

**CONTRACT AMENDMENT NO. 1  
CONTRACT FOR Inmate Telephone System  
CONTRACT # COR11-18470**

This CONTRACT AMENDMENT is to amend the above-referenced contract between the State of Montana, Department of Corrections (STATE), whose address and phone number are P O Box 201301, Helena, MT 59620 406- 444-3980 and Telmate, LLC. (CONTRACTOR), whose address and phone number are 1108 SE Sixth Street, Ontario, OR 97914 and 208-739-8333. This Contract is amended for the following purpose(s):

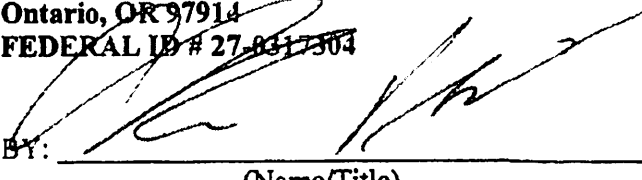
- 1) In accordance with the section entitled Effective Date, Duration, and Renewal, both parties mutually agree to extend this Contract for the period February 1, 2014 through January 31, 2015, per the terms, conditions, and prices agreed upon. This is the first renewal, third year of the Contract.

Except as modified above, all other terms and conditions of Contract COR11-18470 remain unchanged.

STATE OF MONTANA  
Department of Corrections  
P O Box 201301  
Helena MT 59620

Telmate, LLC.  
1108 SE Sixth Street  
Ontario, OR 97914  
FEDERAL ID # 27-8317304

BY:   
(Name/Title)


BY:   
(Name/Title)

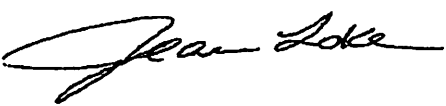
  
(Signature)

Kevin Orvil / President  
(Signature)

DATE: 1/10/14

DATE: 12/19/13

Approved as to Legal Content:  
  
Legal Counsel (Date)

Approved as to Form:  
  
Procurement Officer (Date)  
State Procurement Bureau

# STATE OF MONTANA VENDOR CONTRACT

Department of Administration  
 State Procurement Bureau  
 165 Mitchell Building  
 PO Box 200135  
 Helena, MT 59620-0135  
 Phone: (406) 444-2575 Fax: (406) 444-2529  
 TTY Users-Dial 711  
<http://gsd.mt.gov>

**V.C. #: COR11-18470**  
**Title: Inmate Telephone System**

CONTRACT TERM	FROM	February 1, 2011	CONTRACT STATUS	NEW (x)
	TO	January 31, 2014		RENEW ( )
VENDOR ADDRESS	Telmate LLC. 1108 SE Sixth Street Ontario OR 97914		ORDER ADDRESS	
ATTN:	Kevin O'Neil		ATTN:	
PHONE:	208-739-8333		PHONE:	
FAX:	541-889-9630		FAX:	
E-MAIL:	kevin@telmate.com		E-MAIL:	

PRICES: Per Contract Agreement  
 DELIVERY: Per Contract Agreement  
 F.O.B.: Per Contract Agreement  
 TERMS: Per Contract Agreement

REMARKS:

IFB/RFP NO.: RFP11-18470

Robert Oliver, Contracts Officer

Date: 02/09/2011

**AUTHORIZED SIGNATURE**

1

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# INFORMATION TECHNOLOGY CONTRACT

## INMATE TELEPHONE SYSTEM COR11-18470

### 1. PARTIES

THIS CONTRACT is entered into by and between the State of Montana Department of Corrections , (hereinafter referred to as "the State"), whose address and telephone number are PO Box 201301, Helena, MT 59620, 406-444-3980, and Telmate, LLC, (hereinafter referred to as the "Contractor"), whose address and telephone number are 1108 SE Sixth Street, Ontario, OR 97914 and 208-739-8333.

### THE PARTIES AGREE AS FOLLOWS:

### 2. EFFECTIVE DATE, DURATION, AND RENEWAL

**2.1 Contract Term.** The contract term is for a period of three years beginning upon execution of a fully signed contract unless terminated earlier in accordance with the terms of this contract. (Section 18-4-313, MCA)

**2.2 Contract Renewal.** This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not to exceed a total of 10 years, at the option of the State.

### 3. SERVICES AND/OR SUPPLIES

Contractor agrees to install and provide to State an Inmate Telephone System and subsequent services per the specifications as detailed in the response to the Request for Proposal #11-18470 and Proposal Clarification letter dated November 8, 2010.

### 4. COSTS AND COMMISSION

**4.1 Costs.** The costs and expenses of providing the Services, including but not limited to installation charges, materials and labor costs, shall be the sole responsibility of the Contractor and shall not be charged to State except as otherwise expressly provided for.

**4.2 Commission.** Contractor shall pay to State, commissions in connection with the telephone usage at each Facility. Monthly Commission payments of twenty three thousand dollars (\$23,000) or 25% percent, whichever is greater, on the total gross billable collect, debit, and prepay revenue at each Facility, calculated at the rates set forth in this Contract. Contractor shall be responsible for maintaining records sufficient to permit the proper determination of commissions due to State. Contractor shall send a statement to State setting forth the current commissions due to State.

**4.3 Rates** The collect, debit, and prepaid call rates shall be: \$0.24 connect fee per call and \$0.12 per minute, as stated in the response to the Request for Proposal #11-18470.

### 5. PREVAILING WAGE REQUIREMENTS

**5.1 Montana Resident Preference.** The nature of the work performed, or services provided, under this contract meets the statutory definition of a "public works contract" in section 18-2-401, MCA. Unless superseded by federal law, Montana law requires that Contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or

nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted in relation to these statutes.

Unless superseded by federal law, each Contractor shall ensure that at least 50% of a Contractor's workers performing labor on a construction project are bona fide Montana residents.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

**5.2 Standard Prevailing Rate of Wages.** In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the Contractors, subcontractors, and employers shall pay during the public works contract.

The standard prevailing rate of wages paid to workers under this contract must be adjusted 12 months after the date of the award of the public works contract per section 18-2-417, MCA. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. This adjustment is the sole responsibility of the Contractor and no cost adjustment in this contract will be allowed to fulfill this requirement.

Furthermore, section 18-2-406, MCA, requires that all Contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA.

Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each Contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the Contractor's, subcontractor's, or employer's completion of work on the public works contract. All Contractors and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification, or type of employee established by the Commissioner of the Montana Department of Labor and Industry, and shall pay each such employee a rate of wages not less than the standard prevailing rate as specified in the Montana Prevailing Wages Rates for Building Construction and Non-Construction Services 2010.

## **6. ACCESS AND RETENTION OF RECORDS**

**6.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor, or their authorized agents access to any records required to be made available by 18-1-118 MCA, in order to determine contract compliance.

**6.2 Retention Period.** The Contractor agrees to create and retain records supporting the Inmate Telephone System for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation, or exception relating to this contract taken by the State of Montana or a third party.

## **7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

The Contractor shall not assign, transfer, or subcontract any portion of this contract without the express written consent of the State. (Section 18-4-141, MCA)

## **8. LIMITATION OF LIABILITY**

The Contractor's liability for contract damages is limited to direct damages and further to no more than twice the contract amount. The Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, are not subject to a cap on the amount of damages.

## **9. REQUIRED INSURANCE**

**9.1 General Requirements.** The Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**9.2 Primary Insurance.** The Contractor's insurance coverage with respect to the Contractor's negligence shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**9.3 Specific Requirements for Commercial General Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

**9.4 Specific Requirements for Automobile Liability.** The Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

**9.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency, the Contractor will elect to either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**9.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than B++ indicating compliance with the required coverages, has been received by the Department of Corrections, Contracts Management Bureau, Attn: Contracts Manager, PO Box 201301,

Helena, MT 59620-1301. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require certificates of insurance policies at all times.

#### **10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of this contract. A renewal document must be sent to the Department of Corrections, Contracts Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301, upon expiration.

#### **11. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

#### **12. INTELLECTUAL PROPERTY/OWNERSHIP**

**12.1 Mutual Use.** All patent and other legal rights in or to inventions first conceived and reduced to practice, created in whole or in part under this contract, must be available to the State for royalty-free and nonexclusive licensing if necessary to receive the mutually agreed upon benefit under this contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use and authorize others to use copyrightable property created under this contract including all deliverables and other materials, products, modifications developed or prepared for the State by the Contractor under this contract or any program code, including site related program code, created, developed, or prepared by the Contractor under or primarily in support of the performance of its specific obligations hereunder, including manuals, training materials, and documentation (the "Work Product").

**12.2 Title and Ownership Rights.** The State shall retain title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "content"), but grants the Contractor the right to access and use content for the purpose of complying with its obligations under this contract and any applicable statement of work.

**12.3 Ownership of Work Product.** The Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

**12.4 Copy of Work Product.** The Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term or at the expiration or termination of all or part of the Contractor's performance hereunder, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or as of such expiration or termination, as the case may be.

**12.5 Ownership of Contractor Pre-Existing Materials.** Literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or rights thereto and derivatives thereof owned by the Contractor at the time this contract is executed or otherwise developed or acquired independent

of this contract and employed by the Contractor in connection with the services provided to the State (the "Contractor Pre-Existing Materials") shall be and remain the property of the Contractor and do not constitute Work Product. The Contractor must provide full disclosure of any Contractor Pre-Existing Materials to the State prior to its use and prove its ownership, provided, however, that if the Contractor fails to disclose to the State such Contractor Pre-Existing Materials, the Contractor shall grant the State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the State to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 12.3 or as may be expressly agreed in any statement of work, the Contractor shall retain title to and ownership of any hardware provided by the Contractor.

### **13. PATENT AND COPYRIGHT PROTECTION**

**13.1 Third-Party Claim.** In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify the Contractor. The Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at the Contractor's expense. The Contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim. Such indemnification will be conditional upon the following:

- a. the State will promptly notify the Contractor of the claim in writing; and
- b. the State will allow the Contractor to control, and will cooperate with the Contractor in the defense and any related settlement negotiations, provided that:
  - i. the Contractor will permit the State to participate in the defense and settlement of any such claim, at the State's own expense, with counsel of its choosing; and
  - ii. the Contractor shall not enter into or agree to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the State, its elected and appointed officials, agents or employees without the State's prior written consent.

**13.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then the Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes noninfringing or replace it with one that is at least functionally equivalent. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State agrees to return the product to the Contractor on written request. The Contractor will then give the State a credit equal to the amount paid to the Contractor for the creation of the Work Product. This is the Contractor's entire obligation to the State regarding a claim of infringement. The State is not precluded from seeking other remedies available to it hereunder, including Section 9, and in equity or law for any damages it may sustain due to its inability to continue using such product.

**13.3 Claims for Which Contractor is Not Responsible.** The Contractor has no obligation regarding any claim based on any of the following except where the Contractor has agreed in writing, either separately or within this contract, to such use that is the basis of the claim:

- a. anything the State provided which is incorporated into a Work Product except:
  - i. where the Contractor knew (and the State did not know) such thing was infringing at the time of its incorporation into a Work Product but failed to advise the State; or
  - ii. where the claim would not have been brought except for such incorporation;
- b. the State's modification of a Work Product furnished under this contract;
- c. the use of a Work Product in a manner that could not be reasonably contemplated within the agreed upon scope of the applicable project; or
- d. infringement by a non-Contractor Work Product alone.



## **14. CONTRACT OVERSIGHT**

**14.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

**14.2 Right to Assurance.** If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at the State's option, be the basis for terminating this contract under the terms and conditions or other rights and remedies available by law or provided by this contract.

**14.3 Stop Work Order.** The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this contract shall be amended in writing accordingly.

## **15. CONTRACT TERMINATION**

**15.1 Termination for Cause.** The State or the Contractor may, by written notice to the other party, terminate this contract in whole or in part at any time the other party fails to perform this contract pursuant to Section 16, Event of Breach – Remedies.

**15.2 Bankruptcy or Receivership.** Voluntary or involuntary bankruptcy or receivership by the Contractor may be cause for termination.

**15.3 Noncompliance with Department of Administration Requirements.** The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, the State will pay for products and services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this contract must be mutually agreed to by the parties.

**15.4 Reduction of Funding.** The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

**15.5 Termination for Convenience.** The State, by providing at least 30 days prior written notice to the Contractor, may terminate for convenience this contract and/or any active projects at any time. In the event this contract is terminated for the convenience of the State, the agency will pay for all accepted work or services performed and accepted deliverables completed in conformance with this contract up to the date of termination.

**16. EVENT OF BREACH – REMEDIES**

**16.1 Event of Breach.** Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- a. products or services furnished by the Contractor fail to conform to any requirement of this contract; or
- b. failure to submit any report required by this contract; or
- c. failure to perform any of the other covenants and conditions of this contract, including beginning work under this contract without prior Department of Administration approval.

**16.2 Actions in Event of Breach.** Upon the occurrence of any material breach of this contract, either party may take either one, or both, of the following actions:

- a. give the breaching party a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater specification of time, 30 days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the breaching party notice of termination; or
- b. treat this contract as materially breached and pursue any of its remedies at law or in equity, or both.

**17. WAIVER OF BREACH**

No failure by either party to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of either party to enforce each and all of the provisions hereof upon any further or other breach on the part of the breaching party.

**18. STATE PERSONNEL**

**18.1 State Contract Manager.** The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints, or any other issues regarding this contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

April Grady  
PO Box 201301  
Helena, MT 59620  
406-444-4941  
406-444-9818 Fax  
agrady@mt.gov

**18.2 State Project Manager.** The State Project Manager identified below will manage the day-to-day project activities on behalf of the State and serve as Contract Liaison for reporting purposes.

The State Project Manager for this contract is:

Investigations Bureau  
406-444-3930

## 19. CONTRACTOR PERSONNEL

**19.1 Identification/Substitution of Personnel.** The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. The Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve the Contractor personnel assigned to work under this contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

**19.2 Contractor Contract Manager.** The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

Kevin O'Neil  
1108 SE 6<sup>th</sup> Street  
Ontario, OR 97914  
208-739-8333  
Fax: 541-889-9630  
[kevin@telmate.com](mailto:kevin@telmate.com)

**19.3 Contractor Project Manager.** The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:

Kathryn Jarrell  
188 King Street, Suite 602  
San Francisco, CA. 94107  
415-845-5347  
415-845-5347  
Fax: 415-704-3195  
[kathryn@telmate.com](mailto:kathryn@telmate.com)

## 20. MEETINGS AND REPORTS

**20.1 Technical or Contractual Problems.** The Contractor is required to meet with the State's personnel, or designated representatives, at no additional cost to the State, to resolve technical or contractual problems that may occur during the term of this contract. Meetings will occur as problems arise and will be coordinated by the State. Failure to participate in problem resolution meetings or failure to make a good faith effort to resolve problems may result in termination of this contract.

**20.2 Progress Meetings.** During the term of this contract, the State's Project Manager will plan and schedule progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of this contract as required. At each such meeting, the Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by the Contractor, or of which the Contractor gained knowledge during the period since the last such status report, which may prevent the Contractor from

completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under this contract. The Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**20.3 Failure to Notify.** In the event the Contractor fails to specify in writing any problem or circumstance that materially impacts the costs of its delivery hereunder, including a material breach by the State, about which the Contractor knew or reasonably should have known with respect to the period during the term covered by the Contractor's status report, the Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope; provided, however, that the Contractor shall be relieved of its performance obligations to the extent the acts or omissions of the State prevent such performance.

**20.4 State's Failure or Delay.** For a problem or circumstance identified in the Contractor's status report in which the Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by the Contractor. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

## **21. CONTRACTOR PERFORMANCE ASSESSMENTS**

**21.1 Assessments.** The State may conduct assessments of the Contractor's performance. The Contractor will have an opportunity to respond to assessments, and independent verification of the assessment may be utilized in the case of disagreement.

**21.2 Record.** Completed assessments may be kept on record at the State's Information Technology Services Division and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

## **22. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated for any reason, the Contractor must provide for a reasonable, mutually agreed period of time after the expiration or termination of this contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by this contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

## **23. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA.)

**24. SCOPE, AMENDMENT, AND INTERPRETATION**

**24.1 Contract.** This contract consists of 11 numbered pages, any Attachments as required, RFP11-18470, as amended, and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is as follows: 1) amendments to this contract, 2) this contract, 3) the applicable statement of work, 4) RFP11-18470, as amended, and 5) the Contractor's RFP response, as amended.

**24.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

**25. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

Montana Department of Corrections  
PO Box 201301  
Helena, MT 59620

Telmate, LLC  
1108 SE Sixth Street  
Ontario, OR 07014  
Federal ID# 27-0317304

BY: \_\_\_\_\_

Mike Ferriter, Director  
Montana Department of Corrections

  
\_\_\_\_\_  
(Signature)

DATE: 2.1.11


BY: \_\_\_\_\_

Kevin O'Neil


  
\_\_\_\_\_  
(Signature)

DATE: 2/2/11

Approved as to Legal Content:


 1/26/11  
\_\_\_\_\_  
Legal Counsel (Date)

Approved as to Form:

 1/24/2011  
\_\_\_\_\_  
Procurement Officer (Date)  
State Procurement Bureau

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

 1-17-11  
\_\_\_\_\_  
Chief Information Officer (Date)  
Department of Administration