or all data furnished by the State promptly at the request of the State in whatever form it is maintained by Contractor. On the termination or expiration of the Agreement, Contractor will not use any of such data or any material derived from the

data for any purpose and, where so instructed by the State, will destroy or render it unreadable.

M. Nondiscrimination and Workplace Safety

Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this Agreement.

N. Environmental Protection

Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this Agreement for cause.

O. Hold Harmless

1. Contractor shall defend, indemnify, and hold the 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 (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 the State, its agents or employees.
2. The State agrees to provide Contractor with reasonable and timely notice on any claim, demand or cause of action made or brought against the State arising out of or related to the 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. The State will promptly advise Contractor of any proposed agreement to compromise or settle any claim and Contractor will have 10 days to respond to such proposal.
3. In the event an infringement claim is made or threatened against the State, or injunctive relief is granted to a claimant, Contractor shall (a) obtain the right for the State to continue use of the services; (b) substitute other services of like capability, or (c) 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, the State may terminate this Agreement upon 60 days written notice to Contractor. The remedies provided in this subsection are the State's sole remedies for Contractor's failure to perform any obligation in this subsection.
4. These indemnities and remedies shall survive the expiration or other termination of this Agreement.
5. Contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State, including its agents, employees, and assigns.
6. The State shall not be precluded from receiving the benefits of any insurance Contractor may carry which provides for indemnification for any loss or damage to

property in Contractor's custody and control, where such loss or destruction is to state property. Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

P. Care of State Property

Contractor shall be responsible for the proper care and custody of any State-owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this Agreement, and Contractor will reimburse the State for such property's loss or damage caused by Contractor, normal wear and tear excepted.

Q. Prohibition of Gratuities

Neither Contractor nor any person, firm or corporation employed by Contractor in the performance of this Agreement shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.

R. Retention of Records

1. Unless the State specifies in writing a different period of time and in conjunction with **Section III, Paragraph D**, Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of the expiration or termination of this Agreement.
2. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.
3. Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of the State and/or federal agencies shall have access to and the right to examine records during the Agreement period and during the five (5) year post contract period. Delivery of and access to the records shall be at no cost to the State.

S. Antitrust

If Contractor elects not to proceed, Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this Agreement.

T. Modification

This Agreement shall be modified only by the written agreement of the parties with the approval of the State. No alteration or variation of the terms and conditions of the Agreement shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

U. Assignment and Mergers/Acquisition

1. The services to be performed under this Agreement shall not be assigned, sublet or transferred without 30 days advance written notification to the State and then only upon Contractor's receipt of the State's written consent.
2. Upon receipt of the State's written consent, any such purchaser, assignee, successor, or delegate shall thereupon assume all rights and responsibilities of

Contractor. However, the State may assign any and/or all of its rights and obligations hereunder without Contractor's written consent but upon the State's written notice thereof to 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, acquisition 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.

3. If Contractor merges or is acquired by another entity, the following documents must be submitted to the State:
 - a. Corporate resolutions prepared by the Contractor and the new entity ratifying acceptance of the Agreement terms, conditions and processes.
 - b. New Contractor's Federal Identification Number (FEIN) if applicable.
 - c. Other documentation requested by the State.
4. Contractor expressly understands and agrees that it assumes and is solely responsible for all legal and financial responsibilities related to the execution of this Agreement. Contractor agrees that utilization of a subcontractor to provide any of the products/services in this Agreement shall in no way relieve Contractor of the responsibility for providing the products/services as described and set forth herein.

V. Third Party Beneficiaries

This Agreement shall not be construed as providing an enforceable right to any third party.

W. Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the Agreement shall not be affected and each provision of this Agreement shall be enforced to the fullest extent permitted by law.

X. Governing Law

This Agreement shall be governed by the laws of the State of Kansas and shall be deemed executed at Topeka, Shawnee County, Kansas.

Y. Jurisdiction

Contractor and State shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment.

Z. Mandatory Provisions

The provisions found in DA 146a (Contractual Provisions Attachment – **Attachment D**) which is attached are incorporated by reference and made a part of this Agreement.

AA. Integration

This Agreement, in its final composite form, shall represent the entire agreement between Contractor and State and shall supersede all prior negotiations, representations or

agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

BB. Debarment of State Contractors

Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state Contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in termination of the Agreement.

CC. Immigration and Reform Control Act of 1986 (IRCA)

1. Contractor is expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.
2. Contractor certifies without exception that such Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the Agreement to termination for cause and any applicable damages.
3. Contractor is expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the Agreement.

DD. Worker Misclassification

Contractor and all lower tiered subcontractors under the Contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in termination of the Agreement.

EE. Injunctions

Should the State be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

FF. Statutes

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the Agreement shall be amended to make such insertion or correction.

GG. Materials and Workmanship

1. Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this Agreement, within the time specified, in accordance with the provisions as specified.
2. Contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at Contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Procurement and Contracts said issue is due to imperfection in material, design, workmanship or Contractor fault.

HH. Industry Standards

If not otherwise provided, materials or work called for in this agreement shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

II. Confidentiality of Health Information

Contractor shall establish and maintain procedures and controls acceptable to the State to protect the privacy of members' health information. Unless Contractor has the member's written consent, Contractor shall not use any personally identifiable health information obtained for any reason other than that mandated by this Agreement.

JJ. Off-Shore Sourcing

If, during the term of the Agreement, Contractor or a subcontractor moves work previously performed in the United States to a location outside of the United States, Contractor shall immediately notify the State and the respective agency in writing, indicating the new location the nature of the work to be moved and the percentage of work that would be relocated. The Director of Purchases, with the advice of the respective agency, must approve any changes prior to work being relocated. Failure to obtain the Director's approval may be grounds to terminate the Agreement for cause.

KK. Price Adjustments

1. Prices shall remain firm for the entire Agreement period. Any rate adjustments or commission increases available during the Agreement period shall be offered to the State. Failure to provide available rate adjustments or commission increases may result in termination of the Agreement.
2. Any price changes will be governed by **Section III, Paragraph B.**

LL. Payment

1. Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). If applicable, this Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the State receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by Contractor and the State. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date. Further requirements are specified in **Section III, Paragraph C**.
2. Payment schedule shall be on a frequency mutually agreed upon by both the State and Contractor and as detailed in **Section III, Paragraph C**.

MM. Upgrades

Contractor shall provide upgrades for any software, firmware, or hardware at no cost to the State throughout the life of the Agreement and any renewal term(s).

NN. Acceptance

No contract provision or use of items by the State shall constitute acceptance or relieve Contractor of liability in respect to any expressed or implied warranties.

OO. New Materials, Supplies or Equipment

Unless otherwise specified, all materials, supplies or equipment offered by the Contractor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.

Notwithstanding the above, the parties agree that Contractor may utilize existing inmate telephone instruments installed within KDOC facilities, provided that they are in good working condition and Contractor performs monthly preventative maintenance checks on this equipment. Nothing in this paragraph is meant to relieve Contractor of its obligations under **Section XII** (General Maintenance) of this Agreement.

PP. Transition Responsibilities of Contractor

Upon the expiration or termination of this Agreement, should the 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 the State and the newly contracted vendor in accomplishing an efficient and effective transfer of responsibilities.

QQ. 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 the 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.

RR. 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. 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.

SS. Captions

The captions and 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.

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 award of the contract and prior to any installation work or equipment delivery. The Surety Bond must be made payable to

- a. Provide a certificate of coverage for all persons providing services on a project, showing coverage is being provided for the duration of the contract. Coverage shall be based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Kansas Labor Code.
 - b. Provide, 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.
 - c. Retain all required certificates of coverage on file for the duration of the project and for two years thereafter;
 - d. Notify State in writing, 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.
8. 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 the State and to ensure that the 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.

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

A. Compensation and Reporting

1. Contractor shall pay State a commission rate of **sixty-eight and two-tenths percent (68.2%)** on all Gross Revenue generated by and through the proposed ITS. Gross Revenue consists of all compensation, earnings, gain, income, generated revenue, payment, proceeds or receipts paid to or received by Contractor that are in any way connected to the provision of service pursuant to this Agreement. Gross Revenue includes, by way of example and not limitation, all the following: all surcharges, per minute fees and any additional fees and/or charges generated by the completion of all calls (including any combination of free, collect, debit, and pre-paid local, intralata/intrastate, intralata/interstate, interlata/intrastate, interlata/ interstate and international calls), additional fees and/or charges added to the total cost of a call or added to the called party's bill or any other compensation received by Contractor.
2. Contractor shall pay the State an up-front Minimum Annual Guarantee ("MAG") of **two million three hundred and sixty thousand dollars (\$2,360,000.00)** for each year of this Agreement and any renewal terms. The MAG shall be due and payable to the State on February 1st 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** of this Agreement) from February 1st of the preceding year through January 31st 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 February 1st of the preceding year through January 31st of the current year is greater than the MAG, Contractor shall calculate the additional commission due the State at the commission rate described in **Section III, Item A.1** of this Agreement. The additional commission shall be payable to the State as outlined in **Section III, Item C** of this Agreement.

3. Contractor shall pay the State a signing bonus of **two-hundred fifty thousand dollars (\$250,000.00)** payable within thirty (30) days of execution of this Agreement.
4. Contractor shall pay commission on total Gross Revenue (as defined above) before any deductions are made for unbillable calls, bad debt, uncollectible calls, fraudulent calls, LEC adjustments or any other Contractor expense.
5. Any additional fees to be added to the called party's bill or paid by the calling or called party (including those associated with establishing/funding pre-paid collect accounts) for inmate telephone calls from the Facilities must be approved by KDOC prior to implementation. KDOC and Contractor shall mutually agree on the method for compensation associated with the additional charges/fees due to KDOC.
6. Any charges/fees added to the called party's bill without the express written consent of KDOC shall incur a fine of \$350.00 per day from the date the additional charges/fees were first added through the date the charges/fees were discontinued. KDOC and Contractor shall mutually agree on charges to be imposed.
 - a. KDOC shall notify Contractor of any unapproved additional fees and/or charges of which KDOC becomes aware of and shall provide Contractor with an invoice for the total fine due, for which Contractor shall remit payment to KDOC within 30 days.
 - b. Should KDOC and Contractor mutually agree that the charges/fees will be imposed, KDOC and Contractor shall mutually agree on a method for compensation.
 - c. Should KDOC and Contractor mutually agree that the charges/fees are to be discontinued, Contractor shall refund each called party for the unapproved charges/fees from the date the charges/fees were implemented until the date the charges/fees were discontinued.
7. Notwithstanding the foregoing, Gross Revenue does not include:
 - a. Required regulatory 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.
 - b. A "Free" call shall be defined as a call not generating any revenue or compensation for Contractor. Calls to telephone numbers that appear on the free call list supplied by KDOC shall not generate revenue or compensation for Contractor and shall not be commissionable to KDOC. Only those numbers designated by KDOC on the free call list shall be marked as "Free" in the ITS and designated as such in the Call Detail Records. In the event Contractor receives revenue or compensation, notwithstanding the source, from any third party related to a completed free call or completes free calls not approved by KDOC, such calls or revenue shall be included in Gross Revenue and commissionable to KDOC. KDOC reserves the right to enter a free number in the ITS as deemed necessary by KDOC and without the assistance of Contractor.
 - c. Promotional calls are not commissioned.
8. A call is deemed complete, and considered part of Gross Revenue (as described above) , 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 (i.e. when the ITS considers a tone from an answering

machine, voicemail, etc. as acceptance). The call shall be deemed completed and commissionable regardless if Contractor can bill or collect revenue on the call.

9. Contractor agrees that it is entirely responsible for calculating, collecting and remitting all fees and taxes, including sales tax where applicable on all services and items provided to the inmates. This includes all taxes as applicable for collect, debit, pre-paid and any other calls or services provided.
10. Additionally it is expressly understood that KDOC is not responsible in any way, manner or form for any of Contractor's costs, including but not limited to taxes (including sales tax), shipping charges, network charges, insurance, interest, penalties, attorney fees, liquidated damages, licenses, fees, tariffs or other costs related to Contractor's services.
11. Commission for debit calls shall be based upon total Gross Revenues (as defined above) generated from debit call usage and is payable under **Section III, Item C**.
 - a. On the 5th day following the month of traffic, Contractor shall submit a monthly invoice and corresponding debit funding report to KDOC for the full amount of the debit purchases (less any issued refunds) for the prior traffic month.
12. Any deviation from this process shall automatically cause Contractor to forfeit their Surety Bond as defined in **Section II, Item B**.

B. Rate Requirements

1. Contractor and State have mutually agreed upon the rates and fees for inmate telephone calls as detailed in **Attachment C**. Calling rates shall be defined as the per minute rate(s) charged to the called party or inmate. Any and all charges and fees that will be assessed for all collect, debit and pre-paid inmate telephone calls shall be identified in **Attachment C**.
2. Before any new calling rate increases or decreases are implemented, Contractor must submit a written request to receive approval from KDOC. KDOC will respond in writing to Contractor's request.
 - a. If Contractor decreases the calling rates without the written approval of KDOC, Contractor shall be responsible for paying commissions on the Gross Revenue calculated by applying the calling rates prior to the unapproved change.
 - b. If Contractor increases the calling rates without the express written approval of KDOC, Contractor shall be responsible for paying commission on the Gross Revenue calculated by applying the increased rates. Contractor must also issue refunds to all overcharged end-users or inmates within 5 business days; a list of the issued credits must be provided to KDOC and its Designated Agent as documentation. KDOC will not issue a refund of commission paid to Contractor for unapproved rate increases. If Contractor is unable to issue refunds and/or provide the required documentation, Contractor shall issue a payment to KDOC as concession. The payment amount shall be in the amount of Contractor's portion of the Gross Revenue generated from the overbilled calls.
3. Contractor shall implement any rate adjustments requested by KDOC within 4 days of said request, subject to regulatory approval.
4. Contractor shall calculate the raw duration of each inmate telephone call in seconds based on the time the call is accepted and the time the call is terminated by the ITS

("Duration Rounding"). For calls where the duration is at least 10 seconds, the duration, in seconds, shall be rounded up to the next whole minute increment and shall be converted from rounded seconds to minutes before the calling rates are applied.

5. During the call rating process, Contractor shall round the raw calculated call amount to the nearest hundredth decimal place (up or down) using normal accounting practices ("Calling Rate Rounding").
6. For call rating purposes, mileage calculations shall be completed using airline distance between serving wire centers associated with the originating and terminating points of a call ("Mileage Rounding"). The servicing wire centers shall be determined by the area codes and exchanges of the origination and destination points. The formula for calculating airline distance is as follows; "V" and "H" coordinates shall be obtained for the wire centers serving Contractor and the destination point.

$$\sqrt{\frac{(V_1V_2)^2 + (H_1H_2)^2}{10}}$$

7. Should the number resulting from the formula be a fraction, Contractor shall round the fraction value to the next higher whole number.

C. Payment and Reporting

1. Contractor shall provide monthly commission payments and traffic detail reports to KDOC on or before the 15th day of the month following the traffic month. NOTE: If the 15th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date. KDOC requests all payments are sent via a wire transfer. KDOC requires the traffic detail reports be sent electronically in an exploitable format.
2. Traffic detail reports shall include a detailed breakdown of all traffic, including but not limited to, all collect, pre-paid and debit calls down to the inmate level and for each inmate telephone at the Facilities:
 - a. Facility Name;
 - b. Facility Identification Number/Site Identification Number;
 - c. Facility Address (Street, City, State and Zip);
 - d. Automatic Number Identifier;
 - e. Inmate Telephone Station Port/Identifier;
 - f. Inmate Telephone Location Name;
 - g. Local Call, Minutes, Gross Revenue and Commission (per inmate telephone);
 - h. Intralata/Intrastate Call, Minutes, Gross Revenue and Commission (per inmate telephone);
 - i. Interlata/Intrastate Calls, Minutes, Gross Revenue and Commission (per inmate telephone);
 - j. Intralata/Interstate Calls, Minutes, Gross Revenue and Commission (per inmate telephone);
 - k. Interlata/Interstate Calls, Minutes, Gross Revenue and Commission (per inmate telephone);
 - l. International Calls, Minutes Gross Revenue and Commission (per inmate telephone);
 - m. Commission Rate (%);

- n. Total Calls, Minutes, Revenue and Commission Amount (per inmate telephone);
and
 - o. Traffic Period and Dates.
3. The Billing Files, in EMI format, shall contain all fields which are legally permitted to be released, with the contents of said fields in the exact format and exact content as those files prepared and submitted for billing to the billing company and ultimately delivered to the called party. The Billing Files shall be accompanied by a complete file map and complete field legend. The billing files shall include, without limitation, the following fields:
- a. Record ID;
 - b. Facility Name
 - c. Facility ID
 - d. From ANI;
 - e. To ANI;
 - f. Batch Number/ID;
 - g. Seconds;
 - h. Revenue Period;
 - i. Date (yyymmdd);
 - j. Connect Time (hhmmss);
 - k. Billable Time (mmmmss);
 - l. Multiple Rate Indicator;
 - m. PIN Digits;
 - n. Originating City;
 - o. Originating State;
 - p. Bill City;
 - q. Bill State;
 - r. Rounded Bill Time Indicator;
 - s. Bill Number
 - t. LATA ID;
 - u. Settlement Code;
 - v. Message Type;
 - w. Charge Amount
 - x. Addition Fees and Line Surcharges
 - y. Specialized Calling Indicator
 - z. Validation Indicator
 - aa. Tax Exempt Indicator;
 - bb. Rate Period; and
 - cc. Rate Class.
4. The raw CDRs shall contain all calls (both attempted and completed) which originate from the Facilities for each day and each time of the day for the period said raw CDRs are requested. The raw CDRs shall contain the unedited data including all fields and all field content which is legally permitted to be released. The CDRs shall be accompanied with a complete file map and complete file legend. The raw CDRs shall include, without limitation, the following fields:
- a. Facility Name;
 - b. Facility ID;
 - c. From ANI;
 - d. To ANI;
 - e. Batch Number / ID;
 - f. From City;
 - g. From State;
 - h. To City;

- i. To State;
 - j. Station ID;
 - k. Phone Name or Location;
 - l. Inmate ID;
 - m. PIN
 - n. Pre-Paid Calling ID;
 - o. Revenue Period
 - p. Call Start (yymmdd; mmss);
 - q. Call End (yymmdd; mmss);
 - r. Seconds
 - s. Call Type (i.e. local, ect.);
 - t. Bill type (i.e. free, collect, ect.)
 - u. Cost
 - v. Tax
 - w. Validation Result
 - x. Termination Reason;
 - y. LIDB Status; and
 - z. Completion Indicator
5. Contractor shall provide monthly system platform Call Detail Records (“CDRs”) and Billing Files to KDOC no later than the 15th day of the month following the month of traffic. NOTE: If the 15th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required delivery date. Contractor shall adjust the format of the CDRs and/or Billing Files as requested by KDOC or its Designated Agent at no cost and throughout the life of the Agreement and any renewal term(s).
 6. Commission discrepancies must be resolved by Contractor, and to KDOC’s reasonable satisfaction, within 30 days of receipt of discrepancy notification from KDOC. If not resolved satisfactorily, such discrepancy will be subject to late charges described below and/or the contract may be terminated at the discretion of KDOC. KDOC further retains the right to pursue any other legal remedies it deems necessary.
 7. Commission payments, traffic detail reports, billing files, CDRs and/or reports not containing the required fields, received by KDOC after the specified date are subject to late charges and/or fines.
 - a. Late charges and/or fines for commission payments shall be equal to 5% per month of the commission due.
 - b. Late charges and/or fines for reporting shall be a fee of \$750.00 per month for each report not received by the 15th day of the month following the traffic month or for each report that does not contain all of the fields and information identified above. NOTE: If the 15th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.
 - c. If the commission payment is late, reporting is late and/or reports do not contain all required fields, late charges and/or fines for all three shall apply.

D. Reconciliation

1. From the Effective Date of the Agreement and for a period of 5 years after the termination of the Agreement, with 10 business day’s written notice, KDOC will have the right to examine and/or reconcile Contractor’s information (records, data, compensation records) pertaining to the Agreement. KDOC will have the right to

allow a State Agency or outside entity/consultant of KDOC's choice, perform any or all audits and examinations pertaining to the contract.

2. KDOC requires Contractor to maintain accurate, complete and reconcilable records, in electronic format, detailing the Gross Revenues from which commissions can be determined. The records shall include all CDRs, EMI billing files, pre-paid card sales and associated invoices, debit usage reports and associated invoices and commissioning reports during the term specified.
3. All CDRs, including all attempted and completed calls, shall be stored online for a minimum period of 3 years and stored offline for a minimum period of 5 years following the expiration of the contract. Contractor shall provide detailed information of its offline storage process. The system CDRs shall be stored in a minimum of 3 locations to avoid any possibility of CDRs being lost.

ATTACHMENT A**CONTRACTOR RESPONSIBILITIES & INMATE TELEPHONE SYSTEM FEATURES AND FUNCTIONALITIES****I. Standards**

Inmate telephone services are to be provided and shall comply with all applicable Federal Communication and/or Utility Commissions regulations relating to inmate telephone service in correctional facilities.

II. Installation Requirements

- A.** For each installation, Contractor shall submit an implementation plan, which shall include an installation schedule, for each facility. Initial installations must be completed within 75 days from the date the State provides written notification that the RFP has been awarded to Contractor. The implementation plan will become a part of the Agreement and must be followed.
1. If any portion of the installation is not completed within the timeframe allowed in the agreed-upon implementation plan, Contractor may incur liquidated damages in the amount of \$500.00 per day for each day beyond the installation date that the installation is incomplete. However, Contractor shall not incur liquidated damages if the cause of the delay is beyond the Contractor's reasonable control.
 2. Should Contractor incur liquidated damages, KDOC will invoice Contractor. Payment of the invoice shall be made to KDOC within 30 days of Contractor's receipt of the invoice.
- B.** Contractor shall be responsible for all costs associated with the ITS which shall include but not be limited to, the necessary labor, parts, materials, transportation, purchase of equipment, wiring, new electrical circuits, cables, installation, service, maintenance, voice network and transmission, data network, and day-to-day operation to maintain all proposed telephones in good working order and in compliance with the equipment manufacturer's specifications.
- C.** Contractor's ITS shall not be configured to reside on or use KDOC's network.
- D.** Contractor agrees to obtain KDOC's written approval before making any physical changes to the facility, such as drilling into walls, floors, ceilings or any other portion of the Facilities. This includes existing, newly constructed or expanded Facilities.
- E.** Contractor shall install the telephones, pedestals, enclosures and ITS equipment and software in accordance with the manufacturer's specifications.
- F.** All telephone equipment provided shall be fully operational at the time of the initial installation.
- G.** The telephone sets shall be suitable for a correctional environment, stainless steel, sturdy, non-coin, vandal and tamper resistant; the cord length for the inmate telephones is specified in **Attachment B**. Placards containing dialing instructions in both English and Spanish shall be placed on each phone and shall be replaced each time an inmate telephone set is replaced. The telephones must not contain any exterior removable parts.

- H.** Contractor shall post calling rates near each inmate telephone or group of inmate telephones. Calling rate flyers and/or additional inmate telephone related information shall be provided by Contractor upon KDOC's request and at no cost.
- I.** Use of existing conduit, raceways, cable, wiring, switches and terminal within the Facilities is at the risk of Contractor. Exposed wiring is not permitted. Ownership of any wiring or conduit installed under the Agreement by Contractor becomes KDOC's property upon termination and/or expiration of the Agreement.
- J.** Contractor agrees that if any cabling work is required as part of any installation, new cables shall be used and marked clearly and legibly at both ends, and meet all applicable Electronic Industries Alliance/Telecommunications Industry Alliance ("EIA/TIA") wiring standards for commercial buildings and must be approved by the Facilities maintenance personnel.
- K.** At no cost to KDOC, Contractor shall install additional telephones and monitoring and recording equipment as needed, within 30 days of request. This includes newly constructed or expanded Facilities.
1. If the installation is not completed within 30 days, Contractor may incur liquidated damages in the amount of \$500.00 per day for each day beyond the installation date that the installation is incomplete. However, Contractor shall not incur liquidated damages if the cause of the delay is beyond the Contractor's reasonable control.
 2. Should Contractor incur liquidated damages, KDOC will invoice Contractor. Payment of the invoice shall be made to KDOC within 30 days of Contractor's receipt of the invoice.
- L.** Contractor shall provide, install, maintain, replace and upgrade adequate surge and lightning protection equipment on all lines used for the ITS.
- M.** All telephone equipment shall be powered by the telephone line, not require an additional power source and shall have an Uninterruptible Power Supply ("UPS") back-up power. A separate power supply shall not be required. A power source will be available at the demarcation location. Contractor shall provide the UPS back-up power source to ensure there is no loss of recordings or real time call data in the event of a power failure.
- N.** Installation of all telephones and related equipment shall be accomplished during normal business hours at the Facilities or as otherwise specified by KDOC.
- O.** Contractor shall clean-up and remove all trash and packaging materials resulting from work performed. Unless otherwise specified by KDOC, no equipment, inventory or spare parts shall be stored by Contractor at the Facilities.
- P.** Contractor shall correct any damage to KDOC's property caused by maintenance or installation associated with the ITS, including repairs to walls, ceilings, etc.
- Q.** Contractor shall install, repair and maintain all Contractor provided equipment and lines, including but not limited to, any wiring or cable work required from the demarcation throughout the Facilities. All Contractor-provided equipment, installation, maintenance, repair costs and all costs or losses due to vandalism shall be the total responsibility of Contractor.

- R. Upon completion of the initial installation and any ongoing installations, Contractor shall provide KDOC with a list of telephone numbers, equipment specifications and locations of each device/unit.
- S. Contractor shall provide written documentation indicating that all circuits have been tested and all cables, pairs, fiber strands, blocks, etc. are legibly marked after completion of each installation.
- T. Contractor shall install/mount its equipment in accordance with KDOC's requirements.
- U. With the initial installation, Contractor shall transition all segregation phones at El Dorado Correctional Facility (EDCF) to be on a 1:1 phone-to-station port ratio and to each be connected to the cutoff switches at no cost to KDOC.

III. Transition

- A. Upon expiration, termination, or cancellation of the Agreement, Contractor shall accept the direction of KDOC to ensure inmate telephone services are smoothly transitioned. At a minimum, the following shall apply:
 - 1. Contractor acknowledges that the CDRs, call recordings, documentation, reports, data, etc., contained in the ITS are the property of KDOC. KDOC acknowledges the ITS hardware and software are the property of Contractor.
 - 2. At no cost to KDOC, Contractor shall supply the requested number of workstation(s) as specified in **Attachment B**, which shall become the property of KDOC after expiration, cancellation or termination of the Agreement to allow KDOC access to all CDRs, call recordings, documentation, reports, data, etc. contained in the ITS.
 - 3. Contractor shall discontinue providing service or accepting new assignments under the terms of the Agreement, on the date specified by KDOC. Contractor agrees to continue providing all services in accordance with the terms and conditions, requirements and specifications of the Agreement for a period not to exceed 90 calendar days after the expiration, termination or cancellation date. Commissions shall be due and payable by Contractor to KDOC at the percentage provided in the Agreement until collect, debit and/or pre-paid calls are no longer handled by Contractor.
- B. Contractor agrees to remove its equipment at the conclusion of the Agreement in a manner that will allow the reuse of wiring/cabling associated with the ITS.

IV. ITS and User Application Specifications

- A. 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.
- B. The ITS shall be configured to process all or any combination of the following bill types, without limitation: collect, free, pre-paid collect, pre-paid card, debit and/or speed dial.
- C. Contractor agrees to install the quantity of telephones, pedestals, enclosures, booths, etc. required by KDOC as outlined in **Attachment B**.

- D.** Contractor shall provide a sufficient number of lines, ports, channels, etc. to ensure inmates are allowed to place calls 99.5% of the time. KDOC reserves the right to require Contractor to revise its configuration to a 1:1 (telephone to line, port, etc.) ratio should the configuration installed by Contractor result in inmate complaints for busy signals or unavailable prompts. Such configuration changes shall be completed by Contractor at no cost to KDOC.
- E.** The reception quality shall meet telecommunication industry standards and shall be at least equal to the quality available to the general public. All telephone sets installed must include volume control. Contractor shall accept KDOC's reasonable decision regarding whether the reception quality is acceptable.
- F.** Call acceptance by the called party shall be accomplished for all calls through Dual-Tone Multi-Frequency ("DTMF") confirmation ("positive acceptance"). Voice recognition is not an acceptable method for positive acceptance.
- G.** The ITS shall be capable of recognizing and distinguishing standard or irregular busy signals, standard or irregular ringing signals, answering machines, digital voicemail, cellular telephones, ring-back tones, chain dialing, etc.
- H.** The ITS shall be configured to monitor the switch hook on the telephone sets. If the switch hook is pushed down or moved from its idle position, the call must be disconnected immediately and the call prompts must come on to prevent fraud or unauthorized dialing. Contractor must assume all responsibility for fraud or unauthorized dialing occurring as a result of the ITS failing to meet this requirement.
- I.** With each call, the ITS must provide an automated message to advise the called party that:
1. The call is coming from a correctional facility;
 2. The call is coming from a specific inmate; and
 3. The call may be monitored and recorded.
- J.** The ITS shall play the call acceptance information to the called party a maximum of two (2) times. With each call, the ITS shall clearly identify the type of call being placed to the called party: collect, free, etc. This recording must be free of any charges.
- K.** The ITS shall allow the inmate to record a name only once (with the first call attempted); the recorded name will be stored in the ITS and shall be played back with all call attempts. KDOC requires that no more than 2 seconds be allowed for the inmate to record a name; this setting shall be configurable in the ITS.
- L.** The ITS shall process calls on a selective bilingual basis: English and Spanish. The inmate must be able to select the preferred language at the time the call is initiated.
- M.** Contractor shall subscribe to the LEC Line Information Data Base ("LIDB"). Contractor shall query this database for each collect inmate call and process only those calls which do not have Billed Number Screening ("BNS"). Contractor must assume all responsibility for the cost and accuracy of validation.
- N.** For calls that are not completed, the ITS shall play a recorded message to the inmate detailing why the call was not completed. KDOC reserves the right to request Contractor to modify/revise the recordings at any time during the Agreement at no cost to KDOC and within 30 days of the request.

- O.** In no event shall the inmate be allowed to communicate with the called party until the call is positively accepted.
- P.** The ITS shall be able to program a specific speed dial code to selected numbers as determined by KDOC and at no cost to KDOC.
- Q.** The ITS user application shall allow KDOC to query the CDRs for inmate activities and calling patterns.
- R.** The ITS user application shall allow the following search criteria and filters to be applied to the CDR queries:
1. Inmate Name (First, Last);
 2. Inmate PIN;
 3. Record Identifier;
 4. Date Range (Start Date/Time and End Date/Tim);
 5. Facility(s);
 6. Called Number;
 7. Originating Number;
 8. Station Port;
 9. Station Name;
 10. Call Type;
 11. Bill Type;
 12. Duration (minimum and maximum);
 13. Call Amount;
 14. Flagged Calls;
 15. Monitored Calls;
 16. Recording Type;
 17. Completion Type;
 18. Termination Type;
 19. Validation Result;
 20. Pre-Paid Card ID Number;
 21. Phone Group; and
 22. Custom Search.
- S.** The ITS user application shall allow CDR query results to be exported in a format selected by KDOC (.csv, PDF, Excel, etc.).
- T.** The ITS user application shall be equipped, at a minimum, to generate the following standard reports in addition to the CDRs:
1. Call Statistics by Date Range;
 2. Frequently Called Numbers;
 3. Frequently Used PINs;
 4. Commonly Called Number;
 5. Call Detail Report;
 6. Gross Revenue Report by Date Range;
 7. Facility Totals and Statistics;
 8. Called Party/Number Accepting Report;
 9. Fraud/Velocity Report;
 10. Total Calls;
 11. Calling List (PAN) Report;
 12. Pre-Paid Card Report;
 13. Debit Usage Report;
 14. Debit Balance and Funding Report;
 15. Pre-Paid Card Balance Report;

16. Bill and Call Type Distribution;
 17. Phone Usage;
 18. Reverse Look-Up; and
 19. User Audit Trail.
- U.** The ITS shall have the capability to customize reports in a form mutually agreed upon by KDOC and Contractor.
- V.** Contractor's ITS user application shall at a minimum allow:
1. The creation, modification and deactivation of user accounts;
 2. The creation, modification and deactivation of inmate accounts;
 3. The creation and modification of telephone numbers in the ITS;
 4. Assignment of inmates or an inmate type to an agency, inmate telephone or a group of inmate telephones;
 5. Locating and accessing a specific recording by utilizing a unique recording/call identifier; and
 6. Block/unblock telephone numbers without the assistance of Contractor.
 7. Configure an alert that will detect and prohibit a call made to a restricted number, a call using a restricted PIN, or a call made from a restricted telephone.
- W.** Contractor shall ensure continuous diagnostics and supervision for call processing and call recording. Contractor shall be capable of performing remote diagnostics to the ITS to determine if a problem exists with the telephone, station port, channel, line, etc. Remote diagnostic tests will be, at a minimum, run one time each day on each telephone.
- X.** The ITS shall comply with Americans with Disabilities Act (ADA) requirements including, but not limited to, providing telephones which are accessible to persons in wheelchairs and providing devices that are compatible with Telephone Devices for the Deaf (TDD). Contractor shall provide the number of TDD telephones and ports specified in **Attachment B** and shall configure the ITS and TDD units for use as directed by KDOC. At a minimum the following shall apply:
1. Contractor shall provide a speed dial to the Kansas Relay Center at no cost to KDOC. For such calls, the ITS shall apply near real-time DTMF translation in a manner mutually agreed upon by the Parties.
 2. The ITS shall record and convert to text each TDD call placed through the ITS. The text shall be searchable and stored with each call recording.
 3. Call controls, such as inmate and telephone number validation shall be applied to TDD to TDD calls.
- Y.** The ITS must offer the called party an option to receive a rate quote during the call acceptance process.
- Z.** The ITS shall be able to accommodate pro-bono calls to Consulates for all countries which may be required for ICE detainees. This option, when requested by KDOC, shall be provided at no cost to KDOC. Contractor shall accept KDOC's direction for how pro bono calling services are configured via the ITS.
- AA.** Contractor shall be able to establish an informant line at no cost to KDOC. Calls to the informant line shall be free and shall be routed via the ITS to a destination designated by KDOC. Contractor shall accept KDOC's direction for how the informant line is configured through the ITS.

- BB.** Contractor shall be responsible for handling restrictions/suspensions associated with an inmate's telephone account based on KDOC policy and at no cost. Each facility has different criteria for restrictions; the ITS shall be capable of accommodating the following configurations. Contractor shall accept KDOC's direction for any modifications to the specified configuration at any time during the Agreement and any renewal term(s).
1. A restriction shall not allow any telephone calls to be processed by the inmate for a designated time period;
 2. A restriction shall allow an inmate to process a privileged/attorney telephone call for a designated time period;
 3. A restriction shall allow an inmate to make a single call for a designated duration per week;
 4. A restriction shall allow an inmate a single telephone call once placed on a restricted status for a designated time period.
- CC.** Contractor shall work with KDOC to implement a reporting line which complies with the Prison Rape Elimination Act (PREA) of 2003. Contractor shall accept KDOC's direction for any modifications to the specified configuration at any time during the Agreement and any renewal term(s). At a minimum, Contractor' shall:
1. Route free calls via the ITS to a destination provided and designated by KDOC and which may be the same as that used for the KDOC informant line.
 2. At no cost to KDOC, provide a telephone line to KDOC dedicated for PREA calls to which the calls will be routed as free.
 3. The ITS shall be capable of limiting access to PREA recordings. Only designated users as defined by KDOC shall have access to the PREA recordings.
 4. The ITS shall be capable of accommodating calls with and without a PIN.

V. Security Features

- A.** The ITS shall prohibit:
1. Direct-dialed calls of any type;
 2. Access to a live operator for any type of calls;
 3. Access to "411" information service;
 4. Access to 800, 888, 877, 900, 911, and any other 900 type services; and
 5. Access to multiple long distance carriers via 950, 800 and 10 10-XXX numbers.
- B.** The ITS shall prevent call collision or conference calling among telephone stations.
- C.** The ITS shall be able to be shut down and/or disable an individual telephone or telephone groups quickly and selectively without affecting other telephones or telephone groups. KDOC must be able to shut down the ITS via a workstation, the ITS user application and/or by cut-off switches at several locations including, but not limited to:
1. At demarcation location;
 2. Central control; and

3. By select housing units.
- D. The ITS shall not accept any incoming calls. Contractor shall work with the LECs to ensure such control.
- E. 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 will not be able to interfere with these announcements.
- F. The ITS, upon detection of a three-way call, forwarded call, conference call and etc. shall be able to flag and/or terminate the call immediately. These calls shall be flagged in the CDRs as such.
- G. The ITS shall allow the called party to block their telephone number during the call acceptance process.
- H. As specified by KDOC, the ITS shall have the capability to allow calls to specified numbers at specified times during the day.
- I. The ITS shall be capable of limiting the length of a call, providing service at specified times of the day and allowing a maximum number of minutes or seconds per inmate, per month. The current call time limit for the Facilities is specified in **Attachment C**. During the life of this Agreement and any renewal terms, KDOC reserves the right to modify the call time limit as mutually agreed upon by both parties.
- J. For a period of ninety (90) days following implementation of the rates specified in **Attachment C**, Contractor shall configure the ITS such that inmates and called parties will hear an announcement after every fifteen (15) minute interval of talk time. The announcement shall be mutually agreed upon by the parties and shall state that fifteen (15) minutes has elapsed and the cost of the call shall be rated. The ITS shall exclude the pre-recorded announcements from the cost of a call.

VI. **Personal Identification Number (PIN) Application**

- A. The PIN application shall work with the ITS and include all of the following features and functionalities:
 1. The capability to provide collect, pre-paid, debit and free calling utilizing a PIN.
 2. The capability to interface with the KDOC booking system so that inmate PINs will be automatically transferred to the ITS. In utilizing the interface option, the ITS shall be capable of accommodating any of the following options for inmates to use PINS to complete calls via the ITS.
 - a. KDOC booking system generates and sends to the ITS an inmate ID. The ITS shall store the inmate ID and generate an additional unique identifier to be added to the inmate ID. The combination of the inmate ID and the additional unique identifier shall be the PIN.
 - b. KDOC booking system generates and sends to the ITS and inmate ID along with an additional inmate data. The ITS shall store the inmate ID and utilize the additional inmate data to create the complete PIN.
 - c. KDOC booking system generates and sends to the complete PIN to the ITS. The ITS shall store the complete PIN.

- d. The ITS, without an interface with the KDOC booking system, auto-generates the complete PIN.
 - e. The ITS shall accept a manually entered PIN.
3. The interface between the KDOC booking system and ITS shall automatically update the status of the PIN in the ITS based on the inmate's status in the KDOC booking system (i.e. newly booked, transferred, released, etc.).
 4. Once a PIN has been activated in the ITS, the inmate shall only be allowed to place calls from the facility in which the inmate is housed.
 5. The ITS shall be capable of documenting the date/time when an individual PIN was added or modified in the ITS and by the user making the change.
- B.** The ITS shall have the capability to store a list of Personal Allowed Numbers (PANs) associated with each PIN.
1. PANs shall allow a set quantity of approved telephone numbers for each PIN.
 2. The quantity of approved telephone numbers within a PAN shall be configurable; the current limit is 20 telephone numbers, not including privileged/attorney telephone numbers.
 3. ITS shall be capable of documenting all updates, modifications and/or details for a PAN (i.e.: user name, modification made, time/date stamp, etc.).
 4. ITS shall be capable of storing the following information (at a minimum) for each telephone number on the PAN: telephone number, called party name, address and relationship to inmate.
 5. ITS shall be capable of auto-enrolling PANs to avoid manual entry. Should KDOC utilize the auto-enrollment option, ITS shall be capable of capturing the following information (at a minimum) for each telephone number on the PAN: telephone number, called party name, address and relationship to inmate.
 6. Contractor shall be responsible for providing a supply of KDOC-approved PAN forms to the Facilities on an as-needed basis and at no cost to KDOC.

VII. Monitoring and Recording Requirements

- A.** The ITS shall be capable of monitoring and recording all inmate calls from any telephone within the Facilities unless there are restrictions that prohibit the recording and monitoring of certain calls such as attorney-client privilege. The ITS shall be able to exclude restricted or privileged calls and clearly designate non-recorded calls within the ITS user application.
- B.** The ITS shall allow designated users at the Facilities to play back a recorded call or a call in progress (aka live monitoring) via the ITS user application.
- C.** The ITS shall be capable of recording calls in a manner which allows designated users to isolate the inmate or the end-user side of the recording for playback.
- D.** The ITS shall provide simultaneous playback and continuous recording of calls.

- E.** Live monitoring shall allow KDOC to view, at a minimum, the following information in chronological order.
1. Call Start Time;
 2. Facility(s);
 3. Phone Location Name;
 4. Inmate Name;
 5. Inmate PIN;
 6. Called Number;
 7. Called City, State;
 8. Call Type;
 9. Bill Type;
 10. Call Status; and
 11. Duration.
- F.** All call recordings under this Agreement shall be stored online indefinitely and offline for a period of three (3) years.
- G.** Contractor shall be responsible for supplying all storage media (CDs/DVDs, flash drives, etc.) at no cost to KDOC throughout the life of the Agreement and any renewal terms.
- H.** Contractor shall pay KDOC liquidated damages in the amount of \$300.00 per each instance wherein KDOC suffers one or more lost, unrecoverable or un-useable recording(s). KDOC agrees to notify Contractor of such instances and provide up to 7 days per instance for Contractor to produce the call recordings. Contractor shall be notified of the total amount due via written notice from KDOC. KDOC will invoice Contractor and payment shall be due within 30 days of Contractor's receipt of invoice.
- I.** Contractor shall provide KDOC with the requested number of workstations as specified in **Attachment B**, working real-time with the ITS, for such monitoring, recording and reporting. The workstations shall each include a CD/DVD burner, flat screen monitor, speakers (built in or external), mouse, keyboard, data/audio burning software, laser printer and a licensed copy of Microsoft Office (or equivalent). In addition to Contractor-provided workstations, and at the request of KDOC, Contractor shall provide remote access to the ITS at no cost to KDOC.
- J.** Access to the ITS shall be completely web-based for real-time, anywhere, anytime access to the ITS user application at no cost to KDOC. The provision of remote access shall allow KDOC the same features and functionalities, permitted by the user's level of access, available on a Contractor-provided workstation.
- K.** Contractor shall provide a mechanism and/or router, at no cost to KDOC, so each Contractor-provided workstation or remote access computer can connect to the ITS to perform daily activities such as debit entries, monitor live calls, listen to recorded calls, etc. without leaving the Facilities Local Area Network ("LAN") or without residing on KDOC's network. If necessary, Contractor shall provide KDOC with a KDOC-approved firewall to secure the connectivity between the networks. The firewall will be set up and managed by KDOC.
- L.** For the term of the Agreement, KDOC will have access to all CDRs from all workstations and remote access computers, based on the user's access level.

- M. The ITS shall be capable of providing alerts for certain calling events and (at a minimum) allowing designated users to receive or be forwarded a live call to a specified destination.
- N. The ITS user application shall transfer/copy/export recordings with no loss in quality and shall be capable of placing an audio and visual date/time stamp with the recording.
- O. The ITS shall be capable of emailing and copying recorded calls onto a CD/DVD or other storage medium in audio or MP3/data format with tamper free capabilities.

VIII. Pre-Paid / Debit Application

- A. The pre-paid and/or debit application shall allow for pre-payment to a specific telephone number or an inmate's account.
- B. The ITS shall provide the inmate with the balance of the pre-paid or debit account at the time of the call.
- C. The ITS shall provide the called party with the balance of their pre-paid collect account at the time of the call.
- D. The pre-paid and/or debit application shall allow international calls.
- E. The ITS shall be capable of interfacing with the KDOC's booking system and kiosk service provider for the ease of transferring money from the inmate's trust fund account to the ITS debit account. It is Contractor's responsibility to initiate and establish a business relationship and necessary interfaces prior to the initial installation. KDOC shall not be responsible for paying any amounts associated with the required interface.
- F. Contractor shall supply, at KDOC's request, signage, brochures, flyers regarding the ITS and/or Contractor's pre-paid and debit programs at no cost to KDOC.

IX. Security

All Contractor employees shall obtain, at Contractor's cost, the appropriate personnel background security clearance prior to arrival at the Facilities. All Contractor employees shall comply with KDOC's policy and procedures. Entry to the Facilities is subject to the approval of KDOC.

X. Training

- A. Contractor shall provide onsite training to KDOC's staff. Additional training (onsite or via the web) shall be provided to new staff at no cost to KDOC. Training manuals shall be provided to KDOC's staff at all training meetings and will become the property of KDOC.
- B. When requested by KDOC, informational pamphlets shall be available to inmates and shall describe the applicable features and functionalities of the ITS.
- C. Contractor shall provide full documentation for all of the ITS features.

XI. ITS Upgrades and Performance Process

- A.** Contractor shall provide KDOC with written notice, including detailed information, of any new ITS software upgrades or features, within thirty (30) days of the introduction of the new software or features into the industry.
- B.** Contractor shall adhere to this Performance Process when upgrading the ITS, software, equipment, or performing any changes to the ITS at the Facilities. Any deviation from this process may result in liquidated damages incurred by Contractor. Such liquidated damages will be equal to \$300.00 per occurrence. Contractor shall be notified of the total amount due via written notice from KDOC. KDOC will invoice Contractor and payment shall be due within thirty (30) days of Contractor's receipt of invoice.
- C.** Contractor shall perform extensive testing on all system changes or upgrades prior to introducing them to KDOC. At a minimum, this shall include the following:
 - 1. Extensive testing on a system identical to the ITS at the Facilities;
 - 2. Circuit testing;
 - 3. Configuration / setting preservation testing;
 - 4. Call processing;
 - 5. International calling; and
 - 6. Debit calling.
- D.** Contractor shall receive written permission from KDOC, before scheduling or proceeding with any functionality changes to the ITS at the Facilities, especially if the changes will cause an interruption in service.
- E.** Contractor shall provide KDOC with written details regarding any change to voice prompts or dialing procedures.
- F.** KDOC, at its option, shall have a minimum of two (2) weeks to notify inmates at the Facilities of any ITS changes that affect the inmates.
- G.** Contractor shall work with the Facilities to schedule changes and/or upgrades during a time when the telephones are not being used regularly by the inmates. Contractor shall coordinate a convenient time and day with KDOC to implement the changes or upgrades to the ITS to avoid an interruption in service.
- H.** Contractor shall coordinate the presence of a technician at the Facilities on the day of implementation to place test calls and ensure the ITS is functioning properly.
- I.** All said changes shall be made by Contractor at no cost to KDOC.

XII. General Maintenance

- A.** Contractor shall respond to repair requests from KDOC by arriving at the site promptly after reasonable notice has been given on a 24-hours a day, 7- days a week basis, 365-days a year.
- B.** Repairs or replacement of nonworking or damaged equipment or software shall be started by a qualified technician within 4-hours following notification of a service request or ITS failure. Contractor must exhibit to KDOC a best effort approach to the completion of the repairs or replacement during the first 24-hours following notification of a problem. KDOC shall be notified of progress and or delays in

ATTACHMENT B

Main Facilities:

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

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

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

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

Larned Correctional Mental Health Facility
1318 Highway 264
Larned, KS 67550

Norton Correctional Facility
11130 Road E-4
Norton, KS 67654

Topeka Correctional Facility
815 SE Rice Road
Topeka, KS 66607

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

Winfield Correctional Facility
1806 Pinecrest Circle
Winfield, KS 67156

Satellite Facilities:

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

El Dorado Correctional Facility
South East Medium Unit
2501 West 7th
Oswego, KS 67356

El Dorado Correctional Facility
South East Minimum Unit
1022 Fordyce
Oswego, KS 67356

Ellsworth Correctional Facility
East Unit
1655 Avenue K.
Ellsworth, KS 67439

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

Stockton Correctional Facility
1210 E. Cedar
Stockton, KS 67669

ATTACHMENT B (Continued)**Inmate Telephones Required**

Facility Name	# of Inmate Telephones
El Dorado Correctional Facility (including North & South East Units)	425
Ellsworth Correctional Facility (including East Unit)	80
Hutchinson Correctional Facility	85
Hutchinson Correctional Facility – East Unit	50
Lansing Correctional Facility	192
Larned Correctional Mental Health Facility	32
Norton Correctional Facility	60
Stockton Correctional Facility	8
Topeka Correctional Facility	54
Wichita Work Release Facility	29
Winfield Correctional Facility	64

Handset Cord Length: 24”**Workstations Required**

Facility Name	# of Workstations
El Dorado Correctional Facility (including North & South East Units)	2
Ellsworth Correctional Facility (including East Unit)	1
Hutchinson Correctional Facility	2
Hutchinson Correctional Facility – East Unit	1
Lansing Correctional Facility	5
Larned Correctional Mental Health Facility	1
Norton Correctional Facility	1
Stockton Correctional Facility	0
Topeka Correctional Facility	1
Wichita Work Release Facility	1
Winfield Correctional Facility	1
KDOC Central Office	1

ATTACHMENT B (Continued)**Portable and TDD Telephones Required**

Facility Name	# of Portable Telephones and TDD Units (each)
El Dorado Correctional Facility (including North & South East Units)	2
Ellsworth Correctional Facility (including East Unit)	2
Hutchinson Correctional Facility	2
Hutchinson Correctional Facility – East Unit	1
Lansing Correctional Facility	2
Larned Correctional Mental Health Facility	1
Norton Correctional Facility	1
Stockton Correctional Facility	1
Topeka Correctional Facility	2
Wichita Work Release Facility	1
Winfield Correctional Facility	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	\$0.00	\$0.18	\$0.00	\$0.18	\$0.00	\$0.17
Intralata/Intrastate	\$0.00	\$0.18	\$0.00	\$0.18	\$0.00	\$0.17
Interlata/Intrastate	\$0.00	\$0.18	\$0.00	\$0.18	\$0.00	\$0.17
Interlata/Interstate	\$0.00	\$0.18	\$0.00	\$0.18	\$0.00	\$0.17
International	N/A	N/A	\$0.00	\$0.60	\$0.00	\$0.60

Rates above exclude applicable taxes.

Commission

- Up-Front MAG - \$2,360,000.00
- Commission Percentage – 68.2%

Approved Fees

- **Collect**
 - Bill Statement Fee: \$0.00
- **Pre-Paid Collect**
 - Account Funding Fee by telephone or internet: \$0.00
 - Account Funding Fee through Western Union: \$5.50 (WU Swift Pay)
\$9.95 (WU Quick Collect)
 - Account Funding Fee through lobby kiosks (if implemented): TBD by mutual agreement
 - Refund Fee: \$0.00

Call Time Limit

- 60 Minutes

Implementation of new rates

Both parties acknowledge that a thirty (30) day notification period is necessary prior to modifying KDOC's current calling rates to those above, and that this notification period will begin on February 1, 2013. During this thirty-day period, the previous contracted rates will remain in place. The MAG and commission percentages above will apply to all gross revenue generated during this notification period.

ATTACHMENT D

State of Kansas
 State of Kansas
 Department of Administration
 DA-146a (Rev. 10-11)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 10-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____ 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges—hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor

agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement