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**State of Wisconsin**  
**Department of Corrections**

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**CONTRACT**

**Services:**

The purpose of this contract is to acquire inmate telephone service for the adult institutions and centers operated by the State of Wisconsin, Department of Corrections (DOC), replacing an expiring contract. This service is to include thirty-six (36) existing facilities, and any others that are either constructed or acquired during the life of the contract. A complete "turn-key", fully operational and reliable system is the highest priority in this procurement. This will include protection of the public, continued improvement of institution security and facilitation of law enforcement, through a seamless system that will provide telephone service, call control capabilities and the ability to record and/or monitor calls, as allowed by law. The State also seeks to minimize called party charges (including call set-up charges, local calling, intraLATA calling, interLATA calling and interstate calling) and anticipates bearing no costs during this procurement and the life of the subsequent contract for services at either the current existing locations or any other future locations. Rates charged to the called parties must be fixed for the initial term of the contract. Should the basis for these charges (tariffs, regulations and/or standards) be reduced during the initial term, these rate reductions must be communicated to the Department and applied to the applicable charges upon implementation of the reductions. Revenue (commissions) from this contract is required by law. A mutually agreeable commission structure ~~will be added during contract negotiation.~~ *was -> will* No State payments to the contractor will be allowed.

**Contract Period:**

The term of the Agreement will be a five (5) year contract with two (2), potential, one-year options. The renewal(s) will be at the sole discretion of the Department. The contract shall commence upon complete installation and acceptance by the department as defined in # 6 below.

**RFP Number:**

**SM-1752**

**Contract Number:**

**C-1752**

## **Standard Terms**

1. **PARTIES TO THE AGREEMENT** - This agreement (the "Contract") is entered into for the term set forth above by and between the State of Wisconsin Department of Corrections ("DOC") and EMBARQ Payphone Services, Inc. ("Contractor") an entity doing business in the State of Wisconsin. To exercise the Contract period extension option set forth above, the parties shall execute a written addendum to the Contract at least thirty (30) days prior to the Contract expiration date.
2. **AGREEMENT** - This Contract formalizes DOC's agreement to purchase Inmate Telephone Services ("Services"), as more specifically defined in the "Request For Proposal" #1752, from Contractor and Contractor's agreement to provide Services, as requested, to each individual requesting Correctional Institution and/or Correctional Center per specifications in the Request for Proposal #1752 which solicited competition for the Services that are the subject of this Contract, and Contractor's written "Proposal" in response thereto, both of which are attached hereto and incorporated into this Contract by reference.
3. **FORMS** - Form DOA-3054 ("Standard Terms and Conditions") and Form DOA-3681 ("Supplemental Standard Terms and Conditions for Procurement of Services") are attached hereto and incorporated into this Contract by reference. To the extent that any term or condition set forth in either Form DOA-3054 or Form DOA-3681 differs or conflicts with this Contract, the term, condition, or Contract provision determined by DOC to be the more favorable to DOC in any given situation shall govern and control.
4. **ORDER OF PRECEDENCE** - The entire agreement between the parties is composed of this Contract and the documents incorporated herein and/or applicable hereto as enumerated below in this paragraph. When there are conflicts or disputes between the terms of this Contract and the terms of the aforementioned documents, the following precedence for all agreement documents, in descending order of priority, shall be used to resolve said conflict or dispute: (1) Contract (including Forms DOA-3054 and DOA-3681); (2) written Proposal; (3) written Request for Proposal; (4) other exhibits/attachments; and (5) official State of Wisconsin Purchase Order.
5. **TERMINATION** - DOC may terminate this Contract at any time, with or without cause, and without penalty by delivering thirty (30) days' written notice to Contractor. Failure of DOC to comply with the Contract terms, conditions, or specifications shall provide the sole cause for which Contractor is entitled to terminate this Contract. Contractor shall notify DOC in writing within thirty (30) days after Contractor becomes aware of the alleged noncompliance with a complete description of the same. If DOC does not, within forty-five (45) days after its receipt of Contractor's notice, either (i) effect a cure or (ii) if the noncompliance is not one that can reasonably be cured within forty-five (45) days, develop a plan to cure the noncompliance and diligently proceed according to that plan until a cure is effected, then Contractor may terminate this Contract for cause by written notice to DOC. Contractor may not terminate this Contract without cause unless express written consent to do so is provided by DOC.
6. **DEPENDENT AUTHORIZATION** - This Contract is contingent upon its authorization under Wisconsin and United States law and any amendment or repeal of the same determined by DOC to affect its relevant authority or funding shall permit DOC to immediately terminate this Contract, without penalty, upon written notice to Contractor.

8. **LEGAL AUTHORITY** - Contractor warrants and represents that it is a duly organized and validly existing legal entity authorized to conduct business in the State of Wisconsin and that the person(s) executing this Contract on its behalf has the complete and unrestricted power and authority to enter into this Contract and bind Contractor to the terms herein. All of the terms, covenants, representations, warranties, and conditions of this Contract will be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors, assigns, and other legal representatives.
9. **INDEPENDENT CONTRACTOR** - The parties hereto agree that Contractor, its officers, agents, and employees, in the performance of this Contract shall act in the capacity of an independent contractor and not as an officer, employee, or agent of DOC. Contractor agrees to take such steps as may be necessary to ensure that each of its subcontractors will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venture, or partner of DOC. Furthermore, neither DOC nor Contractor will represent itself as the agent or legal representative of the other or as partner or joint ventures for any purpose whatsoever, and neither shall have any right to create or assume any obligations of any kind, express or implied, for or on behalf of the other in any way whatsoever.
10. **INDEMNIFICATION** - Contractor will indemnify and hold harmless DOC and all of its officials, officers, agents, and employees from and against any and all liability of any character including, without limitation, suits, actions, claims, demands, losses, judgments, costs, damages, and expenses, including reasonable attorneys' fees, to the extent caused by the Contractor, or any of its officers, agents, employees, or contractors, in performing work under this Contract.
11. **REVISIONS** - Revision of this Contract is not effective until agreed to by DOC and Contractor by a written addendum to this Contract signed by the authorized representatives of both parties.
12. **COST RECOVERY** DOC shall be entitled to recover all costs related to obtaining and providing replacement Services and/or deliverables which could not be provided or completed due to either Contractor's termination of the Contract for any reason prior to the expiration of the original or, if applicable, extended Contract term or DOC's termination of the Contract due to Contractor's failure to comply with the Contract; provided however that DOC shall not be entitled to recover such costs in the event Contractor terminates due to DOC's failure to comply with the Contract. The rights and remedies of DOC provided herein shall not be exclusive but are in addition to any other rights and remedies provided by law or elsewhere in the Contract, including the documents incorporated herein.
13. **DOCUMENTATION** - Upon termination or expiration of this Contract, each party shall forthwith return to the other all papers, materials, and other properties of the other held by each for purposes relating to this Contract; provided, however, DOC shall be entitled to retain a copy of any completed or partially completed deliverables, if any, as well as any other project records DOC is required to retain under the State of Wisconsin's records retention requirements. In addition, each party will assist the other party in the orderly termination of this Contract and the transfer of all aspects hereof, tangible or intangible, as may be necessary for the orderly, non-disrupted business continuation of each party.
14. **APPLICABLE LAW** - This Contract and the performance of the parties' obligations hereunder will be governed by and construed and enforced in accordance with the laws of the State of Wisconsin, other than any conflict-of-laws provisions thereof that would otherwise require the application of the law of any other jurisdiction. Contractor consents to personal jurisdiction in the State of Wisconsin. The venue for any action hereunder shall be in Dane County, Wisconsin.

15. **USE OF FACSIMILE** - The parties agree that this Contract may be signed and transmitted by facsimile and it shall be considered an original document, and the signature of any party upon a document transmitted by facsimile shall be considered an original signature having the binding legal effect of an original. For purposes of this document facsimile will include all scanned and electronically transmitted documents,
16. **ENFORCEABILITY** - All of the terms, covenants, representations, warranties, and conditions of this Contract will be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors, assigns, and other legal representatives.
17. **WAIVER** - No waiver by either party of any default hereunder shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Contract.
18. **SEVERABILITY** - If any part of the Contract is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other part and said part shall continue to apply to the extent allowed by said court or, if not so allowed, be deemed severed from this Contract entirely.
19. **NOTICE** - If for any reason DOC is dissatisfied with the quality or quantity of Services, the Contractor may, at DOC's discretion, be given written notice of that dissatisfaction in a timely manner. The notice will also include a time period in which Contractor may cure the quality or quantity problem
20. **DOCUMENT MAINTENANCE** - Contractor shall comply with the reporting and auditing requirements of DOC including, without limitation, the requirement that Contractor retain all documents applicable to the Contract for a period of not less than three (3) years after the final installation is made. Any required reports shall be forwarded to the Contract Administrator according to the schedule of DOC.
21. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996** - Contractor agrees to comply with State and Federal constitutions, laws, rules, and regulations applicable to the Services under this Contract including, without limitation, those set forth in and pertaining to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any revisions/amendments thereto.
22. **SUBCONTRACTING** - Contractor may not subcontract or assign any part or obligations of this Contract without the prior written consent of DOC. However, even if so permitted to subcontract or assign, Contractor still retains responsibility for fulfillment of all terms and conditions of this Contract.
23. **INFRINGEMENT** - Contractor guarantees that the sale or use of any software or equipment utilized in the provision of Services required under this Contract will not infringe any patent or copyright. Contractor covenants that it will at its own expense defend every suit which shall be brought against DOC (provided that Provider is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent or copyright by reason of the sale or use of such software or equipment, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.
24. **RECORD MAINTENANCE** - Contractor shall maintain such records as are required by State and Federal law and shall comply with all applicable confidentiality laws and requirements pertaining to said records.

- 25. RECORD INSPECTION** - Contractor will allow inspection of records and programs, insofar as is permitted by State and Federal law, by DOC representatives and its authorized agents, and Federal agencies, in order to confirm Contractor's compliance with the specifications of this Contract.
- 26. EMPLOYMENT RESTRICTIONS** - Contractor agrees to have a policy prohibiting the employment of a person who is on probation, parole, extended supervision for any Service position where the primary duties and responsibilities involve the supervision or treatment of inmates, probationers or parolees or involve access to offenders' records or funds. The policy must be substantially equivalent to DOC's policy as expressed in Chapter 301 Attachment A of the DOC Supervisor's Manual, October 1990, a copy of which may be obtained from the Contract Administrator. Furthermore, Contractor's policy shall provide that records of pending criminal charges and convictions of employees or job applicants involved or to be involved in providing Services shall be considered in employment-related decisions when it can be demonstrated that the circumstances of the pending charge or conviction are substantially related to the Service and would prejudice DOC's interests of ensuring that its correctional, rehabilitation, treatment, and administrative programs are carried out in a legal, effective, safe, and humane manner. The policy must be substantially equivalent to DOC's policy as expressed in Executive Directive 42, August 2001, a copy of which may be obtained from the Contract Administrator.
- 27. FRATERNIZATION** - Contractor agrees to have a policy on fraternization which prohibits the forming of improper relationships between Contractor's employees and offenders. The policy must be substantially equivalent to the Department of Corrections' policy as expressed in Executive Directive 16, May 1991 - Revised October 2001 & October 2004, a copy of which may be obtained from the Contract Administrator.
- 28. ENTIRE AGREEMENT** - This Contract sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements, arrangements, and understandings relating to such subject matter.

## **Additional Terms**

1. **CONTRACT ADMINISTRATION** - The contract administrator for WDOC is the purchasing agent (Steve Mahoney or his designee). The EMBARQ contact on contract issues will be Michael Hynes 866 224-5136 The WDOC contact for operational issues will be the telecommunications manager (John Shanda). The EMBARQ contact for operational issues will be . Gary Kasza 414 325 3433
2. **AGREEMENT REVISION AND/OR TERMINATION**
  - 2.1. Failure to comply with any part of this agreement may be considered cause for revision, suspension or termination of this agreement.
  - 2.2. Revision of this agreement is not effective until agreed to by WDOC and EMBARQ by an addendum to this agreement signed by the authorized representative of both parties.
  - 2.3. In the event that EMBARQ experiences any occurrence which might potentially jeopardize its ability to perform the terms of this contract, EMBARQ agrees to give immediate notice to WDOC.
  - 2.4. EMBARQ shall also notify WDOC whenever it is unable to provide the required quality or quantity of services specified. Upon such notification, WDOC shall determine whether such inability will require revision or cancellation of this agreement.
  - 2.5. In the event that the contract is terminated, EMBARQ staff shall provide sufficient interaction and communication with the replacement vendor's staff to insure that there is no interruption in the delivery or diminution in the quality of services required by this contract, and shall provide services requested by WDOC during the transition period, consistent with this contract.
3. **FUNCTIONAL & TECHNICAL REQUIREMENTS**
  - 3.1. EMBARQ will provide new hardware and software networking equipment to support the State of Wisconsin Inmate Collect Calling contract. EMBARQ has decided to use new, state of the art equipment that will provide the best solution for the State. Technological advances are always happening and EMBARQ wants to provide the most complete system available instead of reusing old equipment that may be prone to breakdown or have major outages causing downtime of the inmate calling system.
  - 3.2. EMBARQ will provide a turnkey solution including a seamless transition of the existing call detail and recordings to the inmate-calling platform. "Turnkey solution" means a fully operational system, which will work exactly as specified in the RFP and in the EMBARQ response. This will allow all records and investigations to continue with the change of vendors, without a loss of data or recorded calls.
  - 3.3. EMBARQ will update, service and maintain in-place telephone instruments during the life of the contract. When new telephones are needed, EMBARQ agrees to use "state of the art" equipment, subject to WDOC's advance approval. EMBARQ agrees to assume responsibility for the support and maintenance of all in-place instruments. EMBARQ also agrees to ensure that all re-used telephone instruments comply with the same required signs and/or labels as described above, in both English and Spanish that will be affixed to all inmate telephones and audible through the telephones indicating that all calls made on the telephones, other than

properly placed attorney calls, are subject to being recorded or monitored. EMBARQ will use the language for this signage as provided by WDOC.

- 3.4. EMBARQ agrees to take responsibility for all inside and outside wiring to accomplish a complete installation of the EMBARQ-proposed inmate telephone system. EMBARQ will evaluate all wiring in support of the system. EMBARQ will test all lines and upgrade and/or replace with new wiring where the existing wiring is of substandard quality. New wiring installed during installation of the system will meet minimum industry standards (not less than EIA/TIA-568 Level 5E standards). If additional phones are needed in an existing facility EMBARQ will provide cabling. If the State opens a new facility or has an infrastructure change, the State will provide cabling for inmate telephones.
- 3.5. EMBARQ agrees to upgrade soft and firm ware within the WDOC inmate calling system on a continual basis as improvements become available. Broken or failing hardware will be replaced with comparable hardware.

#### 4. IMPLEMENTATION

- 4.1. EMBARQ and WDOC agree that implementation of this contract will take place on a site-by-site basis. Embarq and WDOC will mutually agree on the location priority.
- 4.2. EMBARQ's Implementation Project Management team will work with WDOC to provide a seamless transition of services. EMBARQ will design a plan to minimize disruption at any single site or network-wide. To expedite the overall process, one Program Manager will be assigned to oversee all aspects of installation and implementation of multiple installation crews that will work in tandem to implement the project.
- 4.3. EMBARQ agrees to provide a complete turnkey installation, including all equipment, software, facilities, cabling, training, database and training for support organization employees. EMBARQ will assume full responsibility for converting the initial database of inmate numbers and for the programming of all variable call parameters.
- 4.4. EMBARQ will assume full responsibility for adapting to all existing site conditions and agrees that WDOC will have final approval of all installation methods and materials. EMBARQ agrees to bear the full cost of installing, providing, and maintaining the site preparation, cabling, telephone instruments, and all special equipment.
- 4.5. Any damage to State premises or property caused by any work performed by EMBARQ or any subcontractor or agent of EMBARQ during implementation or during the life of the contract will be repaired and restored to its original condition at EMBARQ's expense, normal wear and tear excepted.
- 4.6. The summary implementation plan is defined by the chart summarized in EMBARQ's Proposal, subject to revision with WDOC's approval.
- 4.7. The quality of the work will be ensured by the on-site EMBARQ Project Manager (PM). The PM will oversee the installation of the inmate telephone system (ITS), the inmate phones, and all peripheral equipment (wiring, main distribution frame (MDF), etc.). The PM verifies that all equipment is installed properly and working correctly at each site before cutting over the traffic from the existing ITS.

- 4.8. The PM will implement the ITS installation by tracking the schedule and ensuring quality on a day-to-day basis. The PM will be located in the Wisconsin area (M-F, excluding holidays), from the installation of the first site to the last site. The PM will perform the following duties at each site:
  - 4.8.1. Determine that physical access for all installation personnel will be available at each institution/center by discussion with the local coordinator designated by the Wisconsin DOC.
  - 4.8.2. Determine that the existing wiring is acceptable and identify any required modifications to the wiring.
  - 4.8.3. Determine that the existing phones are acceptable and identify any required replacements. The required number of new phones will be ordered and made available prior to cutover.
  - 4.8.4. Ensure that all required equipment and material will have been shipped to the site before installation begins:
    - 4.8.4.1. The Inmate Telephone System with recording and monitoring platform.
    - 4.8.4.2. The new telephones required to replace those existing phones no longer acceptable for use.
    - 4.8.4.3. New enclosures to replace old enclosures no longer acceptable.
  - 4.8.5. Coordinate with the installation crew assigned to implement that particular site.
  - 4.8.6. Ensure that voice and data circuits will be available for service for moving the local and long distance traffic.
  - 4.8.7. Verify that all equipment has been tested to within specification prior to being placed in-service.
- 4.9. EMBARQ will provide a weekly report to WDOC summarizing progress and identifying any exceptions. After installation is complete, documentation will be provided to the WDOC concerning the quantity of equipment located at each site, its location, and any relevant circuit identification numbers.
- 4.10. EMBARQ has assembled an account management team, designed to meet the specific needs of WDOC during the implementation process. EMBARQ proposes to provide end-to-end solutions through installation, cutover and final acceptance. Throughout all phases, EMBARQ will work closely with WDOC to minimize the impact on present operations and end users. The ultimate goal is to ensure a smooth and transparent implementation for WDOC.
- 4.11. The installation crews will install all network equipment, cabling, computer databases to support the inmate PIN system administration.
- 4.12. WDOC's telecommunications manager will serve as the project manager to supervise the initial implementation and a coordinator at each institution/center will also be named. EMBARQ agrees to coordinate all work only through those designated contacts.



## **5. TRAINING AND ORIENTATION**

- 5.1.** EMBARQ agrees to provide initial training prior to cutover of service on the use of all equipment and functions available to the WDOC employees, institutions/centers, and inmates. Further, EMBARQ agrees to provide complete system training, onsite at each location, to up to five (5) employees from WDOC and five (5) from each institution, and up to three (3) from each center. This training may, at WDOC's request, include train-the-trainer training to allow WDOC personnel the ability to train subsequent staff. EMBARQ will also provide on-site follow-up visits to ensure that WDOC personnel can successfully administer the inmate calling system and all the feature functionality. EMBARQ will hold initial regional training for the WDOC over a mutually agreed upon timeframe. The timeframe for the initial training will be one week. Subsequent training will be available as requested by WDOC through the EMBARQ program management group.
- 5.2.** EMBARQ training will include all inmate functions, system administration functions, report generation and use, recording/monitoring, vendor support procedures, and other subjects deemed necessary by WDOC for a full and complete implementation. Appropriate written materials for both training and ongoing reference will be provided.
- 5.3.** The EMBARQ specialized trainer will lead training on the proposed inmate calling system. This will provide a thorough training on the system and telephone equipment. Each session will be individualized to meet the experience and expertise level of the attendees. Training provided will include the following topics, subject to the approval and modification by the EMBARQ team and WDOC: the inmate calling system components and operation, setup and maintenance of inmate accounts, real time monitoring and recording applications, reporting capabilities, the restriction application, and the defining of call timing and duration by phones or groups of phones.
- 5.4.** Training on the use of the inmate calling system will be presented as a video production to allow playback to inmates immediately impacted by any system changes, as well as for future inmates. EMBARQ will further comply with the requested quantities of this video (eight per institution and four per center, plus twenty additional copies for future distribution). The video will be produced in both English and Spanish using the same video image. EMBARQ agrees to work with the WDOC regarding the content of these videos. Brochures will be provided for both the inmate and the called party relating to the usage of the inmate telephones. Additionally, detailed automated voice prompts guide the inmate and called party through the call process.
- 5.5.** Instructor-led training and on-the-job training will be provided by EMBARQ during the life of the contract, at no cost to WDOC. Training sessions occur initially upon Proposal award and continue as any new features are added, and at the request of WDOC. Training sessions will be held at locations recommended and approved by WDOC. EMBARQ training emphasizes hands-on demonstrations to familiarize participants with the inmate calling system. The courses are designed to encourage participants to practice the skills necessary to perform their daily functions on the system.
- 5.6.** The number of attendees per session will depend on the availability and size of the room where the training will be held. There are not a maximum number of people that can attend the sessions. Sessions typically last 3-5 hours; however, the sessions will not end before attendees have a thorough working knowledge of the system and its components. Follow-up training will also be provided as needed. This training can be done via email, on-site visit, or

remotely by taking "control" of the system and walking the administrator through the steps necessary to complete their task(s).

6. **INITIAL TESTING** - EMBARQ agrees that testing must be conducted and successfully passed at each institution for the complete system. EMBARQ understands and agrees that tests shall be conducted over a period of 30 consecutive days, beginning at the time the installation is completed. EMBARQ agrees that WDOC shall be provided with each set of test results for each WDOC institution, and WDOC agrees to review these test results and issue a written notice of acceptance, or direct that the testing period be extended.

## 7. ONGOING TESTING

- 7.1. During the life of this contract, EMBARQ agrees to provide monthly reports to WDOC on system operation at each site and network wide. The monthly report shall indicate that all systems are fully operational. The report will note systems in need of remediation, complete with a schedule to bring them back into compliance.
- 7.2. This report will be transmitted to the WDOC Designee(s) and will cover the following specific items.
- 7.2.1. All Network Services including dial tone to all telephones or jacks, all local network services and all remote access and maintenance lines.
- 7.2.2. All premise-based network equipment including all hardware/software required for system operation.
- 7.2.3. All premise-based telephone instruments provided for inmate telephone use.
- 7.2.4. All recording and monitoring equipment in-place for audio recordings of telephone conversations, playback capabilities and network call detail recording, with specific assurance that no "properly placed attorney telephone calls" are being recorded.
- 7.2.5. All systems are fully operational as proposed in EMBARQ's Response to the WDOC Request for Proposal.

## 8. MAINTENANCE

- 8.1. EMBARQ agrees to provide complete maintenance for all parts of the system provided to the State, including but not limited to labor, parts, materials, software, repair or replacement of equipment, and transportation, for the life of the contract.
- 8.2. EMBARQ agrees to provide maintenance at no cost to the State. EMBARQ understands and accepts that a regularly scheduled preventative maintenance program must be established for each location. EMBARQ further understands and agrees this work must be performed to assure the WDOC of the proper operation of the entire system.
- 8.3. The Wisconsin-based EMBARQ Project Manager will manage the EMBARQ team in scheduling all onsite preventative maintenance on the proposed systems and equipment. The EMBARQ support team resources will be located throughout the State of Wisconsin and will travel from there as needed to provide maintenance on all systems.
- 8.4. Additionally, proactive monitoring, preventive maintenance, and virus protection will be provided 24 hours a day, 7 days a week. The inmate calling system is constructed to enable remote access at any time. This allows for nightly "polling" of information, future software

enhancements and upgrades via modem or data link. This method of connectivity may also be used to provide general system maintenance or on-site user assistance.

- 8.5. EMBARQ understands and agrees that maintenance will include any inmate telephone equipment, including instruments and inmate telephone wiring owned by WDOC, and replacement as needed of any equipment or wiring now owned by WDOC.
- 8.6. EMBARQ agrees that an existing monitoring/playback unit will be maintained for use with historic tapes at a mutually agreed upon location.
- 8.7. EMBARQ agrees to provide and maintain sufficient staffing to respond to multiple events and sites simultaneously.
- 8.8. EMBARQ understands and agrees that scheduled maintenance and minor repairs will be performed during business hours, which are 7:30 AM to 4:30 PM, Monday through Friday. Major repair services will be available from 6:30 AM to 10:30 PM, seven (7) days a week, three hundred and sixty five (365) days a year.
- 8.9. EMBARQ will provide a 7x24 Inmate Help Desk. An EMBARQ System Administrator answers the phone and opens a ticket, routing the issue(s) to the appropriate EMBARQ personnel for resolution. The System Administrator logs and tracks the ticket throughout the entire process to ensure complete resolution. EMBARQ's Help Desk Support organization can take requests via telephone, e-mail or facsimile. All reports are logged in at the time they are received.
- 8.10. EMBARQ understands that WDOC reserves the right in extraordinary situations to declare an emergency and to require repair services at any time.
- 8.11. EMBARQ agrees that response to a major problem to begin resolution will occur within one (1) hour via remote access with arrival on-site within four (4) hours from reporting. EMBARQ will use its best efforts to ensure that satisfactory completion of the repairs will occur within twenty-four (24) hours from reporting.
- 8.12. EMBARQ agrees to implement their escalation plan per the RFP in the case that any of the above conditions are not met within the required time allowances.
- 8.13. EMBARQ fully understands WDOC's maintenance and repair requirements, as stated above, and agrees to implement them as needed. EMBARQ understands and agrees that any time a repair problem is pending, reports will be made to the reporting institution every two (2) hours. If a problem is in first stage escalation, reports will be made to the reporting institution and to WDOC every two (2) hours. If a problem is in second stage escalation or later, or is deemed by WDOC to be an emergency, reports will be made to the reporting institution and to WDOC every hour, until resolution is achieved. EMBARQ's onsite Project Manager and Help Desk Support ensure rapid response, reporting and resolution of all issues. On a monthly basis EMBARQ's technicians will do a routine inspection of all inmate calling system equipment at all the facilities within WDOC. EMBARQ will visit each site at least once per quarter of a year. EMBARQ will monitor all facilities and check diagnostics of all sites monthly. Any damaged or worn parts will be replaced at that time. Additionally, remote diagnostics are run on a nightly basis, identifying any abnormalities of inmate calling that could point out broken equipment, unreported by the State.

- 8.14. EMBARQ will maintain a stock of spare telephone parts in locations approved by WDOC. This will ensure that the 4-hour response time is met for most repair calls. The following spare telephone-related equipment will be stored so the administration of State investigations can proceed if a part fails:

- 8.14.1. armored handsets with steel lanyards
- 8.14.2. enclosures
- 8.14.3. wall mountings and backboards
- 8.14.4. chrome metal keypads
- 8.14.5. chrome metal cradle

## **9. CONTRACTOR/SUBCONTRACTOR RELATIONSHIPS**

- 9.1. EMBARQ will function as the prime contractor—assuming total responsibility for all performance aspects of this contract, including portions provided by subcontractors. EMBARQ understands that there are consequences including but not limited to contract penalties for failing to sufficiently plan for fully carrying out all objectives and tasks under this contract.
- 9.2. Subcontractors shall be subject to approval of WDOC. WDOC reserves the right to prohibit any of the employees of EMBARQ and/or subcontractors from performing service, and/or demand the removal any of the employees of EMBARQ and/or subcontractors, for any reason, and at its sole discretion, with regard to this contract.

## **10. COST & REVENUE REQUIREMENTS**

- 10.1. EMBARQ agrees to make available from all Department facilities, Local, IntraLATA, InterLATA and Interstate call.
- 10.2. The contract rates to callers using the inmate calling system will not increase for the term of the contract.

The following are the initial rates to be charged for this contract, subject to state and federal law. The charge to the called party shall consist of the set-up charge for the appropriate call type plus the per minute rate for each minute of the placed call. The charges below do not include voice recognition applications or other value added services defined within Embarq's proposal. Charges shall commence upon acceptance of call by the party called and shall cease when the connection is terminated. Should state or federal statutes or regulations change in the future either reducing or eliminating commissions or reducing the rates, fees or other charges that are allowed or required to be collected by EMBARQ for inmate calling services provided under this Contract, DOC and EMBARQ agree to renegotiate such commissions and/or contract rates, fees or other charges in good faith to preserve, to the greatest extent possible, the economic benefits of this Contract that were contemplated by both parties, including without limitation, the possibility of rebalancing any mandated rate reductions or commission reductions by adjusting rates for other types of calls.

10.3.

Call Type:	Set-Up Charge:	Per Minute Rate:
Local:	<u>\$0.00</u>	<u>\$0.12</u>
IntraLATA:	<u>\$0.00</u>	<u>\$0.12</u>
InterLATA:	<u>\$0.00</u>	<u>\$0.12</u>
Interstate:	<u>\$0.00</u>	<u>\$0.18</u>

**11. COMMISSIONS, ADMINISTRATIVE SUPPORT, AND REPORTS**

- 11.1. Subject to state and federal law, EMBARQ agrees to pay to WDOC a commission of Thirty percent (30%) of the gross revenues generated under this contract. Payments shall be made monthly by one check covering all commissions and administrative costs. The check shall be made payable to Wisconsin Department of Corrections and remitted to the Bureau of Fiscal Services, PO Box 7991 Madison, Wisconsin 53707-7991.
- 11.2. EMBARQ agrees that these commissions will be paid retroactively to the date service commenced at each location, and will be paid based on gross revenues.
- 11.3. EMBARQ agrees to provide a monthly report to the WDOC Designee(s) detailing all commissions and administrative support costs paid by EMBARQ. For commissions, this report shall include the location name, the number of lines in service, total calls, total minutes, total gross revenue, and total commission paid, for each location within the WDOC system.
- 11.4. EMBARQ agrees upon reasonable request to maintain and file with WDOC such progress, service, fiscal, inventory and other reports as WDOC may require within the period and scope of this Agreement.

## **12. SECURITY, BACKGROUND INVESTIGATIONS AND WORK RULES**

- 12.1.** EMBARQ personnel and all subcontractor personnel will submit to a background investigation conducted by WDOC for initial and/or continued employment, and will sign a WDOC statement regarding workplace rules and inmate fraternization.
- 12.2.** All EMBARQ team staff, including subcontractor staff, agree to comply with institutional regulations, as well as security rules of each site. EMBARQ agrees that all access to, use of, and modifications to State facilities will have prior approval from the WDOC telecommunications manager.
- 12.3.** EMBARQ agrees that each institution/center has the sole right to allow or not allow any EMBARQ or subcontractor employee to enter and work in its facilities. Contractors will be required to provide whatever information about employees is requested by the institution/center, and to replace any employee at the direction of the institution/center.
- 12.4.** EMBARQ agrees that the vendor work rules and procedures vary from site to site, dependent on the site's security level and physical limitations. These work rules will be provided to EMBARQ before the commencement of any work on this project. Any EMBARQ or subcontractor employee, working at a WDOC location, must present proper picture identification. WDOC also reserves the right to deny access at its sole discretion.

## **13. SERVICE STANDARDS AND QUALITY EVIDENCE**

- 13.1.** EMBARQ agrees to service standards and quality, continuity, transparency, and adequacy of staffing, as well as other resources, will be maintained in the highest possible manner over the life of the contract.
- 13.2.** EMBARQ will provide customer service staff to WDOC to receive and process orders for adds, moves and changes, scheduling work, updating records, updating systems to include central processors, software, firmware, and other operational components.
- 13.3.** EMBARQ has a support organization in place to respond to trouble calls, 24 hours a day, seven days a week, requests for information and other service issues. EMBARQ agrees to immediately trace recent calls placed from specific telephones, in case of an emergency. EMBARQ will provide administrative support to make changes in databases, system parameters or call parameters. EMBARQ will provide points of contact and customer service for inquiries made by called parties relating to operational issues and billing.
- 13.4.** The procedural information listed above will be provided in a written format to each site and to WDOC's Telecommunications Manager to be used as a reference for daily usage. This document will contain contact information, including telephone, fax and e-mail addresses, as well as escalation procedures. This document will be kept up to date during the term of the contract. The EMBARQ Program Manager will send an updated document in a manner acceptable by WDOC (fax, mail, e-mail) each time a change in personnel or procedures is made.
- 13.5.** EMBARQ also agrees to provide additional consulting services to the WDOC or individual site regarding inmate telephone service, as reasonably requested.
- 13.6.** EMBARQ agrees to fully support all the contract reporting requirements related to inmate calling system usage, performance, and trouble reporting by doing the following. EMBARQ agrees to fully support and maintain initial and ongoing management of all databases created

for the State. EMBARQ also agrees to provide full maintenance services in connection with all services and equipment provided under this contract. EMBARQ has reviewed the RFP maintenance requirements and will fully meet all requirements.

- 13.7. EMBARQ understands and agrees that additions, changes and moves of premise equipment will be ordered in writing by WDOC. Further, EMBARQ agrees that work must be completed within 15 days, except for new institutions, for which dates will be established on a case-by-case basis. EMBARQ agrees that removals will be completed within 10 days of order.
  - 13.8. EMBARQ agrees to provide a combination of centralized Contractor staff and available on-site contractor staff. The centralized staff will provide an on-line "Help Desk." EMBARQ is dedicated to providing a high level of customer service, 24 hours a day, seven days a week. EMBARQ operates customer service centers across the United States, specializing in providing customer service to state, local and government customers. EMBARQ's designated in state Project Manager will be available during normal business hours (7:30 AM – 4:30 PM) (Monday through Friday). Should any situation occur after hours, a toll free number set up by EMBARQ specifically for WDOC is available. This number will be listed in the manual provided to each location.
  - 13.9. EMBARQ will use its controlled closed-loop system for reporting, documenting, analyzing and correcting failures, problems, and anomalies. The initial trouble report is generated via system diagnostics, State facility phone call, or facsimile. During working hours (7:30 AM – 4:30 PM) (Monday through Friday) and after hours a toll free number to the EMBARQ Inmate Help Desk is available to the DOC to initiate the trouble reporting process. The EMBARQ System Administrator will assign a priority ranking, based on the level of severity. The appropriate EMBARQ personnel will be contacted, depending on the level of severity.
14. **TITLE TO EQUIPMENT** - Through the term of this Agreement (60 months, with two possible one-year extensions), EMBARQ shall hold title to all equipment covered by the agreement with the exception of the telephone instruments. At the conclusion of the initial 60 months, plus any extensions of the Agreement, EMBARQ shall transfer title of all the existing equipment, which includes, but is not limited to, hardware, software, interconnect components and interfaces, to WDOC at no cost to WDOC. This includes title to any and all monitoring equipment, cabling, and all other inmate telephone equipment installed, as well as all telephone instruments, but excludes any proprietary software systems used under license from the owner(s) of such intellectual property.

## **15. LIMITATIONS OF LIABILITY AND INSURANCE**

- 15.1. WDOC shall not be held liable for EMBARQ's inability to collect on any Operator Services calls that EMBARQ allows through its network. WDOC shall not be responsible for, or for collecting, any Federal, State, or local taxes normally associated with telephone use charges. WDOC shall not be responsible for establishing or guaranteeing any minimum amount of calls measured by minutes used, calls completed, or revenue generated.

Notwithstanding the above, should average daily population over the course of a six-month period fall below 20,500 (vs. current ADP of approximately 22,500), EMBARQ and WDOC agree to work in good faith to renegotiate commissions and/or contract rates, fees or other charges in good faith to preserve, to the greatest extent possible, the economic benefits of this Contract contemplated by EMBARQ during the bidding process.

- 15.2. Except for defaults by subcontractors or as otherwise set forth herein, neither party shall be deemed negligent, at fault or liable in any respect to the other for any delay, interruption or failure in performance hereunder resulting from fire, flood, earthquake, other natural disaster, riot, acts of God, war, nuclear accidents, labor disputes, strikes, unavailability of transportation, public regulatory body, or governmental statutes or regulations superimposed after the fact, or other cause beyond the reasonable control of the party delayed, interrupted or prevented from performing. If a delay or failure in performance by EMBARQ arises out of a default of its subcontractor and if such default arises out of causes beyond the control of both EMBARQ and subcontractor, and without the fault or negligence of either of them, EMBARQ shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time and at comparable costs to permit EMBARQ to meet the required performance schedule.
- 15.3. Delays or failures beyond the control of EMBARQ, including those caused by either a Local Exchange Carrier (LEC) or WDOC will not be considered a failure to perform and EMBARQ shall not be liable for damages arising from such delay or failure.
- 15.4. EMBARQ shall be liable for damages arising out of injury to the person and/or damage to the property of WDOC, its employees, persons designated by WDOC for training, or any other person(s) other than agents or employees of EMBARQ, designated by WDOC for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of any equipment, equipment software and telephone services provided under this agreement, at WDOC's place of business, to the extent the injury or damage was caused by the fault or negligence of EMBARQ. In addition to the liability imposed upon EMBARQ to the extent such injury or damage was suffered as a result of EMBARQ's fault or negligence, EMBARQ agrees to save and hold harmless WDOC from every expense, liability, or payment, arising out of such negligent act. EMBARQ also agrees to hold WDOC harmless for any negligent act or omission to the extent caused by a subcontractor or other person employed by or under the supervision of EMBARQ under the terms of this Agreement.
- 15.5. WDOC shall not be liable in the event of loss, incident, destruction, theft, damage, etc., for any equipment, equipment software and telephone services provided under this Agreement except in the case of WDOC employee's destruction, theft, and damage to any of the equipment or WDOC's negligence. Further, WDOC shall take reasonable precaution to protect the equipment. It shall be EMBARQ's sole responsibility to obtain insurance coverage for such loss in an amount that EMBARQ deems appropriate. EMBARQ shall further be responsible for repairing or replacing any such equipment, equipment software and telephone services loss to make it fully operational within a reasonable period of time.
- 15.6. EMBARQ agrees that WDOC shall not be responsible for any liability incurred by EMBARQ or its employees arising out of the ownership, possession, operation, control, use, maintenance, delivery, and/or installation of equipment, equipment software and telephone services provided by EMBARQ, except if liability arises from or is attributable to the gross negligence, malfeasance or willful misconduct of the WDOC or its employees or agents.
- 15.7. EMBARQ understands and agrees that WDOC does not maintain commercial liability insurance. EMBARQ agrees to carry liability insurance as follows:
- 15.7.1. The following minimum insurance limits apply to vendors doing business within the State of Wisconsin. All policies must be issued with a 30-day cancellation notice, by an



insurance company licensed to do business in the State of Wisconsin, with a minimum AM Best rating of A-, and signed by an authorized agent.

15.7.2. Worker's Compensation (WC)	Statutory limits
Each Accident	\$100,000
Disease-Policy Limit	\$500,000
Disease-Each Employee	\$100,000

15.7.3. Commercial General Liability (CGL)	
General Aggregate including	
Products & Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

15.7.4. Automobile liability:	
Combined Single Limit	\$1,000,000

- 15.8. A certificate of insurance, which evidences that an insurance policy exists, must be mailed to the WDOC within 10 days following the execution of this contract. The certificate should be mailed to:

Steve Mahoney, Purchasing Agent - Senior  
Department of Corrections  
P.O. Box 7991  
Madison, WI 53707-7991

The certificate must include the following information: insurer, insurance agency, insured, type(s) of insurance, policy number(s), effective date(s), expiration date(s), limits, certificate holder, cancellation procedure and the name of the representative who authorized the policy.

- 15.9. EMBARQ further understands and agrees that WDOC cannot save and hold harmless and/or indemnify EMBARQ or its employees against any liability incurred or arising as a result of an activity of EMBARQ or any activity of its employees performed in connection with EMBARQ, except if Such liability arises from or is attributable to the gross negligence, malfeasance or willful misconduct of the WDOC or its employees or agents.
- 15.10. EMBARQ shall be liable, and agrees to be liable for, and shall indemnify, defend and hold the WDOC harmless from all claims, suits, judgments, or damages of whatsoever kind or nature, including court costs and attorney fees, to the extent caused by wrongful acts, negligence, or omissions by EMBARQ in the course of this Agreement.
- 15.11. Except as otherwise provided in this contract, in no event shall either party be liable to the other for any indirect, incidental, special or consequential damages even if aware of the potential thereof.
- 15.12. Notwithstanding the foregoing, nothing contained herein shall limit EMBARQ's liability for personal injury and damages to tangible property caused by EMBARQ's negligence or tortuous act. Also, in the event of a termination of this contract by EMBARQ, which is not authorized by this contract, EMBARQ agrees to reimburse WDOC for the costs of another procurement process and any additional cost increases for phone service obtained through substitute performance obtained by WDOC; provided however that WDOC shall not be entitled to

recover such costs in the event EMBARQ terminates due to DOC's failure to comply with the Contract..

- 16. NOTICES** - All notices, requests, demands or communications required or permitted under the Agreement shall be in writing, delivered personally or by U.S. Mail, postage prepaid, at the respective addresses set forth below and shall be deemed effective upon personal delivery or when received if sent by U.S. Mail.

If to WDOC:

Steve Mahoney, Purchasing Agent - Senior  
Wisconsin Department of Corrections  
P.O. Box 7991  
Madison, WI 53707-7991

With a copy to:

Office of Legal Counsel  
Wisconsin Department of Corrections  
P.O. Box 7925  
Madison, WI 53707-7925

If to EMBARQ:

Bill Check  
President  
9300 Metcalf Avenue  
Overland Park, KS 66212

With a copy to:

Embarq Payphone Services, Inc  
Director - Paul Cooper  
9300 Metcalf Avenue  
Overland Park, KS 66212

If either party changes the above name, and or title(s) and or addresses, then written notice of such change shall be rendered in writing to the other party and said notification shall be attached to the originals of the Agreement.

- 17. ATTORNEY FEES** - In the event that legal action is taken against the State of Wisconsin or WDOC, arising out of, under and/or pertaining to the Agreement, and if such legal action names EMBARQ as a co-defendant, or if WDOC or EMBARQ requires documentation or any other type of assistance in preparing for a hearing, or in defending itself in court, the State, WDOC or EMBARQ shall offer all necessary assistance at no cost to the other party, and shall not require the other party to reimburse it for any attorney fees incurred by such party.

## **18. DISPUTE RESOLUTION**

- 18.1. No term, provision or condition of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other breach or subsequent breach, except as may be expressly provided in the waiver or consent.
- 18.2. In the event of any material breach of the Agreement by one party, the other party shall give written notice specifying the breach.
- 18.3. WDOC and EMBARQ agree that, the existence of a material breach notwithstanding, they will continue without delay to carry out all their responsibilities under this Agreement which are not affected by the material breach until such time that the Agreement is terminated.

## **19. COMPLIANCE WITH LAWS**

- 19.1. WDOC, EMBARQ and all subcontractors shall be responsible for complying with all applicable federal, state, and local laws and regulations in the conduct of the work hereunder, including but not limited to, the laws and regulations related to eavesdropping and wire-tapping. WDOC and EMBARQ represent and warrant that their use of the call recording capabilities provided herein shall at all time be lawful. EMBARQ personnel will comply with any current and future state, federal and local laws and regulations, court orders, directives, ACA and NCCHC standards, and WDOC policies and procedures.
- 19.2. EMBARQ accepts full responsibility for payment of all taxes and insurance including worker's compensation, insurance premiums, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by EMBARQ in the performance of the work authorized by this Agreement. EMBARQ agrees to carry, at a minimum, workers compensation insurance within the statutory limits set by the Wisconsin Statutes.

20. **FILES** - EMBARQ will maintain files of all subcontractors and contract employees on-site at all WDOC institutions or other premises in a location where they may readily be made available to WDOC's contract administrator or designee. All necessary information, such as licenses, professional certifications, insurance certificates, and evaluations, will be contained in these files.

21. **DISCHARGES** - EMBARQ will immediately notify the Contract Administrator of any discharges or removal of professional staff and the reason for the action.

## **22. RIGHT TO CURE AND PENALTY**

- 22.1. In the event that EMBARQ fails to perform its obligations under this Agreement, WDOC shall give EMBARQ notice of such deficiency in writing. EMBARQ agrees to correct such failure within thirty (30) days, or if the failure is such that it cannot be corrected within thirty (30) days, EMBARQ shall commence correction within thirty (30) days and shall continue to work on the failure with due diligence until such failure is corrected. WDOC reserves the right to assess a penalty of One Thousand (\$1,000.00) dollars per day for every day in excess of thirty (30) days that such failure exists. Each failure to perform shall be considered separately and may individually be subject to the assessment of penalties, such that the same system failure at multiple institutional locations would be treated as separate failures, each

subject to the specified penalty. If EMBARQ fails to correct or begin correction within thirty (30) days of notice from WDOC, then upon thirty (30) days additional notice to EMBARQ, WDOC may require EMBARQ to remove, replace, or remediate the affected inmate telephone equipment without penalty or liability to the State.

- 22.2. EMBARQ will not be responsible or liable for any errors or omissions in data supplied by WDOC, including but not limited to, inmate personal identification numbers (PINs), call allowed lists, and processing of attorney names and numbers.

23. AMENDMENTS OR ALTERATIONS - No amendment or alteration of the terms of this contract shall be valid unless made in writing and signed by both parties. This contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

For State of Wisconsin  
Department of Corrections  
3099 E. Washington Avenue  
P.O. Box 7925  
Madison, WI 53707-7925

By   
Signature

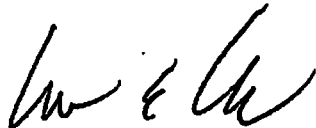
Date 7/6/9

Title Secretary, Department of Corrections

Phone 608-240-5505

**To be completed by Contractor**

For Embarq Payphone Services, Inc  
9300 Metcalf Avenue  
Overland Park, KS 66212

By   
Signature William E. Cheek

Date \_\_\_\_\_

Title President Wholesale Markets

Phone 913 - 534 - 5699