

**Contract for Inmate Payphone and  
Associated Inmate Monitoring and  
Recording Equipment and Services (ITS)**

**Contract Number 3999**

**Between**

**Oregon Department of Corrections and**

***Pinnacle Public Services LLC***

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**THIS CONTRACT FOR INMATE PAYPHONE AND ASSOCIATED INMATE MONITORING AND RECORDING EQUIPMENT AND SERVICES (THE "ITS CONTRACT" OR "CONTRACT") IS BETWEEN THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF CORRECTIONS ("ODOC"), 3601 STATE STREET SUITE 280 SALEM, OR 97301-5780,**

**and**

*Pinnacle Public Services LLC  
a Limited Liability Corporation in the State of Oregon  
1108 SE 6<sup>th</sup> Street, Ontario, Oregon 97914  
Telephone: (800)205-5510, fax: (208)379-7498  
Kevin O'Neil, President*

**Federal Employer Tax Identification Number: On file at ODOC  
State Tax Identification Number: On file at ODOC**

**together with Telmate LLC hereinafter collectively called "Contractor."**

## **RECITALS**

ODOC issued Request for Proposals #3999 ("RFP"), Inmate Payphone and Associated Inmate Monitoring and Recording Equipment and Services, and in reliance upon Contractor's proposal, a portion of which is attached hereto and identified as Attachment 8, the Contractor was selected as most advantageous to ODOC following a competitive evaluation process; and

Contractor is capable of providing a complete turn-key, fully operational and reliable system as described in its proposal to allow for protection of the public, continued improvement of ODOC security and facilitation of law enforcement, through a seamless system that will provide Inmate telephone service, call control capabilities and the ability to record and monitor calls, as allowed by law and associated Enhanced Services for the ODOC inmate population; and

ODOC, through its collaborative relationship with the Contractor as established under this Contract, intends to define and continuously improve mutually agreeable services to Inmates;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and subject to the terms, conditions, provisions, and limitations contained in this Contract, ODOC and the Contractor agree as follows:

## **CONTRACT**

### **I. EFFECTIVE DATE AND DURATION**

This ITS Contract is effective, has a term, and may be extended as provided in Section B of Attachment 1.

### **II. PURPOSE AND SCOPE OF WORK**

The purpose of this ITS Contract is for the Contractor to provide inmate payphone and associated monitoring and recording equipment and services for the 14 ODOC operated

prison sites throughout the State of Oregon and any additional Institutions that may be purchased or constructed during the course of this Contract. Contractor shall provide these services in accordance with the terms and conditions of this Contract, as set forth in particularity in Attachments 3, 5, and 8.

### III. CONTRACT DOCUMENTS

This ITS Contract consists of (a) this ITS Contract without Attachments, together with (b) all Contract Amendments, and (c) the following listed attachments which are attached and are hereby incorporated into this ITS Contract by reference:

Attachment 1 – Legal Terms and Conditions

Attachment 2 – Commission and Rates

Attachment 3 – Statement of Work

Attachment 4 – Insurance Requirements

Attachment 5 – Contractor Assurance

Attachment 6 – Department of Corrections - Code of Ethics [May be viewed at the following website:

[http://www.oregon.gov/DOC/PUBSER/rules\\_policies/docs/20.1.2.pdf](http://www.oregon.gov/DOC/PUBSER/rules_policies/docs/20.1.2.pdf)]

Attachment 7 – Designated Institution

Attachment 8 – Portions of Contractor's Proposal

### IV. CERTIFICATION OF TAXES

**CERTIFICATION:** I, the undersigned representative of Contractor, hereby certify and swear under penalty of perjury that I am authorized to act on behalf of Contractor, that I have authority and knowledge regarding Contractor's payment of taxes, and that to the best of my knowledge, Contractor is not in violation of any Oregon Tax Laws.

For purposes of this certificate, "Oregon Tax Laws" means those Oregon tax laws named in ORS 305.380(4), including without limitation the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue, including the Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan District Self Employment Tax.

By:  Date: 4/30/12

(Authorized Signatory, Title)

### V. PERFORMANCE UNDER PENDING LITIGATION

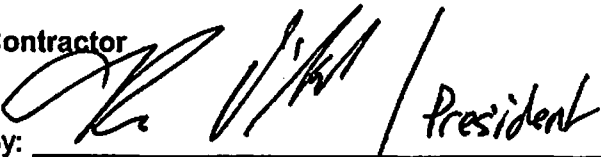
Contractor acknowledges that if performance is commenced under this ITS Contract while litigation challenging the process ODOC used to solicit this Contract is still pending, there is a possibility that a court may find ODOC failed to conduct the solicitation in compliance with Oregon procurement law, and may remand the solicitation back to ODOC for further action in compliance with the court's ruling. In such an event, ODOC may cancel this contract pursuant to this Section if, in its sole discretion, it determines such action is necessary to comply with the court ruling. Should ODOC

cancel the Contract under this Section, ODOC will have no liability to Contractor for, and Contractor shall not seek to recover from ODOC, any costs, fees, or other expenses Contractor may incur in the course of performance, or in preparations taken in anticipation of performance, notwithstanding any court award of same pursuant to ORS 279B.415(7). Contractor acknowledges this risk is inherent in proceeding with performance of a contract whose underlying solicitation is the subject of a judicial dispute, and hereby assumes this risk.

### Signatures

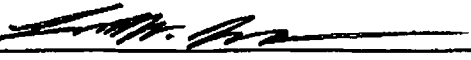
In witness, the parties have caused this ITS Contract to be executed by their duly authorized representatives.

Contractor

By:  President  
(Authorized Signatory, Title)

Date: 4/30/12

ODOC

By:   
(Leonard W. Williamson, Inspector General)

Date: 4/30/12

Approved as to Legal Sufficiency

By:   
(Jonathan M. Ward, Assistant Attorney General)

Date: 4/30/12

## **Attachment #1 – Legal Terms and Conditions**

### **A. Definitions**

- (1) "Confidential Information" includes, but is not limited to, all ODOC ITS data and information marked or designated in writing by either party as "confidential" prior to initial disclosure.
- (2) "Facility" means an ODOC institution where Contractor is providing Services, including the Designated Institutions listed in Attachment 7.
- (2) "Procurement" means a solicitation or procurement for the ITS or other decision by ODOC. For purposes of this RFP, "Procurement" includes negotiation, renewal or renegotiation of the ITS Contract with ODOC without regard to whether a formal solicitation or procurement process is used.
- (3) "Proposal" means the Contractor's proposal submitted to DOC in response to the RFP. Where Contractor is required to perform under this ITS Contract pursuant to its Proposal, such requirement refers to the portions of the Proposal extracted in Attachment 8.
- (4) "Services" refers to all work that Contractor performs under this ITS Contract as specified in Attachment 3, any associated services, goods, and deliverables including but not limited to, equipment for complete Turn Key system, ITS installation and maintenance, payphones, Enhanced Services, kiosks, and ITS training.
- (5) "Subcontractor" means an individual or entity performing all or part of the services under this Contract, under a separate agreement with the Contractor. The terms Subcontractor and Subcontractors mean subcontractor(s) in any tier. For the purpose of this contract, the term Subcontractor relates to those subcontracts that are related directly or indirectly to ensuring the successful operation of the ITS.

Other terms will be defined as used in the ITS Contract, or are defined in Section I of Attachment 3.

### **B. Term**

- (1) This ITS Contract, which includes both setup, implementation and ongoing maintenance, is effective upon approval by the Department of Justice and receipt of all required signatures the ("Effective Date"). While Contractor will not begin providing Services until the Effective Date, there will be work required prior to the Effective Date, including but not limited to: institutional site surveys; implementation planning with ODOC Project Manager(s); and Contractor training of ODOC's policies and procedures.
- (2) Unless extended by ODOC, this ITS Contract will terminate after June 30, 2015.
- (3) ODOC and Contractor may, by mutual agreement, extend the termination date of this ITS Contract by written amendments.

### **C. Consideration**

ODOC will not pay any monetary consideration to Contractor for the ITS under this Contract. Contractor's compensation for Services rendered pursuant to this ITS Contract comes from revenue derived from the rates and fees charged for services, after paying ODOC its commission, as set forth in Attachment 2 and elsewhere in this ITS Contract.

### **D. Default**

(1) Contractor will be in default under this ITS Contract if:

- (a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (b) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the ITS Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after ODOC's notice or such longer period as ODOC may specify in such notice; or
- (c) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this ITS Contract, fails to perform the Services under this ITS Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this ITS Contract in accordance with its terms, and such breach, default or failure is not cured within 10 calendar days after ODOC's notice, or such longer period as ODOC may specify in such notice.

(2) In the event Contractor is in default under subsection (1), ODOC may, at its option, pursue any or all of the remedies available to it under this ITS Contract and at law or in equity, including, but not limited to:

- (a) termination of this ITS Contract;
- (b) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; and,
- (c) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and ODOC may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

(3) Liquidated Damages and Remedies are as described per Section G, below.

### **E. Events of Termination**

At the ODOC's discretion, ODOC may terminate this ITS Contract without cause upon thirty (30) days' prior written notice by ODOC to Contractor.

ODOC may terminate this ITS Contract for any reason permitted by law and this ITS Contract including, but not limited to, the following:

- (1) ODOC fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for its obligations under the ITS Contract;
- (2) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the services to be performed under this ITS Contract are prohibited or ODOC is prohibited from paying for such services from the planned funding source; and,



**(3) Contractor is in default under the ITS Contract.**

In the event of termination of the ITS Contract pursuant to paragraphs (1) or (2) above, Contractor's sole remedy will be a claim for the sum due Contractor through the date of termination, less previous amounts paid and any claim(s) that ODOC has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor will pay any excess amounts from the Claims Payment Account to ODOC upon demand. In the event of termination pursuant to paragraph (3) above, ODOC will have any remedy available to it in law or equity.

**F. Procedure upon Termination**

In the event of termination of this ITS Contract, Contractor will administer all claims upon thirty (30) days' notice to Contractor if requested by ODOC. ITS Contract termination will not extinguish or prejudice ODOC's right to enforce this ITS Contract with respect to any default by Contractor that has not been cured.

Contractor will transfer to ODOC, in the event that ODOC does not request that Contractor administer all claims within 30 calendar days of notice of termination, all required service data and records necessary to administer the Services without a break in service.

Upon termination of this ITS Contract for any reason whatsoever, Contractor will immediately deliver to ODOC all of ODOC's property (including without limitation any Work Products for which ODOC has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such ODOC property is expressed or embodied at that time. Upon receiving a notice of termination of this ITS Contract, Contractor will immediately cease all activities under this ITS Contract, unless ODOC expressly directs otherwise. Upon ODOC's request, Contractor will surrender to anyone ODOC designates all documents, research or objects or other tangible things needed to continue provision of services comparable to the Services, and complete any Work Products.

**G. Liquidated Damages Remedies**

Upon notification by ODOC to Contractor of the occurrence of any breach by Contractor described in Section D(1), ODOC may collect from Contractor, and Contractor shall pay to ODOC certain dollar amounts described below (the "Liquidated Damages"), and ODOC is entitled to the other remedies described below. Contractor and ODOC recognize that it would be difficult to prove damages in the event of such breaches. Contractor and ODOC agree that (a) the Liquidated Damages are reasonable in light of the difficulties of proof of loss, the anticipated harm caused by such breaches, and the inconvenience and infeasibility of ODOC or any ODOC Entity otherwise obtaining an adequate remedy, (b) the Liquidated Damages represent an estimated amount of the projected loss or damages that will be suffered by State and the State Entities in connection with such breaches and are not a penalty, and (c) they have reviewed this section with their respective legal counsel, understand its significance, and have specifically negotiated its terms.

(i) Excluding Force Majeure Events, in the event that Contractor breaches its obligation to install within the time period required under the proposed contract or repair, or restore telephone service for, any Inmate telephone or install, repair or restore three-way call detection and call disconnection or call blocking capability, Contractor shall cure such breach within a 24 hour period after the subject problem is reported to Contractor. If ODOC is not satisfied that Contractor has resolved the deficiency within the 24 hour period required above, Contractor shall pay to ODOC the sum of \$75 per day per affected Inmate telephone for the first ten

affected Inmate telephones, \$150 per day per affected Inmate telephone for the eleventh through fiftieth affected Inmate telephone and \$200 per day per affected Inmate telephone for any Inmate telephones above fifty, for each day that such breach is not cured, up to Contractor's total revenue earned under this ITS Contract on the last day such affected Inmate telephones were working. Without limiting the foregoing, if Contractor does not cure any such breach within five (5) days after the reporting of such occurrence, in addition to the right to collect the amounts described in the prior sentence, State may immediately terminate this Contract, except that no new Liquidated Damages will accrue *after* such termination.

(ii) Excluding Force Majeure Events, in the event that Contractor breaches its obligation to provide (a) monitoring and recording Services (as more particularly described in Attachment 3), with respect to Inmate telephones, or (b) call information retrieval and search capabilities at each Facility as a result of Contractor system failure, the entire monitoring and recording system at that location will be deemed to be inoperative. Contractor shall cure such breach under subsection (a) within four (4) hours, or within twenty-four (24) hours of such breach under subsection (b), after the deficiency is reported. If ODOC is not satisfied that Contractor has resolved the deficiency within the four (4) hour time period or twenty-four (24) hour time period required above, respectively, Contractor shall pay ODOC the sum of \$2,500 per day for each day that the breach is not cured. In the event that any call recordings cannot be retrieved within two (2) weeks of such breach, the Contractor shall pay ODOC the additional sum of \$100 per lost call recording, up to Contractor's total revenue earned under this ITS Contract on the last day that monitoring and recording systems were operative. Without limiting the foregoing, if Contractor does not cure any such breach within five (5) days after the reporting of such occurrence, in addition to the right to collect the amounts described in the prior sentence, State may immediately terminate this Contract, except that no new Liquidated Damages will accrue *after* such termination.

(iii) Excluding Force Majeure Events, in the event that Contractor breaches its obligation to provide remote access to the monitoring and recording system at a Facility, the entire monitoring and recording system at that location will be deemed to be inoperative. Contractor shall have five (5) days to rectify the deficiency once ODOC reports the deficiency to Contractor. If ODOC is not satisfied that Contractor has resolved the deficiency within the five (5) day period required above, Contractor shall pay ODOC the sum of \$2,500 per day for each day following the five (5) day period the Contractor fails to provide services under this Contract, up to Contractor's total revenue earned under this ITS Contract on the last day that remote access to the monitoring and recording systems were operative. Without limiting the foregoing, if Contractor does not cure any such breach within ten (10) days after the reporting of such occurrence, in addition to the right to collect the amounts described in the prior sentence, State may immediately terminate this Contract, except that no Liquidated Damages will accrue *after* such termination.

The time periods after a breach before which Liquidated Damages or termination rights apply as described in this Section regardless of any other due dates contained in this Contract or the appendices hereto.

For any other breach of any obligations under this Contract as described in section D (1) (c) and not described in Subsections (i) through (iii) above, ODOC is entitled to all remedies available under applicable law or in equity, including, but not limited to, the right to terminate this Contract and to recover from Contractor all actual damages and costs suffered or incurred by ODOC and any ODOC Entity in connection with such matter, including, but not limited to, all costs and expenses of ODOC in obtaining replacement services for the Services and all reasonable

attorney's fees and costs. Such liability includes damages or harm to any ODOC Entity, even if ODOC, when taken as a whole, is not harmed.

Notwithstanding the foregoing, nothing contained herein limits Contractor's liability for personal injury and damage to property caused by Contractor's tortious act.

(1) **Additional Remedies.** The remedies described in Section G (i) through (iii) above are the exclusive remedies of ODOC with respect to the specific breaches described in such subsections, provided, however that (i) if ODOC is entitled to recover any Liquidated Damages, and Contractor does not pay the same to ODOC, and in connection with ODOC's enforcement of its rights, a court or other forum determines that such Liquidated Damages are unenforceable (other than a finding that the breach underlying the obligation to pay such Liquidated Damages did not occur), ODOC may recover any and all actual and direct damages suffered or incurred by ODOC and any other ODOC Entity in connection with such underlying breach, (ii) ODOC may set off from any amounts ODOC owes under this Contract any undisputed Liquidated Damages, other damages or other amounts owed by Contractor under this Contract, and (iii) ODOC is entitled to all equitable remedies available, including, but not limited to, specific performance.

(2) **Consequential Damages.** Except as provided in Section G.1, neither ODOC nor any ODOC Entity may recover consequential damages (including, but not limited to, lost profits, lost revenues, lost savings or other consequential damages) from Contractor for any breach under this Contract or arising out of any failure to perform its obligations under this Contract. Contractor may not recover consequential damages (including, but not limited to, lost profits, lost revenues, lost savings, or other consequential damages) from ODOC or any ODOC Entity for any breach under this Contract or arising out of any failure to perform its obligations under this Contract.

#### **H. Permits, Taxes (Federal and Local) and Regulatory Approval**

(1) **Permits.** Contractor shall obtain any necessary official licenses and inspections, certificates of authority, and other official approvals necessary for the provision of the Services under this Contract at Contractor's own expense.

(2) **Taxes – Federal and Local.** Neither ODOC nor any ODOC Entity is liable for any taxes accruing or coming due as a result of this Contract, whether federal, ODOC, or local, and Contractor is responsible for any such taxes.

(3) **Regulatory Approval.** If this Contract is now or in the future subject to the approval of applicable State or federal regulatory bodies, the Parties shall be relieved of their obligations hereunder if regulatory approval is denied; or, at the sole discretion of ODOC, those parts of the Contract upon which the denial was based may be renegotiated and the Contract amended to reflect the result of that renegotiation. Without limiting the other remedies available to ODOC for this or any breach by Contractor under this Contract, if any regulatory approval required to allow Contractor to provide the Services and otherwise satisfy its obligations under this Contract is not received which causes Contractor to breach any obligation under this Contract, ODOC may, at its sole discretion, terminate this Contract and obtain service from another party if Contractor does not obtain such regulatory approval within fourteen (14) calendar days after ODOC's notice or such longer period as ODOC may specify in such notice. A decision to

terminate the Contract under these conditions shall bear no penalty for ODOC or any obligation by ODOC to Contractor.

(4) Contractor shall make every reasonable effort to obtain any required regulatory approval, including promptly responding to information and data requests from the regulatory body. Contractor shall fully cooperate with the Oregon Public Utilities Commission. Contractor shall promptly notify ODOC of all actions taken to obtain such regulatory approval, including all formal filings or informal contacts with the applicable regulatory bodies related to this Contract. To the extent that it reasonably could assist Contractor in obtaining required regulatory approval, if any, of the Services to be rendered under this Contract, ODOC shall make a good faith effort to cooperate with Contractor in making filings with applicable regulatory bodies. So long as Contractor uses all reasonable efforts to obtain any required regulatory approval, failure to obtain such approval is not a breach of this Contract.

#### **I. Compliance with Certain Laws**

Contractor shall comply with all State and Federal Law applicable to the administration of the ITS. Contractor shall also comply with applicable Oregon Administrative Rules, particularly including ODOC's Administrative Rules, and applicable agency procedures.

**J. [Reserved]**

**K. [Reserved]**

**L. [Reserved]**

**M. [Reserved]**

#### **N. Representations and Warranties**

Contractor represents and warrants to ODOC that:

(1) Contractor has the power and authority to enter into and perform this ITS Contract.

(2) This ITS Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms.

(3) Each person executing this ITS Contract on behalf of Contractor hereby represents and warrants to ODOC that such person is duly authorized to execute this ITS Contract and to bind Contractor to each of the terms and provisions hereof.

(4) The execution and performance of this ITS Contract has been duly authorized by all necessary corporate, trust or partnership action.

(5) Contractor has the requisite experience, expertise and resources to fully and properly perform all of its duties and obligations, and exercise all of the powers, as set forth herein.

(6) Contractor is possessed of greater knowledge and skill than the average person and is under a duty to exercise a skill greater than that of an ordinary person. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession.

(7) Contractor will, at all times during the term of this ITS Contract, be qualified, professionally competent, and duly licensed to perform the Services.

(8) Contractor prepared its Proposal related to this ITS Contract, if any, independently from all other Proposers, and without collusion, fraud, or other dishonesty.

- (9) Contractor has completed, obtained and performed all other registrations, filings, approvals, authorizations, consents or examinations required by any government or governmental authority for its acts contemplated by this ITS Contract.
- (10) The Proposal and the Exhibits to this ITS Contract are true, complete, accurate, and not misleading.
- (11) The Services and ITS System provided will substantially comply with the representations and specifications Contractor provided in its Proposal.
- (12) The representations and warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- (13) The Contractor will promptly notify ODOC in writing if any of the foregoing representations or warranties will cease to be true at any time during the term of this ITS Contract.

#### **O. Ownership of Work Product and Confidentiality**

##### **(1) Ownership of Work Product**

- (a) Definitions. As used in this Section, and elsewhere in this ITS Contract, the following terms have the meanings set forth below:
  - (i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Services.
  - (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than ODOC or Contractor.
  - (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to ODOC pursuant to the ITS Contract.
- (b) Original Works. Contractor hereby grants to ODOC a non-exclusive, royalty-free license to use all original Work Product created pursuant to the Services, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine, during the term of this ITS Contract. Upon ODOC's reasonable request, Contractor will execute such further documents and instruments necessary to fully vest such usage rights in ODOC.

In the event that Work Product created by Contractor under this ITS Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to ODOC a non-exclusive, royalty-free license to use the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, during the term of this ITS Contract, and to authorize others to do the same on ODOC's behalf.

In the event that Work Product created by Contractor under this ITS Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor will use reasonable efforts to secure on ODOC's behalf and in the name of ODOC a non-exclusive, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, during the term of this ITS Contract, and to authorize others to do the same on ODOC's behalf.

- (c) Contractor Intellectual Property. In the event that Work Product is Contractor Intellectual Property, Contractor hereby grants to ODOC a non-exclusive, royalty-free license to use the Contractor Intellectual Property, during the term of this ITS Contract, and to authorize others to do the same on ODOC's behalf.
- (d) Third Party Works. In the event that Work Product is Third Party Intellectual Property, Contractor will use reasonable efforts to secure on ODOC's behalf and in the name of ODOC a non-exclusive, royalty-free license to use the Third Party Intellectual Property during the term of this ITS Contract, and to authorize others to do the same on ODOC's behalf.

**(2) Trade Secrets**

- (a) Subject to the Statement of Work, each party will make reasonable efforts to maintain the confidentiality of any Confidential Information received from the other party and will not disclose any Confidential Information to third parties except as required in the performance and administration of this ITS Contract or as otherwise authorized by applicable law, order of a court or other dispute resolution forum or administrative agency having authority to order disclosure of such Confidential Information.
- (b) ODOC will, to the extent allowed by Oregon Public Records Law (see ORS 192.410 to 192.505) make reasonable efforts to maintain the confidentiality of any information received from Contractor that is considered Trade Secret information, as defined in ORS 192.501(2) or under Oregon's Uniform Trade Secrets Act. It is Contractor's responsibility to explicitly identify the specific information that is being provided that constitutes Trade Secret information by conspicuously labeling it "Trade Secret Information." ODOC may evaluate Contractor's characterization of material as Trade Secret under applicable legal standards and is not obligated to accept Contractor's characterization.
- (c) Exceptions. The confidentiality obligations imposed by this subsection shall not apply to the following:
  - (i) Information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient;
  - (ii) Information subsequently and rightfully received from third parties who have the necessary rights to transfer said information without any obligation of confidentiality;
  - (iii) Information that was known to the recipient prior to initially receiving the information claimed by disclosing party to be confidential;
  - (iv) Information that is independently developed by recipient (and which independent development is documented in writing) without use of, or reference to, any Confidential Information of the other party; and,
  - (v) Information required to be disclosed by compulsory judicial or administrative process or by law or regulation.
- (d) If ODOC is required to disclose information that is submitted in confidence or that constitutes Trade Secrets in this subsection, ODOC will first give Contractor notice and will provide such information as may reasonably be necessary to enable Contractor to take action to protect its interests.
- (e) Upon request, Contractor shall submit a redacted copy of any document for which the Contractor desires Trade Secret protection or which the Contractor believes is otherwise exempt from disclosure. The redacted copy of the document must meet the following requirements:

- (i) Contractor must redact (whiteout, blackout, or otherwise cover) information that it believes is exempt under Oregon Public Records Law, particularly including, but not limited to, information the Contractor believes is Trade Secret information.
- (ii) Contractor must include with its redaction an attachment that contains a list of every redaction made by Contractor as well as the following information:
  - (a) The section, subsection, and page number of the document where each specific redaction is found;
  - (b) A general description of the information that has been redacted for each specific redaction;
  - (c) The basis, or bases, under Oregon Public Records Law for making each specific redaction (i.e. information described above in this Section labeled "Trade Secret Information" or other applicable exemption); and,
  - (d) The specific Contractor contact person ODOC should contact in the event a public records request has been made that may include information that has been redacted by Contractor or in the event that ODOC has any questions related to information redacted by Contractor.

(3) Oregon Public Records Law. Contractor acknowledges that any information disclosed to ODOC may be disclosed subject to the Oregon Public Records Laws and may also be subject to the provisions for the Custody and Maintenance of Public Records, including the archiving requirements at ORS 192.005 to 192.170. The non-disclosure of documents or any portion of a document submitted by Contractor to ODOC may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law. If ODOC receives a request under the Oregon Public Records Law for the disclosure of information designated by Contractor as "Trade Secret Information," ODOC shall notify Contractor within a reasonable period of time of the request. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested information. Neither the State of Oregon nor any of its agencies is or shall be obligated to assist in Contractor's defense. If any requests for disclosure of such information are made to ODOC, ODOC intends to make a disclosure only consistent with and to the extent allowable under law. The State shall not be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

**P. Independent Contractor; Responsibility for Taxes and Withholding**

Contractor will perform all required Services as an independent Contractor. Although ODOC reserves the right to determine (and modify) the delivery schedule for the Services to be performed and to evaluate the quality of the completed performance, ODOC cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

If Contractor is currently performing Services for the State of Oregon or the federal government, Contractor by signature to this ITS Contract declares and certifies that: Contractor's Services to be performed under this ITS Contract creates no potential or actual conflict of interest as defined by ORS 244.020. No rules or regulations of Contractor's employing agency (state or

federal) would prohibit Contractor's Services under this ITS Contract. Contractor is not an "officer," "employee," or "agent" of ODOC, as those terms are used in ORS 30.265.

Contractor will be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this ITS Contract and, unless Contractor is subject to backup withholding, ODOC will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or Workers' compensation benefits from compensation or payments paid to Contractor under this ITS Contract.

**Q. Records Maintenance; Access**

Contractor will maintain all fiscal records relating to this ITS Contract in accordance with generally accepted accounting principles. In addition, Contractor will maintain any other records pertinent to this ITS Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that ODOC and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this ITS Contract to perform examinations and audits and make excerpts and transcripts. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this ITS Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this ITS Contract, whichever date is later.

Contractor will allow ODOC to audit claims and other records relating to this ITS Contract at any time. ODOC will have the right to audit any billings or examine any records maintained pursuant to this ITS Contract both before and after payment. Payment under this ITS Contract will not foreclose the right of ODOC to recover excessive or illegal payments.

**R. Governing Law; Venue; Consent to Jurisdiction**

This ITS Contract will be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOC or any other agency or department of the State of Oregon and Contractor that arises from or relates to this ITS Contract will be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States Court for the District of Oregon. In no event will this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. **CONTRACTOR, BY EXECUTION OF THIS ITS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

**S. ODOC Rules**

All terms and conditions of the ITS Contract are governed by ODOC's Rules (OAR Chapter 291) generally, in addition to any specific ODOC Rules cited herein. In the event that the ITS Contract's terms and conditions conflict with ODOC's Rules, ODOC's Rules will take precedence over the terms and conditions of the ITS Contract.



**T. Capacity to Contract in Oregon**

Contractor is either domiciled in or registered to do business in the State of Oregon, and prior to entering into this ITS Contract shall provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies to demonstrate its legal capacity to perform the Services under this ITS Contract in the State of Oregon.

**U. Compliance with Applicable Law**

Contractor will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the ITS Contract. Without limiting the generality of the foregoing, Contractor expressly will comply with the following laws, regulations and executive orders to the extent they are applicable to the ITS Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws (except for administrative rules in direct conflict with a term/condition in this ITS Contract); and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. With regard to Workers' compensation insurance, all employers, including Contractor, that employ subject Workers who work under this ITS Contract in the State of Oregon will comply with ORS 656.017 and provide the required Workers' compensation coverage, unless such employers are exempt under ORS 656.126(2). These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the ITS Contract and required by law to be so incorporated. Contractor will, to the maximum extent economically feasible in the performance of this ITS Contract, use recycled paper (ORS 279A.010(gg)), recycled PETE products (ORS 279A.010(hh)), and other recycled products (ORS 279A.010(ii)). Contractor will require and ensure that each of its subcontractors complies with these requirements. A reference in this ITS Contract to a provision of law means the provision as in effect or as may be amended from time to time.

**V. Foreign Contractor**

If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Contractor's performance of any resulting Contract. Contractor shall have demonstrated its legal capacity to perform the services set forth under the Scope of Work of this ITS Contract in the State of Oregon prior to entering into this ITS Contract. The Oregon Secretary of State website may be accessed at <http://www.filinginoregon.com/index.htm>.

**W. Security**

If Services performed under this Contract requires Contractor to have access to or use of any ODOC computer system or other ODOC Information Asset for which ODOC imposes security requirements, Contractor shall comply and require subcontractors to comply with the information security requirements imposed under this section. "Information Asset" means all Confidential Information in any form (e.g., written, verbal, oral or electronic) which ODOC determines requires security measures, including confidential information created by ODOC, gathered for ODOC, or stored by ODOC for external parties.

(1) All requirements imposed on Contractor under this section shall also apply to its officers, employees, agents and subcontractors that have access to any ODOC information computer system or other ODOC Information Asset, and Contractor shall include these requirements in any subcontract that may provide such access by a Subcontractor, its officers, employees or agents to any ODOC computer system or other ODOC Information Asset. Contractor shall:

(a). Cooperate with ODOC in Identifying Information Assets that will be utilized in the performance of Services and applicable security measures that will be undertaken to protect the Information Assets, and provide updated information to ODOC within fourteen (14) calendar days of the date such information changes for any reason;

(b). Implement security measures that reasonably and appropriately provide administrative, physical and technical safeguards that protect the confidentiality, integrity and availability of the Information Assets that it creates, receives, maintains or transmits on behalf of ODOC. Contractor's security measures must be documented in writing and be available for review by ODOC upon request. ODOC's review of the reasonableness of security measures, as well as Contractor's compliance with ODOC's assigned access control or security requirements, will take into account Contractor's physical, administrative, and technical capabilities related to security measures and the potential risk of unauthorized use or disclosure of Information Assets by Contractor, its officers, employees, agents or subcontractors.

(c) Prevent any unauthorized access to or disclosure of ODOC's information systems and Information Assets.

(d) Take necessary actions to comply with ODOC's determinations of the level of access that may be granted, as well as changes in level of access, or suspension or termination of access as determined by ODOC.

(e) Keep any ODOC assigned access control requirements such as identification of authorized user(s) and access control information in a secure location until access is terminated; monitor and securely maintain access by Contractor and its agents and subcontractors in accordance with security requirements or access controls assigned by ODOC; and make available to ODOC, upon request, all information about Contractor's use or application of ODOC access controlled computer systems or Information Assets.

(f) Report to ODOC any privacy or security incidents by Contractor, its officers, employees, agents or subcontractors that compromise, damage, or cause a loss of protection to ODOC Information Assets. Contractor shall report in the following manner:

(i) Report to ODOC in writing within five (5) business days of the date on which Contractor becomes aware of such incident; and

(ii) Provide ODOC the results of the incident assessment findings and resolution strategies.

(g) Comply with ODOC requests for corrective action concerning a privacy or security incident, and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of Confidential Information, if any.

(2) If ODOC determines that Contractor's security measures or actions required under this section are inadequate to address the security requirements of ODOC, ODOC will notify Contractor. ODOC and Contractor may meet to discuss appropriate security measures or action. If security measures or corrective actions acceptable to ODOC cannot be agreed upon, ODOC may take such actions as it determines appropriate under the circumstances. Actions may include but are not limited to restricting access to computer systems or Information Assets, or ODOC amending or terminating the Contract.

(3) ODOC may request additional information from Contractor related to security measures, and may change, suspend or terminate access to or use of an ODOC computer system or Information Assets by Contractor, its officers, employees, agents or subcontractors.

(4) Wrongful use of ODOC computer systems, wrongful use or disclosure of Information Assets by Contractor, officers, its employees, agents or its subcontractors may cause the immediate suspension or revocation of any access granted through this Contract, in the sole discretion of ODOC. ODOC may also pursue any other legal remedies provided under the law.

(5) Security Background Check. Upon request by ODOC, Contractor shall provide (at its own expense) ODOC with sufficient personal information about its agents, employees, and the agents and employees of its sub-contractors (if any), who will enter upon premises controlled, held, leased, or occupied by ODOC during the course of performing this Contract to facilitate ODOC's criminal record check of such personnel, at state expense.

#### **X. Indemnity**

(1) General Indemnity. Contractor will defend, save, hold harmless, and indemnify the State of Oregon and ODOC and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including the cost of legal defense or settlement and reasonable attorneys' fees, to the extent directly caused by the reckless or negligent activities of Contractor or its officers, employees, subcontractors, or agents under this ITS Contract; provided, that ODOC provides Contractor with prompt written notice of any infringement claim, control of its defense and/or settlement as described in subsection (4) below, and reasonable cooperation therein, at Contractor's expense, as may be requested by Contractor.

(2) Indemnity for infringement claims. Without limiting the generality of section (a), Contractor expressly will defend, indemnify, and hold ODOC, the State of Oregon and their agencies, subdivisions, officers, directors, agents, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys' fees, and damages arising out of or related to any claims that the Services, the Work Product or any other tangible or intangible items delivered to agency by Contractor that may be the subject of protection under any State or federal intellectual property law or doctrine, or the agency's use as intended thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any

third party; provided, that ODOC will provide Contractor with prompt written notice of any infringement claim, control of its defense and/or settlement as described in subsection (4) below, and reasonable cooperation therein, at Contractor's expense, as may be requested by Contractor.

(3) **Limitation of Liability.** Except as otherwise provided in this Section X, Telmate does not assume any liability for any acts or omissions of ODOC or ODOC's agents, employees, or inmates, or ODOC's possession, operation, or use of the Services.

(4) **Control of defense and settlement.** Contractor will have control of the defense and settlement of any claim that is subject to sections (1) or (2); however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor will Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense. Neither party will settle or compromise a claim on behalf of the other party without that party's prior written consent which should not be unreasonably withheld.

#### **Y. Insurance**

Contractor will maintain insurance as set forth in Attachment 4 which is attached hereto.

#### **Z. [Reserved]**

#### **AA. Agents and Subcontractors**

ODOC will neither recognize the appointment of any agent, general agent or broker by Contractor nor authorize any payment or remuneration of any kind by Contractor to a party not approved in writing by ODOC.

Contractor will not enter into any subcontracts for any of the Services required by this ITS Contract without ODOC's prior written consent. ODOC's consent to any subcontract will not relieve Contractor of any of its duties or obligations under this ITS Contract. The provisions of this ITS Contract will be binding upon and will inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

Any capability for which the Contractor will be relying upon the service or assistance of a third party have been disclosed in the Proposal. The Contractor has described the nature of such relationships, including a description of all relevant agreements between the two parties.

In the event any Services or Goods are subcontracted, nothing contained in the ITS Contract or any subcontract shall create any contractual relationship between any such Subcontractor and ODOC, and Contractor agrees to accept full responsibility for the performance of all Services or Goods that Contractor has subcontracted. Contractor shall hold such Subcontractor to the same standards and requirements to which Contractor is obligated under the ITS Contract. More

specifically, Contractor shall require Subcontractor to comply with the following Terms and Conditions of these Sections of the ITS Contract: I, N, R, S, U, X, AA, BB, II, and JJ.

Subject to the foregoing, ODOC hereby approves Contractor's proposed use of Keefe as a Subcontractor, and consents to the performance or satisfaction of Contractor's obligations by Telmate LLC.

Contractor may not charge ODOC for any Services provided by Contractor's Agents or Subcontractors.

#### **BB. Survival**

All rights and obligations will cease upon termination or expiration of this ITS Contract, except for those terms and conditions provided in the following Sections of Attachment 1 to the ITS Contract: F, G, N, O, P, Q, R, S, X, Y (with respect to Tail Coverage), BB, FF, and any other provisions which by their terms are meant to survive termination or expiration of this ITS Contract.

#### **CC. Notices**

Except as otherwise expressly provided in this ITS Contract, any communications between the parties hereto or notices to be given hereunder will be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or ODOC at the address, number or email address set forth in this ITS Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed will be effective five (5) days after mailing. Any communication or notice delivered by facsimile will be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. Any communication or notice given by email will be effective upon the sender's receipt of confirmation generated by the recipient personally. Any communication or notice given by personal delivery will be effective when actually delivered.

#### **DD. Entire ITS Contract**

The ITS Contract and the exhibits listed therein and attached thereto constitute the entire agreement between the parties on the subject matter thereof. Any communication materials prepared by ODOC or Contractor for distribution do not constitute a part of this ITS Contract unless such materials are part of an Attachment to this ITS Contract. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this ITS Contract.

#### **EE. Order of Precedence**

Whenever possible, all terms and conditions in this ITS Contract are to be harmonized. In the event of conflict between the documents and this agreement, documents will be interpreted in the following order of precedence:

- (1) The ITS Contract without Attachments; and
- (2) The Attachments to the ITS Contract, in Numeric Order.

#### **FF. Waiver**

No agent has the authority to change this ITS Contract or waive any of its provisions. No waiver, consent, modification or change of terms of this ITS Contract will bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance

and for the specific purpose given. The failure of either party to enforce any provision of this ITS Contract will not constitute a waiver by either party of that or any other provision.

#### **GG. Amendments**

To be valid, any change or amendment to the ITS Contract must be approved by an officer of Contractor, an officer of ODOC, and, if not exempt, the Oregon Attorney General's Office. No amendment to this ITS Contract will be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

At its discretion, ODOC may amend this ITS Contract, including, but not limited to, the desirables and other goods and services required by new technologies, and negotiable aspects agreed to in the initial contract or the RFP, to the extent provided in the Request for Proposals and negotiations from which this ITS Contract arose, and to the extent permitted by applicable statutes and administrative rules.

#### **HH. Force Majeure**

Neither ODOC nor Contractor will be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of ODOC or Contractor, respectively. Contractor will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under this ITS Contract.

#### **II. Assignment**

The provisions of this ITS Contract will be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any. Contractor shall not assign, delegate or transfer any of its rights or obligations under this ITS Contract without ODOC's prior written consent.

#### **JJ. No Third Party Beneficiaries**

ODOC and Contractor are the only parties to this ITS Contract and are the only parties entitled to enforce the terms of this ITS Contract. Nothing in this ITS Contract gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this ITS Contract. Telmate LLC, as part of "Contractor", is expressly identified as an intended beneficiary of the terms of this ITS Contract.

#### **KK. [Reserved]**

#### **LL. Severability of Provisions**

If any provision of this ITS Contract conflicts with governing law or if any provision is held to be invalid or unenforceable by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions of this ITS Contract shall remain in full force and effect.

#### **MM. Code of Conduct**

The following terms and conditions supplement and do not replace any provisions required by the rules or policies of ODOC. As used in this section, "Affiliate" of a person means all affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under

common control with the person; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in them.

(1) **Prohibited Practices.** Except as disclosed in writing to and accepted or authorized in writing by ODOC, or as otherwise expressly permitted or required by this ITS Contract, Contractor will not, and will assure that its Affiliates do not, in any way:

- (a) Take unfair advantage of ODOC or the Inmates through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair practice.
- (b) Mislead ODOC or the Inmates through deceptive acts or practices, false advertising claims, misrepresentations regarding Services of Contractor, or promote unfair methods of competition.
- (c) Engage in any conduct, conspiracy, contract, agreement, arrangement or combination, or adopt or follow any practice, plan, program, scheme, artifice or device similar to, or having a purpose and effect similar to, the conduct prohibited above.

(2) **Disclosure and Transparency.** Contractor will fully, clearly, completely, and adequately disclose to ODOC the services and goods it provides and all forms of income, compensation, or other remuneration it receives or pays or expects to receive or pay under or otherwise in connection with the ITS Contract. The manner in which Contractor gets paid and pays ODOC will be transparent and understandable to ODOC.

(3) **Conflicts of Interest.** Contractor and Affiliates will perform their duties using their best impartial judgment in all matters affecting ODOC. A conflict of interest occurs when Contractor or its Affiliate has a personal interest or is involved in an activity that could interfere with Contractor's ability to perform its Services in an objective, impartial and effective manner. An apparent conflict of interest occurs when personal interests or activities could lead others to doubt the objectivity or impartiality of ODOC or of Contractor or its Affiliates. To maintain independence of judgment and action, Contractor and Affiliates will avoid conflict of interest or an appearance of conflict that might arise because of economic or personal self-interest, except as disclosed in writing to and consented in writing by ODOC. The Contractor's disclosure to ODOC may include suggestions for mitigating or managing a conflict of interest, such as communications barriers with conflicted individuals. While it is impossible to list all situations that could constitute a conflict of interest, the following are some common examples:

- (a) Using property or non-public information of ODOC or Inmates, or an Affiliate's position with or relationship with Contractor, for personal gain of the Contractor or Affiliate (other than compensation to Contractor expressly provided in the ITS Contract).
- (b) Having an ownership or economic interest in a company that does business with Contractor or an Affiliate, where the owner or interested person is in a position to influence Contractor's or ODOC's relationship with the company.
- (c) Having the representative of Contractor to ODOC be an employee of ODOC who has authority over the Contractor or Procurement.
- (d) Contractor or an Affiliate of Contractor employing a former employee of ODOC who assisted in preparing the Procurement.

(4) **Confidential Information.** Contractor and Affiliates will use the property and information of ODOC and of Inmates solely at the request of ODOC or

for the benefit of ODOC and its Inmates, subject to the terms and conditions of the ITS Contract. Affiliates of Contractor will not use property and information of ODOC and of Inmates for personal benefit, nor will they take such information or property with them when they cease to be Affiliates of the Contractor.

**(5) Use of Funds or Assets.** To the extent it uses funds and assets of the State of Oregon under the ITS Contract, Contractor will not, directly or indirectly:

- Use funds or assets for any purpose which would be in violation of any applicable law or regulation.
- Make contributions to any political candidate, party, or campaign either within or without the United States.
- Establish or maintain a fund, asset, or account that is not recorded and reflected accurately on the books and records of Contractor or the State of Oregon.
- Make false or misleading entries in the books and records of Contractor or the State of Oregon, or omit to make entries required for these books and records to be accurate and complete.
- Effect a transaction or make a payment with the intention or understanding that the transaction or payment is other than as described in the documentation evidencing the transaction or supporting the payment.

**(6) Marketing Practices.** Except as authorized in writing by ODOC, Contractor will assure that all relationships with its Affiliates and business partners relating to the State of Oregon are conducted at arms-length using criteria approved by ODOC and are based on fairness and the best interests of ODOC and its Inmates.

In any dealings with a supplier, customer, government official, or other person or entity, Contractor or its Affiliate will not request, accept, or offer to give any payments, gifts, trips, kickbacks, or other significant things of value, the purpose or result of which could be to influence the bona fide off-site healthcare received by ODOC and its Inmates or that may be construed as swaying ODOC's Procurement of the ITS based on other than the merits of the evaluation criteria in the Procurement. For this purpose, a "significant thing of value" will mean a thing that a person could not lawfully receive or be given as an employee of ODOC.

In any dealings with a supplier, customer, government official, or other person or entity for or on behalf of ODOC and its Inmates or in connection with a procurement, Contractor and its Affiliates will not exchange business gifts, meals, entertainment, or other business courtesies that are intended to interfere, or are in a magnitude that may have the effect of interfering, with the recipient's duty to act in the best interests of ODOC and its Inmates or to interfere with the recipient's business judgment.

Contractor represents and warrants to ODOC that Contractor and its Affiliates complied with the Code of Conduct in this Section MM in connection with the RFP under which this ITS Contract was issued. The Provisions of this Code of Conduct do not alter any stricter or different guidelines or prohibitions of ODOC.



## **Attachment #2 – Commission and Rates**

### **I. COMMISSION**

A. Contractor shall pay to ODOC a base commission of \$750,000 per quarter. In addition to the base commission, Contractor shall pay an additional commission to ODOC of 50% of quarterly gross revenue on all Contractor provided inmate telephone equipment and of quarterly profits on all Enhanced Services over \$1.5 million in the aggregate generated from all Services Contractor provides under this Contract in all Facilities throughout the State of Oregon at the end of each quarter.

Contractor shall pay the base commission and additional commission to ODOC within five (5) business days of the end of each quarter and shall notify the ODOC Contract Administrator in writing of the amount and date of each payment. Any commissions not paid to ODOC by Contractor when due shall bear interest at the rate of one and one-half percent (1 1/2%) per month or, if less, the maximum rate allowed by law, until the same is paid in full. Along with the commission payments, Contractor shall provide a report of quarterly revenue, broken down by the percent of the type of call, into percentage of collect calls, debit calls (calls made using monies held in an inmate ITS account), prepaid calls, and percent of Enhanced Services.

B. Beginning on each annual anniversary date of the completed and signed contract, Contractor and ODOC will meet to determine whether to continue the fee structure as contracted, or whether an equitable adjustment to the commission rate and other contract terms is warranted if, due to future laws, regulations, other governmental mandates, or additional correctional and security needs, the Contractor's cost of providing the ITS is materially increased, or the rates that the Contractor may charge to called parties are materially decreased. The Contractor must justify any adjustments it requests.

C. Following consideration of Contractor's justification, at ODOC's sole discretion negotiations may be instituted for an amendment to adjust the fee structure to accommodate ODOC goals. Should ODOC decide to engage in negotiations, fee payments will continue as originally contracted until an alternative agreement is reached; if the parties cannot reach agreement, ODOC may terminate this ITS Contract. If ODOC declines to engage in negotiations or declines to terminate the ITS Contract, fee payments will continue as originally contracted.

### **II. RATES**

A. Per call price rate structure for individual inmate calls will be a flat rate per minute as negotiated between the parties and memorialized in a written instrument between the Effective Date and the date of installation. In the event that the parties do not reach an agreement, the rates shall be as outlined in this Section A.

<b>Rates</b>	<b>setup fee</b>	<b>per min</b>	<b>30 min call</b>
<b>Collect/Prepaid Collect</b>			
Local		\$ 0.13	\$ 3.90
Intralata		\$ 0.17	\$ 5.10

Intrastate		\$ 0.17	\$ 5.10
Interstate		\$ 0.65	\$ 19.50
International	12.00	\$0.00	\$ 0.00

**Debit Rates**

Local		\$ 0.085	\$ 2.55
Intralata		\$ 0.15	\$ 4.50
Intrastate		\$ 0.15	\$ 4.50
Interstate		\$ 0.40	\$ 12.00
International		\$ 0.50	\$ 15.00

B. All Taxes, fees, surcharges and associated costs per call will be included in debit and collect/pre-paid rates. Neither the Contractor nor any of the Contractor's subcontractors or associates may add back-end charges to the debit and collect/prepaid call costs.

C. Contractor shall not charge fees of any type for funds deposited by friends, family, or an inmate into an ODOC inmate debit account or Prepaid Collect account, regardless of the method of deposit, including but limited to kiosk, mail, in person, or through the web.

D. Contractor will guarantee all fees, rates, retention, discounts, and other compensation elements set forth in this Attachment 2 for the Services performed under this ITS Contract from the effective date through June 30, 2015. Contractor will not be compensated for Services performed under this ITS Contract by any other agency or department of the State of Oregon.

E. Rate and fee charges for this ITS Contract are the maximum rates, prices and charges allowed during the Initial Term of this Contract.

F. Contractor has exclusive control over all billing of Local, IntraLATA, InterLATA, and international long distance.

### **Attachment #3 – Statement of Work**

#### **I. DEFINITIONS**

The definitions in OAR 291-130-0006 are incorporated by reference herein and will apply to this ITS Contract except as modified herein. For purposes of this ITS Contract:

**"Alternate Equipment"** means equipment or methods of implementation and maintenance utilized when conditions make it difficult or extremely expensive to provide ITS and Enhanced Features to existing and new Facilities.

**"Enhanced Services"** means goods and services other than those required by the ITS provided by Contractor to ODOC inmates including, but not limited to, electronic mail, video messaging, inmate handheld devices sold by ODOC commissary, the ability to download materials to handheld devices, canteen, kiosks, commissary and trust programs, and e-messaging.

**"Equipment"** means all equipment installed or made available by Contractor in connection with the delivery of the Services, including, but not limited to, the Inmate payphones, monitoring and recording system, kiosks, voicemail platform, voice biometrics system, multimedia players, canteen and trust software, and overall software and platform infrastructure.

**"Inmate"** means a person who is under ODOC's supervision and who is not on parole, probation, or post-prison supervision status.

**"Institutions"** shall mean any ODOC Institutions which house Inmates for whom ODOC is required to pay medical expenses. Designated Institutions are identified in Attachment 7.

**"Like New"** means any Equipment that is refurbished, at a minimum, to all original factory specifications. Refurbishing shall be done by Contractor or its contracted representatives at a qualified refurbishment facility. Appearance and operation of the Equipment shall be the same as new.

**"OAR"** means the Oregon Administrative Rules.

**"ORS"** means the Oregon Revised Statutes.

**"PAN"** means an ODOC Inmate's Calling List.

**"PIN"** mean an ODOC Inmate Personal Identification Number

**"PREA"** means Prison Rape Elimination Act.

**"Prepaid" or "Prepaid Collect"** refers to telephone accounts or calls specific to a particular telephone number where the cost for the calls has been paid in advance of call placement.

**"Turn Key"** means a system that is supplied completely finished and ready to operate at the "turn of a key". No additional installation, assembly, setup, or equipment is needed for full function and operation.

## **II. ITS SYSTEM AND EQUIPMENT**

### **A. ITS System**

1. Contractor shall provide, install, and maintain at Contractor's expense, all Equipment, servers, work stations, Inmate telephones, telephone lines, cabling, recording equipment, and all other incidentals necessary to provide ITS Services. The ITS shall run on Contractor's geographically dispersed data centers, as well as Amazon's Elastic Compute Cloud (Amazon EC2) as an emergency backup. Contractor shall provide ODOC Inmate telephone Services in a fully integrated, Turn Key system for all ODOC existing Facilities, and any other Facilities that are either constructed or acquired by ODOC during the course of the Contract. The ITS system shall be available for access from any ODOC computer with internet access.
2. The Contractor provided ITS system must provide industry standard features that will allow ODOC Inmates to make calls to local, Intra-LATA, Inter-LATA, Interstate and International telephone numbers by means of collect, Prepaid Collect, and debit calling options.
3. All Equipment, including, but not limited to, all Inmate telephones, must be new or "Like New". Contractor shall use Equipment that is identical to, equivalent to or better than the equipment currently installed and in place at each Facility. ODOC may consider Alternate Equipment in situations where the originally described Equipment will not fulfill ODOC's requirements and:
  - a. Conditions make it difficult or extremely expensive to provide standard cable or power within ODOC existing Facilities. ODOC may allow Contractor to provide Alternate Equipment or methods of implementation to provide Inmate telephone service to these locations.
  - b. The ITS Contract Administrator has approved use of the Alternate Equipment.
4. Contractor retains ownership of all Equipment and necessary components required to provide the ITS system.
5. Contractor shall update all software and hardware used in connection with the ITS System. All monitoring and recording systems must be compatible with the most current existing version of Microsoft Windows operating system utilized by ODOC.
6. The ITS System must provide alphabetical and classified directories in approved ODOC locations.
7. The ITS System must have the capability to assign security levels, allow simultaneous log in on different computers, and generate an audit trail of ODOC users logging into the system.
8. The ITS System must allow ODOC staff to set the duration of calls and record call durations to any destination number.
9. Contractor shall provide automated Inmate customer service, Inmate voicemail, locations for Prepaid calling and trust fund deposits, a secure PREA and Crime Tip voicemail system, real-time collect calling to cell phones, free live call monitoring and a comprehensive Advanced Prepaid Calling Program.
10. Contractor shall configure the ITS to allow debit and Prepaid calling accounts on specific numbers.

**B. Contractor ITS Software Platform**

1. The ITS platform must be a complete, fully operational, integrated web-based state-wide multi-facility inmate telephone system, capable of performing on ODOC wireless laptops.
2. The ITS must include voice biometrics for all Inmates using Voice Authentication Biometric Technology to verify the identity of the Inmate caller throughout the telephone conversation.
3. The ITS System must provide full Jail Management System (JMS) integration, including PIN system integration and custom PAN solution. The System must provide a database to store all attorney numbers.
4. The ITS System must include Line Information Databases which identify nomadic VOIP services (like Magic Jack) and report these calls to the ODOC investigative staff.
5. The ITS System must provide a complete KITE solution for recording and resolving inmate phone Kites and Inmate voicemail capabilities with the ability for ODOC staff to broadcast voicemails for disseminating information to Inmates.
6. Provide automated Inmate access to all account balances
7. PREA solution for collecting, escalating and storing reports and crime tip hotlines for Inmates
8. The ITS System must include HTTPS/SSL Web security on the ITS administrative software with a complete multi-facility administrative package and complete speed dial functionality. The System must provide complete logging of administrative actions allowing for complete audio download/CD burning feature.
  - a. Calls to be downloaded as wav or mp3 files which can be played using Windows Media Player or iTunes.
  - b. All calls capable of being stored on CD / DVD, thumb drive, email or on a hard drive.
  - c. Contractor shall provide all CD / DVDs required by ODOC for the duration of the Contract.
9. Contain a complete alert feature, including investigator SMS notification, email notification, and high fidelity recording feature that will channel live calls to an ODOC investigator's phone. Allow Officer on Patrol check in feature and investigator notes feature.
10. Ability to allow ODOC staff unlimited called number blocking.
11. The ITS functionality shall be fully tested by Contractor and supported on Microsoft Windows Internet Explorer 7, Firefox, Chrome and Safari.

**C. Contractor ITS Hardware**

Contract shall provide the following list of hardware for the ITS:

1. Inmate phones, upgraded microphones for voice biometrics and TTY/TDD devices with manual shutoff switches for phones.
2. Analog to digital VOIP converters and uninterruptible power supplies (UPS devices) and routers.
3. A network to each Facility for all network traffic, including kiosks and phones.
4. Secure hosted offsite servers and data storage at multiple redundant facilities.

5. Five (5) printers (comparable to or better than the HP 5460 or HP 5580), capable of printing labels directly on printable CDs, one for each existing ODOC investigative office. Contractor shall provide additional printers at locations designated by ODOC, and as ODOC Facilities and offices are added to or expanded. As requested by ODOC, Contractor shall provide small Laser printers at all work stations.
6. Seven (7) laptops with wireless network cards. Five for remote access and two for portability and training purposes.
7. One hundred (100) up-to-date workstations at all ODOC Control points, Investigator desk, Facility Master Control rooms, each telephone room and OIC or Security office. Contractor shall provide additional work stations to locations designated by ODOC and as Facilities and offices are added to or expanded.
8. Keyboard-Video-Mouse (KVM) switches for connection to ODOC keyboards, monitors and computer mice at locations where there is limited space.
9. Public telephone in each Facility lobby for use by visitors for contacting local transportation. The telephone may be a payphone or a standard line limited to local service only.
10. Fourteen (14) cordless Uniden WXL 2077 Waterproof Submersible cordless telephones in ten (10) locations within three (3) buildings with special features turned off. Cordless phones to be compatible with the ITS system and support the same features available on the inmate phones.
11. Any and all other hardware necessary for ODOC and Inmates to fully utilize all features of the ITS System.

**D. ITS Investigator Tools**

Contractor shall provide the following investigative tools:

1. The ITS system must allow ODOC security staff to listen to live inmate calls or previously recorded calls from any location or by cell phone. Access to all calls must be through a secure web browser with the ability to simultaneously monitor calls from multiple correctional facilities.
2. The ITS must allow ODOC security staff to add notes to inmate calls or flag calls for follow up and copy calls to a CD of the conversation or obtain a transcript of the call.
3. The ITS must provide the ability for ODOC security staff to receive automated alarms when specific calls are made by email or text messages.
4. At no cost to ODOC, Contractor shall perform Inmate call monitoring.
5. The Inmate / Intake Kiosk must record PIN and PAN submission and incorporate Voice Biometrics. The PIN must then be attached to the approved Voice Biometric file.
6. Any and all other investigative tools necessary for ODOC investigative staff to fully utilize all features of the ITS System.

**E. Block Tables and Reports**

**1. TABLES**

- a. Contractor will manage ODOC requested telephone number blocks, and shall provide the ability for ODOC to place administrative blocks on any telephone number or range of telephone numbers. Contractor shall not change or release information regarding ODOC administrative telephone blocks.
- b. Contractor will maintain a list of attorneys licensed to practice in the state of Oregon from the Oregon Bar Association, referred by ODOC as the "Legal Call list" for all ODOC inmates. Contractor shall provide the ability to ODOC to add out-of-state attorneys and other numbers as needed. Contractor must update the list twice per year at Contractor's expense. Telephone calls to numbers on the "Legal Call List" must be available in the ITS system but will not be monitored or recorded. ODOC will have full access to the Legal Call list.

## **2. REPORTS**

Contractor shall provide the following reporting services:

- a. Instantaneous commission reports.
- b. Full real-time auditing access for 24/7 financial auditing of all transactions up to the last completed call.
- c. Within sixty (60) days of the close of Contractor's fiscal year, an annual inventory of Inmate telephone numbers and location of each number.

## **F. Customer Service**

1. Contractor shall provide, at no cost to ODOC or ODOC Inmates and family and friends, customer service through a secure voicemail system. All voicemail requests are to be monitored by Contractor's customer service representatives located in Ontario, Oregon. All conversations linked to an Inmate shall be recorded.
2. Contractor shall resolve all valid voicemail requests within 24 hours of the initial request. Resolution of an Inmate's issue will be through the Contractor's voicemail system by a Contractor customer service representative as a prerecorded voicemail response and resolved within 24 hours. For issues beyond the Inmates' control, such as lock down, Contractor shall issue a credit for one (1) free call for all lost calls to Inmates and friends and family the same day the issue is received.
3. Contractor shall provide live Oregon-based bi-lingual 24/7 inmate customer service and live Oregon-based 24/7 inmate facility customer service.
4. Contractor's customer service shall provide telephone based and self-service Inmate account deposits.
5. Contractor shall provide training materials (manual and CDs) and training at no cost to all Facilities including in-person onsite training upon request by ODOC. Contractor shall schedule ongoing training to coincide with new features. All training will be at no cost to ODOC.
6. Contractor shall provide a one-page reference sheet for all users.
7. Upon request by ODOC, Contractor shall distribute non-weaponizable PIN cards and conduct group Inmate training.
8. Contractor shall provide a Prepaid Plus program providing free calls to new phone numbers for Inmates.
9. Contractor shall provide voice recordings of all Facility names and free voicemail from staff to Inmates.

10. Contractor's customer service shall review all 3-way calls and provide Inmate fraud detection and prevention services.

### **III. INMATE ACCOUNTS AND PAYMENT OPTIONS**

- A. Contractor shall manage all ODOC Inmate debit and Prepaid accounts, providing complete transparency in all transactions through an automated Prepaid system. Contractor may not outsource this service to a third party.
  1. Contractor may not charge taxes or fees, or any other additional charges to an Inmate's Prepaid / debit account or to a specific Prepaid Collect telephone number specific account.
  2. Contractor may not charge taxes or fees, or any other additional charges to friends and family depositing funds into an Inmate account.
- B. Contractor shall provide options for depositing money by ODOC Inmates and friends and family into an Inmate account or to a specific Prepaid Collect telephone number account including, but not limited to:
  1. Contractor lobby kiosks located in each ODOC lobby for family and friends to deposit funds using credit card, debit card or cash with no added fees.
  2. A secure website for web purchases, moneygrams, Western Union payments, direct billing and personal checks.
  3. Contractor's retail partners with automated kiosks, including but not limited to, Wal-mart and 7-11's, to allow family and friends who do not have credit or debit cards, or live far from the Facility the capability to deposit funds.
  4. Telephone based and self-service deposits by friends and family. Contractor shall require submittal of partial address information, year of birth, and the last 4 digits of social security number when deposits are made using this method. Contractor shall notify Inmates via voicemail when a deposit has been made into the Inmate's account. The voicemail must include the amount of deposit and which type of account, such as Prepaid, destination Prepaid or trust funds.
- C. Contractor shall provide Facilities the ability to release an Inmate's fund balance, without fees, to a Debit MasterCard for immediate use upon an Inmate's release from the ODOC.
- D. Contractor shall track all revenue received for ODOC Inmate Debit accounts, and forward refunds to the ODOC Inmate Trust Unit.
- E. All deposits must be auditable by each Facility.
- F. ODOC Inmates must have the capability to access their account and trust information.
  1. Contractor shall verify the identity of an Inmate with use of the Inmate's PIN number and voice biometrics.
  2. Contractor shall verify an Inmate has sufficient funds to place transactions. If there are sufficient funds, the Inmate account will be electronically debited. If funds are insufficient, the automated system will not place the order.
- G. Contractor shall send weekly invoices of all Inmate transactions to the ODOC Contract Administrator. The invoice must indicate the Inmate name, PIN number, Facility and an itemized summary of the transactions.

### **IV. ENHANCED SERVICES**

Contractor shall provide all platforms and software required to provide the Enhanced Services, and the following programs at no cost to ODOC: state-of-the-art automated



trust fund and Prepaid calling kiosk, Inmate Debit MasterCard Program, all system integration with the JMS system and the ODOC's commissary systems, automated Inmate customer service, Inmate voicemail, locations for Prepaid calling and trust fund deposits, a secure PREA and Crime Tip voicemail system, real-time collect calling to cell phones, free live call monitoring and a comprehensive advanced Prepaid calling program. Contractor retains ownership of all Equipment and necessary components required to provide the Enhanced Services. Contractor shall maintain and update all software and hardware used in connection with the Enhanced Services rendered to all Facilities.

**A. Commissary and Trust Software**

1. Commissary software must utilize Scantron for inmate ordering support and KeepTrak software for commissary order fulfillment.
2. DirectDebit inmate real-time telephone interface and DirectSales inmate Pre-Paid Phone Interface features.
3. Contractor to provide nightly and live interfaces with ODOC offender management system to include: inmate locations, inmate updates; and an ODBC interface for external access to the ODOC commissary database.

**B. Kiosks**

Contractor shall provide the following kiosk types at each ODOC institution. ODOC staff will determine the number and location of kiosks at the time of implementation. Additional kiosks may be added or removed during the life of the Contract upon written authorization from ODOC. Changes in the number of kiosks does not require an amendment.

**1. Inmate / Intake Kiosk**

- a. Install KCN Edge kiosks with satellite connectivity packages for music selection and downloading within each Facility.
- b. Provide electronic messaging (E-Messaging) and trust account inquiry support.
- c. Provide commissary ordering, collection and processing of order requests.
- d. Provide a secure website for friends and family to send electronic messages to inmates with customizable word, sender and recipient filters to allow messages to be automatically identified and rated by ODOC investigators.
- e. Provide an administrative interface for ODOC security staff to review all messages and photos for approvals or denials, and audit trail. Provide the Data Detective reporting interface to allow visual browsing by ODOC security staff of the relationships between Inmates' depositors, and individuals the Inmate communicates with via Secure Mail.
- f. Contractor shall archive all e-messages for the life of the contract for reporting and retrieval by ODOC.
- g. Contractor shall provide routine updates to all software and hardware used in connection with the ITS system rendered to all Facilities:

**2. Lobby Kiosks**

- a. Lobby kiosk to be located within the lobby of each Facility. Lobby kiosks must be capable of accepting cash, credit and debit cards from family and friend members, and be interlinked to allow cross-facility deposits to

an inmate Trust account within any Facility. Lobby kiosks must accept payments within an Inmate's account for Trust payments, restitution and medical payments, telephone account payments, and visitation scheduling.

b. Contractor accepts all risk of counterfeit bills and credit card fraud.

**3. Inmate Music Kiosk and Handheld Device**

- a. Music Warden kiosk to be located in all Facilities allowing ODOC Inmates to view music catalogs/library of 6 million individual songs from Universal, Sony, EMI, Warner, and independent artists from the Independent Online Distribution Alliance, and download music selections to an Inmate's handheld device. The music library must contain filters for ODOC security staff to remove explicit content.
- b. The handheld device must be manufactured with a clear plastic casing with no recording capability or moving parts. The handheld device must have built in theft protection and allow ODOC security staff to disable an Inmate's music player.
- c. The handheld device must be capable of downloading photos, email, educational content and rehabilitative programming.
- d. Contractor shall provide all handheld devices and downloads sold to ODOC inmates thorough the ODOC commissary.

**C. Video Visitation**

1. Contractor shall provide a web browser and video visitation equipment allowing for live remote and local visitation scheduling and visitation with Friends and Family.
2. Full administrative integration between the ITS system and video visitation. The ODOC security console must be capable of terminating live visitations, and allow recording and auditing of video visits at any time via Contractor provided web browser.

**D. Training**

Contractor shall:

1. Provide initial new product and refresher training to ODOC personnel as requested by ODOC on the operation of monitoring, recording and investigative software systems at Contractor's expense.
2. Provide on-site training to all required ODOC personnel regarding system software and hardware upgrades.
3. Provide training to all Facilities and security staff personnel as requested and scheduled by ODOC for the life of the Contract.
4. Provide ITS training via live classroom, interactive web seminars, and hardcopy training manuals.

**E. Implementation**

1. The Contractor shall install and test the ITS at no cost to ODOC.
2. The Contractor shall use best efforts in providing a seamless transition during the implementation phase with minimal downtime in inmate telephone services.
3. Contractor shall reimburse ODOC for the cost of ODOC's personnel time, travel, and per diem involved in the escort and security during installation, the quality assurance review, and acceptance testing of the ITS system. ODOC

estimates this cost at \$50,000.

4. Contractor shall provide free calls to Inmates on the day of changeover to ease the transition and test of line capacity for ODOC Inmates and staff.
5. Contractor shall test all Contractor-provided software and hardware installed on ODOC systems to access or operate the ITS for security risk, and obtain the approval of the ODOC Information Technology (IT) unit prior to installation.
6. Contractor shall work with the incumbent Department of Administrative Services Contractor for the removal of incumbent's equipment and transfer of all required data to the ITS system.

#### **H. System Maintenance**

1. Contractor shall provide all upgrades of the ITS system needed to meet performance guarantees throughout the life of the Contract, including but not limited to, ODOC provided equipment when replacement is required, expansion of the ITS, upgrades in ODOC or Contractor's software system, networks or cabling used to access the ITS.
2. ODOC is not responsible for any costs associated with the implementation or ongoing maintenance of this ITS. ODOC will provide at its own expense certain equipment and facilities to support the Services covered by the Contract, such as adequate floor or wall space, electricity (in the proper voltage), support structures and a clean environmentally climate-controlled area.
3. Contractor shall provide additional internet bandwidth as required due to increased Inmate population or new Facilities.
4. Contractor shall include major hardware and software updates to the ITS system biannually at no cost to ODOC. Contractor shall thoroughly test and obtain ODOC approval of all updates prior to implementation. Contractor shall schedule updates during low activity periods, with minimal, or no interruption of service.
5. Contractor shall provide onsite administrators, as well as full remote diagnostics, programming, polling and system alarm reporting.
  - a. Remote diagnostics must provide all statistic reporting vena emails and text messages every 30 minutes and the reports on the status of all phone stations. System to automatically send an alert to Contractors administrators and ODOC ITS users if call parameters fall outside the average call pattern.
  - b. Remote programming must be through a centralized call processing system monitored 24 hours, 7 days a week and notifies Contractor's technicians to correct issues.
  - c. Contractor shall provide onsite maintenance for Inmate phone repairs, damage to Equipment or server, switch or associated hardware failure.
  - d. Contractor shall provide an onsite technician within two (2) hours for minor system problems, such as a single telephone failure; for routine service calls, service will be provided within four (4) hours from the request. Contractor shall provide an online public ticket system to ensure all issues are trackable by ODOC personnel.
6. Contractor shall provide seven (7) full time and three (3) part time onsite technicians/site administrator technicians to be located near Salem, Tillamook, Portland, Lakeview, Madras and Coos Bay.

7. Contactor shall provide help desk support and customer service to the Facilities 24 hours a day, 7 days a week. Support must include but is not limited to any and all questions regarding the use of the ITS, lobby kiosk system, debit cards, Prepaid calling, operator services, Inmate phones, web browser.
8. Contractor shall provide a single 800 number for customer service, as well as an integrated ticket system which will create an auditable trail of all request, provide aging reports and response times
9. If a problem can be repaired remotely, Contractor shall notify the affected Facility within 15 minutes of reported problem with Contractor's planned resolution, and provide status updates every 30 minutes.

## **V. GENERAL REQUIREMENTS**

### **A. Mandatory Meetings:**

Representatives of the Contractor and ODOC shall formally meet not less than annually on a face to face basis and conference quarterly by telephone, to facilitate problem resolution and to review the operational status of the terms of this Contract. Face to face meetings will be held at ODOC's Administration Headquarters.

1. Routine problems may be handled verbally, if both parties agree, and resolved within a reasonable time frame; the resolution shall be documented in writing within five (5) working days by the parties.
2. Significant problems shall be fully documented by both parties and resolution given a high priority by both parties; failure to respond timely may result in the Department seeking remedial action in accordance with Sections XIII.

### **B. Notice**

All notice required given by the parties hereunder must be given by mail to the individuals at the addresses set forth below. Either party may from time to time designate in writing a substitute persons(s) or address to whom such notices are to be sent without formal amendment to the Contract:

To ODOC:  
Kelley Morton, Contract Administrator  
Oregon Department of Corrections  
2575 Center Street NE  
Salem, OR 97301

To the Contractor:  
Pinnacle Public Services, LLC  
1108 SE 6<sup>th</sup> Street  
Ontario, OR 97914

With a copy to  
Bonnie Hommon, Procurement Specialist 3  
Purchasing Unit  
Oregon Department of Corrections  
3601 State Street  
Salem, OR 97301

With a copy to  
Legal Department  
Telmate, LLC  
234 Front Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94111

**C. Additional Requirements**

Contractor shall:

1. Provide such personal background data as is required by ODOC on any Contractor personnel, including subcontractors intending to enter an Facility;
2. Promptly report to ODOC any manufacturer price reductions, model changes, and product substitution where substitution price is a factor;
3. Provide, within sixty (60) days of the close of Contractor's fiscal year, an annual inventory of telephone numbers and location of all Inmate telephones at Facilities;
4. Provide, or reimburse ODOC for, all necessary forms, pamphlets and postings, including but not limited to PIN sheets, PAN forms and repair request forms.
5. Post and maintain accurate and current call rates, dialling instructions and instructions for service request postings at each telephone or bank of telephones. All postings must be approved by the ODOC Contract Administrator prior to posting.
6. Provide system information pamphlets for Inmates and friends and family which include accurate and current call rates and instructions for calls, deposits, and contact information. Contractor shall also provide and maintain all required bulletin boards or support structures.
7. Provide and maintain a minimum of one (1) public payphone in each Facility lobby.

**VI. MONITORING, AUDITS, AND EVALUATION**

**A. Contract Records**

The Contractor and all Subcontractors shall maintain a complete file of all records, documents, communications, and other materials which pertain to the operation of the ITS or the delivery of services under this Contract sufficient to disclose fully the nature and extent of Services provided to the ODOC. These records shall be maintained according to generally accepted accounting principles, must be easily separable from other contractor records, and must provide sufficient detail to reflect services rendered to ODOC. Notwithstanding Section Q of Attachment 1, Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for the minimum of the period required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this ITS Contract, whichever date is later.

**B. Monitoring**

The Contractor shall permit ODOC and any other duly authorized agent or governmental agency ("monitoring agency"), to monitor all activities conducted by the Contractor and all Subcontractors pursuant to the terms of this Contract. As the monitoring agency may in its sole discretion deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedures. The monitoring agency shall perform all such monitoring in a manner that will not unduly interfere with Contractor's provision of Services.

1. The Contractor shall allow duly authorized agents or representatives of ODOC, the State or federal government access to the Contractor's premises or a Subcontractor's premises, during normal business hours, to inspect, audit, monitor, or otherwise evaluate the performance of the Contractor's or Subcontractor's activities and shall forthwith produce all records requested as part of such review or audit. In the event a right of access is requested under this Section, the Contractor or the Subcontractor shall upon request provide and make available staff to assist in the audit or inspection effort, and provide adequate space on the premises to reasonably accommodate the State or Federal personnel conducting the audit or inspection effort. All inspections or audits shall be conducted in a manner as will not unduly interfere with the performance of the Contractor's or Subcontractor's activities.
2. To the extent feasible, ODOC shall coordinate monitoring activities with other state and federal agencies to minimize duplicative review activity and maximize productive use of ODOC and Contractor resources. ODOC reserves the right to deem Contractor compliance with individual requirements under this Contract based on satisfactory review by other recognized monitoring entities. Criteria and policies and procedures for such deemed compliance shall be determined by ODOC; the Contractor shall be provided opportunity for input in the development of such criteria, policies, and procedures.
3. The Contractor shall, as soon as is practical and no later than sixty (60) calendar days after a notice of deficiencies is received, unless justified and agreed upon by ODOC, comply with any recommendations made in writing by ODOC, pursuant to Contract items found not in compliance as a result of any authorized monitoring report or audit. Contractor shall submit a written plan to correct cited deficiencies and a time frame for completion of the plan to ODOC within fifteen (15) working days after receipt of the notice of deficiencies. ODOC may extend or reduce the time frame for corrective action when it is reasonable and advisable to do so.

## **VII. HOLD HARMLESS**

Contractor agrees to place in any of its Subcontract Agreements pertaining to the ITS, language to the effect that Subcontractor(s) agree to hold harmless both ODOC and Inmates in the event the Contractor cannot or will not pay for services performed by the Subcontractor(s) pursuant to the ITS Contract. The hold harmless provision shall survive the termination of this Contract and the Subcontract Agreement, for services rendered prior to the termination thereof, regardless of the cause giving rise to termination.

## **Attachment #4 – Insurance Requirements**

During the term of this Contract, or such other time period provided herein, the Contractor shall maintain in force at its own expense, each insurance coverage or policy noted below:

### **1. Workers' Compensation**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirements for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

### **2. Professional Liability/Errors & Omissions**

Errors and Omissions Insurance, Professional Liability Insurance, and Managed Care Services Liability Insurance (including employed agents) covering damages caused by error, omission, or negligent acts of Contractor or its agents relating to the Services. Combined single limit per occurrence must not be less than \$1,000,000. Each annual aggregate limit must not be less than \$2,000,000.

### **3. General Liability**

General Liability Insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage. This insurance must include personal injury coverage, contractual liability coverage for the indemnity provided under the contract and products/completed operations liability. Combined single limit per occurrence must not be less than \$1,000,000 or the equivalent. Each annual aggregate limit must not be less than \$2,000,000, when applicable. The policy, or an endorsement/amendment to the policy, must provide that the State of Oregon, Department of Corrections and its divisions, officers and employees are "Additional Insureds" under the policy, but only with respect to the Contractor's services to be provided under this Contract.

### **4. Employee Dishonesty and Depositors Forgery**

Employee Dishonesty and Depositors Forgery coverage for state-owned property in the care, custody and control of the Contractor. Coverage limits must not be less than \$1,000,000. The policy must include as loss payee or additional insured the State of Oregon, Department of Corrections.

### **5. "Tail" Coverage**

If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the contract for a duration of 24 months or the maximum time period the Contractor's insurer will provide such if less than 24 months. Contractor is responsible for furnishing certification of "tail" coverage as described. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the Effective Date of the Contract.

### **6. Notice of Cancellation or Change**

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to the Department of Corrections.

## **7. Certificates of Insurance**

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to the Department of Corrections, Contracts Unit, 3601 State Street, Suite 280, Salem, OR 97301-5780 prior to execution of the contract. The certificate must specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, Contractor shall provide complete copies of insurance policies, trust agreements, etc. to the State. Contractor is financially responsible for all pertinent deductibles, self-insured retentions and self-insurance.



## **Attachment #5 – Contractor Assurance**

- 1 Implementation**
  - a. Contractor shall complete the implementation and conversion process for the ITS system on or before July 1, 2012 from the date of the fully executed contract. Contractor is solely responsible for all associated costs for the ITS system implementation and conversion.
  - b. Contractor shall coordinate with the ODOC Project Manager and Contract Administrator to allow for minimal disruption of the inmate telephone service. The ODOC Project Manager will provide in writing any required change orders, approvals and the final signature of acceptance for the conversion at each Facility.
  - c. ODOC will provide all access and escort services to Contractor during the conversion and implementation of the ITS system.
- 2 Contractor Customer Service**
  - a. Contractor shall assign a full time employee to each Facility, or in close proximity to each Facility. Contractor shall handle Customer Service support for family and friends and ODOC security staff in real-time.
  - b. Contractor shall provide service to ODOC within a two (2) hour window, 24 hours a day, seven (7) days a week for Facility ITS system support and inmate family and friends.
  - c. Contractor's liaison to ODOC for all matters pertaining to the ITS system will be the Director of Operations.
- 3 Central Call Processing**
  - a. Contractor shall locate call processing servers and digital call recording storage equipment in multiple secure offsite data centers with full redundancy of all power and Equipment.
  - b. Contractor's IT staff shall monitor and maintain processing and recording equipment twenty-four (24) hours, seven (7) days a week.
  - c. Contractor shall ensure that no call recording becomes lost or unavailable.
- 4 ITS System**
  - a. The ITS system must be 100 percent web based and allow access from any computer with internet access for all approved ODOC ITS system users.
  - b. The ITS system must allow users to control all system and Inmate activity across multiple facilities from a single application.
  - c. Contractor shall include major hardware and software updates to the ITS system at no cost to ODOC. Contractor shall thoroughly test all updates and obtain ODOC approval prior to implementation. Contractor shall schedule updates during low activity periods, with minimal or no interruption of service.
  - d. Contractor shall ensure 99.9 percent or greater uptime and connectivity of all Inmate calls, excepting out Force Majeure events.

## **Attachment #6 – Code of Ethics**

**As an employee, volunteer or contract service provider of the Oregon Department of Corrections, I will value and maintain the highest ideals of professional and compassionate public service by respecting the dignity, cultural diversity and human rights of all persons, and protecting the safety and welfare of the public.**

**I accept that my fundamental duty is to serve the public; to safeguard lives and property, to protect Department of Corrections incarcerated persons against deception, oppression or intimidation, violence or disorder.**

**I will be constantly mindful of the welfare of others. To the best of my ability, I will remain calm in the face of danger and maintain self-restraint in the face of scorn or ridicule.**

**I will be honest and truthful. I will be exemplary in obeying the law, following the regulations of the Department, and reporting dishonest or unethical conduct.**

**I acknowledge that I have been selected for a position of public trust and I will constantly strive to be worthy of that trust and to be true to the mission and values of the Department of Corrections.**

## **Attachment #7 – Designated Institutions**

ODOC reserves the right to add or remove Institutions throughout the term of the Contract. Changes to the list of Designated Institutions shall not require amendment to the Contract.

Coffee Creek Correctional Facility, 24499 SW Grahams Ferry Rd. Wilsonville, OR 97070

Columbia River Correctional Institution, 9111 NE Sunderland Ave., Portland, OR 97211

Deer Ridge Correctional Institution, 3920 East Ashwood Road Madras, OR 97741

Eastern Oregon Correctional Institution, 2500 Westgate, Pendleton, OR 97801

Mill Creek Correctional Facility, 5465 Turner RD., SE Salem, OR 97301

Oregon State Correctional Institution, 3405 Deer Park Drive, SE, Salem, OR 97310

Oregon State Penitentiary, 2605 State St., Salem, OR 97310

Powder River Correctional Facility, 3600 13<sup>th</sup> Street, Baker City, OR 97814

Santiam Correctional Institution/Mill Creek Correctional Facility, 4005 Aumsville Hwy SE, Salem, OR 97301

Shutter Creek Correctional Institution, 95200 Shutters Landing Lane, North Bend, OR 97459

Snake River Correctional Institution, 777 Stanton Blvd, Ontario, OR 97914.

South Fork Forest Camp, 48300 Wilson River Hwy, Tillamook, OR 97141

Two Rivers Correctional Institution, 82911 Beach Access Road, Umatilla, OR 97882

Warner Creek Correctional Facility, 20654 Rabbit Hill Road, Lakeview, OR 97630

Future New DOC Institution will be located in Junction City

**Attachment #8 – Portions of Contractor's Proposal**

**AMENDMENT #1 to CONTRACT #3999**

1. This is Amendment #1 to contract #3999 (as amended from time to time the "Contract") dated April 30, 2012 between the State of Oregon acting by and through its Department of Corrections hereafter called ODOC, and Pinnacle Public Services LLC and Telmate LLC, hereafter collectively called Contractor.

2. Attachment 2, Section I.A, of the Contract is deleted in its entirety and replaced with the following:

**"II. RATES**

**A. Per call rates.**

1. **All calls except international calls.** Per call price rate for individual inmate non-international calls shall be a flat rate of \$ 0.16 per minute.

2. **International calls.** International calls may be made by debit method only (no collect calls). Per call price rate for individual inmate international calls shall be a flat rate of \$ 0.50 per minute."

3. Except as expressly amended above, all other terms and conditions of the original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

Certification: By signature on this Amendment for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

**PINNACLE PUBLIC SERVICES LLC and  
TELMATE LLC**

Kevin O'Neill, President

Title

Date

**STATE OF OREGON by and through its  
DEPARTMENT OF CORRECTIONS**

Leonard W. Williamson, Inspector General

Date

**APPROVED AS TO LEGAL SUFFICIENCY**

/s/ Rick Weisberg, GC (per 5/23/12 e-mail)

**APPROVED AS TO LEGAL SUFFICIENCY**

/s/ Jonathan M. Ward, AAG (per 05/23/12 e-mail)

## AMENDMENT #2 to CONTRACT #3999

1. This is Amendment #2 to contract #3999 (as amended from time to time the "Contract") dated April 30, 2012 between the State of Oregon acting by and through its Department of Corrections hereafter called ODOC, and Pinnacle Public Services LLC and Telmate LLC, hereafter collectively called Contractor.

2. Specific revisions to the Contract (new language is underlined and deleted language is [bracketed]):

2.1 Attachment #2, Section II.A.3 is added as follows:

"3. Incoming voicemail messages. Contractor shall charge a flat rate of \$1.25 for each voicemail message left for an inmate except there shall be no charge for voicemail messages left by ODOC staff. The maximum allowable length of each voicemail message shall be three minutes."

2.2 Attachment #2, Section II.A.4 is added as follows:

"4. Three-way calls. Contractor shall charge a \$25 fine to an inmate's debit account for each confirmed three-way telephone conversation for which an inmate is a party to. If insufficient funds exist in the inmate's debit account, Contractor shall charge the \$25 fine against the pre-paid account associated with phone number that initiated the confirmed three-way conversation or may create a negative balance on the inmate's debit account."

2.3 Attachment #2, Section II.C is amended as follows:

"C. Contractor shall not charge fees of any type not specifically identified in this Contract for funds deposited by friends, family, or an inmate into an ODOC inmate debit account or Prepaid Collect account, regardless of the method of deposit, including but not limited to kiosk, mail, in person or using the web."

2.4 Attachment #2, Section II.G is added as follows:

"G. Contractor shall charge the following fees per deposit for deposits made to individual inmate trust accounts. The maximum amount of any single trust deposit shall be \$300."

1. \$4.50 for deposits made online, by kiosk (non-cash) or by using an Interactive Voice Response System, for each \$300 or portion thereof so deposited."

2. \$5.50 for deposits made with the assistance of a live operator for each \$300 or portion thereof so deposited."

3. \$2.50 for deposits made at a kiosk using cash, or via Western Union or Moneygram for each \$300 or portion thereof so deposited."

2.5 Attachment #3, Section III.A.1 is amended as follows:

"Contractor may not charge taxes or fees, or any other additional charges not specifically identified in this Contract to an inmate's Prepaid / debit account or to a

specific Prepaid Collect telephone number specific account."

- 2.6 Attachment #3, Section III.A.2 is amended as follows:

"Contractor may not charge taxes or fees, or any other additional charges not specifically identified in this Contract to friends and family depositing funds into an Inmate account."

- 2.7 Attachment #3, Section III.B.1 is amended as follows:

"Contractor lobby kiosks located in each ODOC lobby for family and friends to deposit funds using credit card, debit card or cash with no added fees except for those specifically identified in this Contract."

- 2.8 Attachment #3, Section III.B.2 is amended as follows:

"A secure website for web purchases, Moneygrams, Western Union payments, and direct billing through the local telephone exchange company and personal checks)."


- 2.9 Attachment #3, Section IV.A.1 is amended as follows:

"Commissary software must be compatible for use with kiosks and [utilize] software such as Scantron or similar technology for Inmate ordering support and KeepTrak or similar software for commissary order fulfillment. The use of kiosks or Scantron-type technology shall be by mutual agreement of ODOC and Contractor.

3. Except as expressly amended above, all other terms and conditions of the original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

Certification: By signature on this Amendment for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.830 to 310.706 and any local taxes administered by the Department of Revenue under ORS 306.620.

PINNACLE PUBLIC SERVICES LLC and  
TELMATE LLC


  
President

Title

Date

6/28/12

STATE OF OREGON by and through its  
DEPARTMENT OF CORRECTIONS

  
Leonard W. Williamson, Inspector General

Date

6/28/12

Approved as to Legal Sufficiency by  
Pinnacle Public Services LLC and  
Telmate LLC

Approved as to Legal Sufficiency by the  
Oregon Attorney General's Office

/s/ Jonathan M. Ward, AAG (per 06/28/12 e-mail)