



This Contract for MP3/Email services (this "Contract") is made as of the date of last signature by the parties, by and between JPay, Inc. ("Contractor"), located at 12864 Biscayne Blvd. Suite 243, Miami, FL 33181 and the State of Washington acting by and through its DEPARTMENT OF CORRECTIONS ("DOC"). Throughout this Contract, DOC or Contractor may individually be referred to as "Party" or together as "Parties."

RECITALS

DOC issued a Solicitation Number RFP8262 dated July 20, 2009, (the "Solicitation") whereby DOC sought responses from prospective vendors to acquire MP3 Music/Email services for offenders incarcerated in the Department's several institutions.

Contractor is in the business of providing MP3, E-mail and other services to incarcerated offenders and their families. In response to the Solicitation, Contractor submitted its response to provide certain services for DOC offenders.

This Contract embodies the terms and conditions mutually acceptable to the Parties for the provision of the Services defined below.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties hereby agree as follows:

PART I. - SPECIAL TERMS AND CONDITIONS

Section 1.01 DEFINITIONS

As used in this Contract, the capitalized terms contained in Appendix 1.01 shall have the respective meanings set forth therein.

The name assigned to this Contract and the part and section captions used herein are for convenience of reference only and shall not affect the interpretation or construction hereof. Unless otherwise specified, (a) the terms "hereof," "herein" and similar terms refer to this Contract as a whole and (b) references herein to "Parts" or "Sections" refer to parts or sections of this Contract. The use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Contract to such Person or Persons or circumstances as the context otherwise permits. Time is of the essence in the performance of the Parties' respective obligations. Unless otherwise specified, all references to money amounts are to U.S. currency. All references, if any, to generally accepted accounting principles means to GAAP and all accounting terms, if any, not otherwise defined in this Contract have the meanings assigned to them in accordance with GAAP.

Section 1.02 APPENDICES, EXHIBITS AND ATTACHMENTS

The appendices, exhibits and schedules referred to or attached to this Contract are incorporated herein by this reference.

Section 1.03 SUBCONTRACTING

The Contractor shall not enter into sub-contracts for any of the work contemplated under this Contract Agreement without obtaining prior written approval of the Contracts Administrator of the Department or his/her delegate.

PART II. - SERVICES

Section 2.01 SCOPE OF WORK

Contractor agrees to provide to DOC and DOC agrees to grant the authority for Contractor to provide, for DOC correctional facilities, the services described in Appendix 2.01 attached hereto (individually, a "Service", and collectively, the "Services". The work contemplated under this Contract shall include all labor, materials, the transportation, equipment and other activities for, and reasonably incidental to, making the Services operational. It also includes furnishing, installing, interfacing, operating, maintaining, and billing (if applicable) the Services described in this Contract and the appendices, exhibits and other attachments hereto. Silence of the Contract regarding delivery of Services normally offered with respect to the deliverables requested in the Contract does not constitute any waiver of Services by DOC.

Without limiting any of the requirements contained in Appendix 2.01, Contractor agrees to: (a) make available to offenders MP3 Players, Music downloads and E-mail; (b) install, maintain, and keep in operation all equipment, and hardware as specified in Appendix 2.01, at Contractor's expense; (c) install as required and maintain monitoring systems facilities at no cost to DOC; (d) provide initial new product and refresher training to DOC personnel as reasonably requested by DOC on the operation of the kiosk systems at Contractor's expense; (e) service and repair all kiosks and associated equipment at Contractor's expense; (f) retain ownership of all kiosks, monitoring systems; and (g) provide such personal background data as is required by DOC on any Contractor personnel intending to enter a correctional facility.

During the Term of this Contract, Contractor shall replace or keep in operation, and maintain the kiosks located in DOC facilities at such levels that will ensure regular usage by inmate population. Contractor will conduct periodic traffic studies to determine average use, and in the event that said studies support an increase or decrease in kiosk count at a DOC facility, Contractor will make the necessary change after written notification to and approval by DOC. The foregoing notwithstanding, Contractor shall remove any kiosk requested to be removed by DOC. Before Contractor is required to install any new kiosk, Contractor must first receive written authorization from DOC. It is understood that kiosks are located at DOC prison facilities; and that such facilities may open or close during the contract term.

Contractor may request that DOC consider allowing Contractor to remove certain kiosks that Contractor claims to be uneconomical to Contractor; provided, however that this provision does not create any right in Contractor to have any such kiosks removed, and the decision of whether to remove such kiosks shall be made by DOC in its sole discretion.

Unless a longer period is mutually agreed to by the Parties, Contractor shall install any new kiosk within thirty (30) days of the delivery to Contractor of a Written Authorization (as described below) directing Contractor to install such new kiosks. The foregoing notwithstanding, subject to the prior written consent of DOC, which shall not be unreasonably withheld, Contractor may request a period of time longer than thirty (30) days to install a particular new kiosk that Contractor cannot reasonably install, within such thirty (30) day period. It is understood that to install a new kiosks the DOC must ensure that the proper conduit, station wiring, and electricity is installed to support the use and location of the kiosk.

All Equipment, including, but not limited to, all kiosks, shall be new or "Like-New". Contractor agrees that all of the Equipment used by Contractor, shall be identical, equivalent or better than that equipment described in the Response, unless DOC consents in writing to any different equipment, which consent will not be unreasonably withheld.

Section 2.02 ORDERS FOR ADDITIONAL SERVICES

A written authorization to implement Additional Services (a "Written Authorization"), delivered by DOC to the Contractor, shall be used to order Additional Services beyond the Initial Service, and to request any changes or additions to the Services. Such Written Authorization shall specify the quantity, service dates, and other operational parameters of the requested Services. DOC may require Contractor to assist in the preparation of such Written Authorizations by providing necessary Services description, operating parameters, and/or interface information to the extent that Contractor and Subcontractors can provide such assistance. Contractor shall provide this assistance at no added cost to DOC. Each such Written Authorization shall be approved and issued only by DOC.

Section 2.03 NEW TECHNOLOGY

When new technology, either equipment or services related to the Services, becomes available, Contractor agrees to notify DOC within a reasonable time after such availability so that DOC can consider whether such new technology should be utilized by Contractor in rendering the Services. DOC shall have the option, in DOC's sole discretion, to have such new technology utilized by Contractor to render the Services as soon as practical or at such later time as DOC shall determine; provided that the Parties mutually agree that such new technology does not materially increase Contractor's costs of rendering the Services to be affected by such technology.

In considering whether or not to extend the term of this Contract after the Initial Term, DOC may consider the need for utilizing new technology during any such Extended Term. If the use of such new technology will materially increase the costs of Contractor rendering the Service, and DOC wishes to utilize the new technology and elects, in its sole discretion, to pursue the same, the Parties will attempt in good faith to negotiate changes to this Contract to allow the use of the new technology. In addition, any change to this Contract requiring the use of new technology at DOC facilities must provide for initial new product and refresher training for DOC personnel in the use of the technology, at Contractor's expense, provide for the installation and maintenance of any new equipment and for any specialized environmental requirement related thereto. Responsibility for such specialized environmental requirements shall be agreed upon by the Parties.

Section 2.04 AVAILABILITY OF SERVICES

The Services to be provided under this Contract will be made available by Contractor as directed by DOC.

PART III. - RATES AND COMMISSION

Section 3.01 RATES

Neither DOC nor any State Entity shall be liable for any costs or expenses in connection with the Services hereunder, it being understood that all compensation to Contractor for rendering the Services hereunder shall be from the amounts charged by Contractor to the users of the kiosks and services. The rates and prices for the Services described in Appendix 3.01 shall be the total costs to users, except for appropriate taxes.

The rates, prices and charges for the Services as described in Appendix 3.01 shall be the, maximum rates, prices and charges that may apply during the Initial Term of this Contract. Upon mutual agreement of the Parties after the Initial Term of this Contract, such rates, prices and charges shall be reviewed by DOC and Contractor to determine if they should be modified based upon, among other factors, technology changes, Commission payable under the next

section, capital investment by Contractor, and revenues and profitability to Contractor from the operation of the kiosks.

Section 3.02 COMMISSION

In consideration of Contractor being given the opportunity under this Contract to render the Services, and DOC's agreements contained in this Contract, Contractor shall pay to DOC the fees described in Appendix 3.01 (the "Commission"). Except for the Commission payable by Contractor to DOC, Contractor shall not be liable to DOC or any State Entity for any commissions or fees with respect to the Services tendered by Contractor under this Contract:

Contractor will pay the Commission directly to DOC, and shall notify the DOC program administrator in writing of the amount and date of each such payment when Contractor pays the same. DOC will provide to Contractor the address for DOC to which the Commission shall be paid. Contractor shall pay the Commission owed by Contractor hereunder to DOC on a monthly basis, prior to the 30th day of the following month. Any Commission not paid to DOC when due shall bear interest at the rate of one percent (1%) per month or, if less, the maximum rate allowed by law, until the same is paid in full.

Section 3.03 TAXES - FEDERAL AND LOCAL

Neither DOC nor any State Entity will be liable for any taxes accruing or coming due as a result of this Contract, whether federal, State, or local, and Contractor shall be responsible for any such taxes.

PART IV. - TERM.

The initial term of this Contract is from the Agreement's execution date through December 31, 2012 ("Initial Term"). Unless terminated earlier, at the end of the Initial Term the contract may be extended for additional one (1) year periods, until December 31, 2015, unless either Party delivers, via certified mail, RETURN RECEIPT REQUESTED, written notice to the other Party of its desire to terminate the Contract, sent at least one hundred eighty (180) days prior to the last day of the then current Term of this Contract. If either Party delivers any such notice of its desire to terminate, the Term of this Contract shall automatically terminate on the last day of the then current Term of this Contract. Any such extension shall be at the sole discretion of the department, subject to the concurrence of the contractor.

PART V. - PART REPRESENTATIONS AND WARRANTIES

Section 5.01 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor makes the following representations and warranties for the benefit of DOC:

(a) Contractor is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the corporate power to carry on its business as it is now being conducted and currently proposed to be conducted. Contractor is qualified as a foreign corporation to do business, and is in good standing, in the State of Washington.

(b) Contractor has the right, power and authority to enter into, and perform its obligations under this Contract. This Contract has been executed by a representative of Contractor who is authorized to make a commitment on behalf of Contractor.

(c) Contractor has delivered to DOC (i) certifications issued by the applicable governmental authorities evidencing Contractor's authorization to conduct business and render the services in the State of Washington; and (ii) a certificate signed by an officer of the Contractor who is the Secretary or Assistant Secretary of Contractor certifying the incumbency and specimen signature of the Person that executed this Contract on behalf of

Contractor, that all corporate action necessary to authorize Contractor's execution, delivery and performance of this Contract has been taken, and that this Contract has been duly executed and delivered by Contractor.

(d) Contractor has taken all requisite corporate action to approve execution, delivery and performance of this Contract. This Contract constitutes a legal, valid and binding obligation upon Contractor, enforceable against Contractor in accordance with its terms and conditions. The fulfillment of Contractor's obligations hereunder will not constitute a material violation of any existing applicable law, rule, regulation or order of any governmental authority. All necessary or appropriate public or private consents, approvals, permissions, agreements, licenses or authorizations have been obtained in timely manners which are necessary for Contractor to enter into and to perform its obligations under this Contract.

(e) There is no outstanding, pending or to the best of Contractor's knowledge, threatened, litigation, order, judgment, or Proceeding, involving or affecting this Contract, the Services, or Contractor's ability to perform its obligations under this Contract.

(f) To the best of Contractor's knowledge, no representation or warranty made by Contractor contained in this Contract and no statement by Contractor contained in, or information or documents delivered to DOC by Contractor in connection with, the Solicitation, the Response, or this Contract or otherwise supplied by Contractor to DOC contains any untrue statement of a material fact or omits to state a material fact necessary to make such statements, information or documents, in light of the circumstance under which they were made, not misleading.

(g) This Contract is for the provision by Contractor of services, and not the purchase of hardware, software or other equipment or goods. In order to deliver the Services and perform its obligations under this Contract, neither DOC nor any State Entity must purchase any hardware, software, or other equipment or goods, and Contractor is not selling any of the same under this Contract. Contractor shall own and control all equipment and Recording Media. Contractor grants DOC an irrevocable right and license to access, record and copy the Recording Media via Contractor's Monitoring Systems during the term of this Contract and for a period of ninety (90) days following the termination of this Contract.

Section 5.02 DOC'S REPRESENTATIONS AND WARRANTIES

DOC makes the following representations and warranties for the benefit of Contractor:

(a) DOC has the right, power and authority to enter into, and perform its obligations under this Contract.

(b) DOC has taken all requisite administrative action to approve execution, delivery and performance of this Contract. This Contract constitutes a legal, valid and binding obligation upon DOC, enforceable against DOC in accordance with its terms and conditions.

(c) The fulfillment of DOC's obligations hereunder will not constitute a material violation of any existing applicable law, rule, regulation or order of any governmental authority.

(d) There is no outstanding or pending litigation, order judgment, or Proceeding, involving or affecting DOC's ability to perform its obligations under this Contract.

PART VI. - COVENANTS

Section 6.01 CONTRACTOR'S PERSONNEL

Personnel Background Checks: Contractor warrants that it has appropriate procedures for screening employee criminal history and for addressing employee off-duty misconduct,

including a criminal history screening process for all its employees, and has a process for reviewing employee off-duty misconduct. Contractor further warrants that any such screening procedures or processes are and shall be in compliance with all State and federal laws, including, but not limited to, the Fair Credit Reporting Act (15 U.S.C. Section 1681). Contractor's personnel who work on the Services will be subject to this screening and review process. Before beginning such work, Contractor shall submit to all of Contractor's personnel who are proposed to have access to DOC facilities written requests for permission to conduct background checks, including criminal history verification. If any such personnel refuse permission or elect to avoid participation in any such background check, at the option of DOC, Contractor will replace such Person with a qualified employee who is willing to participate in these background checks. In addition, DOC or other law enforcement agencies may, but are not obligated to, do background checks, including criminal history verification, on some or all of the Contractor's personnel proposed to have access to the DOC facilities. Without limiting the foregoing, any of Contractor's personnel proposing to enter a DOC facility may be subject to a screening through the Washington State Patrol database, the results of which are acceptable to DOC in its sole discretion. If DOC conducts any such Washington State Patrol screening, DOC shall comply with the requirements of the Fair Credit Reporting Act, if applicable. Personnel with backgrounds deemed unsuitable by DOC will not be acceptable for support of these services, and Contractor will be requested to provide alternatives.

Criminal Convictions: If during the term of the Contract, it becomes known to Contractor that any of Contractor's personnel or applicant for employment by Contractor in connection with rendering the Services hereunder has had a criminal conviction, that information, with as much supporting detail as is reasonably available, will be submitted to DOC for review, and the personnel involved will be suspended from working on this Contract or, in the case of an applicant, will not be assigned by Contractor to work on this Contract. Such personnel may only resume work on this Contract or, in the case of an applicant; may only be assigned by Contractor to work on this Contract, if DOC grants express written permission.

Contractor Personnel: Should DOC expressly approve Contractor personnel with criminal records, and it becomes known to Contractor that a status change, such as violation of parole or probation term has taken place, it is the responsibility of Contractor to immediately notify DOC and seek written permission to continue use of subject personnel.

Failure to Notify: Without limiting the other remedies available to DOC for this or any other breach by Contractor under this Contract, should Contractor fail to notify DOC, when Contractor learns of the same, of personnel with criminal arrest or conviction records, or any status change, or be unable to provide suitable personnel, with respect to personnel working on DOC systems, DOC may terminate the Contract for cause under Section 10.01

Unacceptable Personnel Notification: DOC may notify Contractor when it finds any Key Personnel or other Contractor personnel, or proposed replacement therefore, unacceptable for any lawful reason relating to the provision of the Services, including but not limited to DOC's reasonable determination that he or she is not qualified to perform the work to which he or she is assigned. Upon receipt of such notice, Contractor shall within ten (10) business days review the matter with DOC and, unless otherwise agreed upon by the Parties, promptly transfer or otherwise remove such Contractor's personnel from working (or if a proposed replacement, not assign such Contractor's personnel to work) on the Services. Upon receipt of a notice from DOC that any Contractor personnel do not meet DOC requirements regarding entrance into any facilities of any correctional institution, such personnel shall be removed immediately from such facilities.

Section 6.02 COMPLIANCE WITH APPLICABLE LAWS

Contractor shall comply with all federal, state and local laws, regulations, rules, executive orders and ordinances, whether now existing or hereinafter enacted, as the same may be amended or modified, in connection with the Services under this Contract or the performance of Contractor's obligations under this Contract. Without limiting the generality of the foregoing, Contractor agrees to comply with: (i) the constitution of the State of Washington; (ii) all federal and state civil rights and rehabilitation statutes, rules and regulations, the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of the Department of Health and Human Services issued according to that Act, and provisions of Executive Order 11246, Equal Employment Opportunity, dated September 24, 1965, as amended; (iii) Section V of the Rehabilitation Act of 1973; (iv) the Americans with Disabilities Act; (v) all applicable state and federal laws, local rules, regulations, and ordinances of all authorities having jurisdiction over the Services to be installed and provided under this Contract (provided, however, that this does not relieve Contractor of the responsibility to comply with the Specifications if the Specifications exceed the laws, regulations, and ordinances); (vi) the provisions of any federal, state, or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the provision of the Services under this Contract; (viii) the provision of State laws relative to prevailing wage rates; and (ix) all regulations and administrative rules established pursuant to the foregoing laws.

Without limiting all other remedies available to DOC in connection with such breach, Contractor's failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Contract by DOC for cause. In addition to and without limiting all other remedies available to DOC in connection with such breach, Contractor shall be liable for any Loss resulting to DOC from such noncompliance.

Section 6.03 PRISON RAPE ELIMINATION ACT (PREA)

Contractor staff shall comply with Public Law 108-79, the Prison Rape Elimination Act (PREA) and DOC Policy 490.800 regarding prevention and reporting of sexual misconduct.

Section 6.04 PERMITS

Contractor shall obtain and pay for all necessary permits, official licenses and inspections, certificates of authority, and other official approvals necessary for the provision of the Services under this Contract.

Section 6.05 RELEASE OF OPINIONS

Contractor acknowledges and agrees that DOC and its representatives reserve the right to provide their opinions publicly and privately to third parties regarding Contractor's performance under this Contract.

Section 6.06 INTELLECTUAL PROPERTY RIGHTS

Contractor warrants that the Services, and all products, equipment and support related thereto, do not infringe upon, violate or result in the misappropriation of any United States or foreign patent, copyright or trademark, any trade secret, utility model, industrial design or mask work, or any other proprietary or intellectual property right of any third party. Provided that Contractor fully performs its obligations under this Section, the exclusive remedy for a breach of the foregoing warranty shall be the indemnification, defense and hold harmless provided herein below; provided, however, that this sentence shall not limit DOC's right to terminate this Contract and recover damages as described herein after.

Contractor shall indemnify, defend and hold harmless each and every Indemnified Party from any claim that the Services, or any product, Equipment or support related thereto, infringes upon, violates or results in the misappropriation of any United States or foreign patent, copyright or trademark, any trade secret, utility model, industrial design or mask work, or any other proprietary or intellectual property right. All of the terms of Section 9.02 below shall apply to any such claim, including but not limited to, the obligation to notify Contractor of such claim.

Contractor shall be responsible for, and shall indemnify each Indemnified Party from, any and all losses suffered or incurred by DOC from any claim that the Services, or any product, equipment or support related thereto, infringes upon, violates or results in the misappropriation of any United States or foreign patent, copyright or trademark, any trade secret, utility model, industrial design or mask work, or any other proprietary or intellectual property right. Without limiting the foregoing, Contractor shall pay all costs and expenses of the defense of any such claim, any settlement, and any costs, expenses and damages awarded by any court, arbitrator or other entity against any Indemnified Party.

If the use of any of the Services by DOC shall be prevented by preliminary or permanent injunction, DOC shall have the right to immediately terminate this Contract and to recover from Contractor all actual or general damages and costs suffered or incurred by DOC in connection with such matter, including, but not limited to, all costs and expenses of DOC in obtaining replacement services for such Service and all attorney's fees and costs.

Contractor has no obligation for any claim of infringement arising from:

- (i) Contractor's compliance with any designs, specifications or instructions of DOC; or
- (ii) Modification of the Services by someone other than Contractor or as called for by Appendix 2.01 by DOC.

Section 6.07 DOC DATA / WORK PRODUCT

DOC Data: During the Term of this Contract, Contractor shall own and control all equipment and Recording Media. Contractor grants DOC an irrevocable right and license to access, record and copy the Recording Media during the term of this Contract and for a period of ninety (90) days following the termination of this Contract..To the extent that any Recording Media is in the possession of Contractor, DOC personnel shall have sufficient access to the data thereon to enable them to retrieve information for security and investigative purposes. Both before and after installation of Contractor's Equipment, all risk of loss, or damage to, the Equipment shall be on Contractor and DOC shall bear no risk of loss regarding the Equipment, unless such loss is due to the negligent or willful acts or omissions of DOC, its employees, or agents.

Contractor shall own and hold all rights with respect to the data contained on the Recording Media. Contractor shall provide a secure environment for the DOC to access the Recording Media and the DOC shall use due care in processing and handling the Recording Media in DOC's possession. All risk of loss, or damage to, the Recording Media and the data contained thereon (including any information that is corrupted, lost, damaged, or cannot be accessed) shall be on Contractor and DOC shall bear no risk of loss regarding the Recording Media and the data thereon, unless such loss is due to the negligent or willful act or omission by the DOC or their employees or agents. DOC may make copies of all or a portion of the Recording Media and said copies will remain the property of the DOC following contract termination. All risk of loss, or damage to the Recording Media copies and the data contained thereon (including any information that is corrupted, lost, damaged, or cannot be accessed) shall be on the DOC.

Section 6.08 INSURANCE

Except as otherwise set forth herein or agreed to in writing by DOC and Contractor, Contractor agrees to maintain adequate and customary coverage for Workers' Compensation, Commercial General Liability, Automobile Liability, and list the DOC and State as an additional insured on its Certificate of Insurance which must be provided to the DOC on an annual basis. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, property insurance covering all risks, including fire, covering the Equipment, insuring at least the replacement value of the Equipment. All insurance policies called for by this section shall contain waivers of subrogation clauses acceptable to DOC.

Section 6.09 PROJECT MANAGEMENT

By prior written notice to DOC, Contractor shall name and make responsible for the provision of kiosk based MP3/E-mail services, a competent manager, and with such other qualifications as DOC may request ("Manager"), who shall be Contractor's single point of contact and represent Contractor in connection with the scheduling, delivery and general provision of the Services to be rendered under this Contract. Contractor may change the Manager by written notice to DOC of such change. DOC may reject or request a replacement for the Manager(s) for cause upon mutual agreement between the Parties, and Contractor may comply with DOC's request.

Section 6.10 INDEPENDENT STATUS OF CONTRACTOR/NO PARTNERSHIP

Any statements to the contrary contained in this Contract, the Solicitation or the Response notwithstanding, (i) the Services to be rendered under this Contract are those of an independent contractor, (ii) Contractor is not an officer or employee or agent of DOC, (iii) the Parties will be acting in their individual capacities and not as agents, employees, partners, joint venturers, or associates of one another, (iv) no partnership or joint venture between Contractor and DOC, or any other State Entity is created by this Contract, and (v) the employees or agents of one Party shall not be deemed or construed to be the employees or agents of the other Party for any purpose whatsoever.

Section 6.11 CONFORMITY TO SPECIFICATIONS

The Services provided shall be in strict conformity with the Specifications, the Response and with such instructions as shall from time to time be given by DOC and mutual agreement between the Parties. If the instructions and Specifications contained in this Contract, all Written Authorizations, and all exhibits and attachments hereto and thereto are not sufficiently clear to permit Contractor to proceed with installing or providing the Services, DOC will, either upon its own motion or upon request from Contractor, furnish additional instructions, together with such additional Specifications as may be necessary. When Contractor makes such request, it must be made in ample time to permit the preparation of the instructions and Specifications before the information is required by Contractor to meet the implementation schedule. Such additional instructions and Specifications shall be consistent with this Contract, all Written Authorizations, and all exhibits and attachments hereto and thereto, and shall have the same force and effect as if contained in this Contract, all Written Authorizations, and all exhibits and attachments hereto and thereto.

Section 6.12 COORDINATION WITH OTHERS

Contractor shall coordinate the installation, testing, and acceptance of the Services with DOC so as to facilitate the installation, testing and provision of the Services. Contractor shall be responsible for all means, methods, techniques, sequences, and procedures, and for coordinating all portions of the work under this Contract. Contractor shall work cooperatively and

professionally with DOC with regard to interfacing, installing, testing, fault isolation, and repair of operating deficiencies in the Services.

Section 6.13 BUILDING AND FACILITY ACCESS

Contractor will be responsible for keys, if provided by DOC, and Contractor and its personnel shall have access to DOC buildings and facilities. In order to be furnished keys and other necessary access arrangements, Contractor personnel will be required to comply with any reasonable access requirements. Contractor personnel seeking access to DOC facilities shall comply with all DOC requirements regarding entrance to those facilities, including but not limited to requirements that such personnel make advance arrangements with the DOC institution to be visited and be escorted by DOC personnel while in DOC facilities. Based on safety considerations and security of DOC staff and personnel of Contractor, DOC shall have the right to deny access in its sole discretion. For purposes of determining Contractor's performance under this Contract, such denial of access shall be considered a Force Majeure Event (as discussed in Section 11.12), except if such denial of access is caused by a failure by Contractor to provide reasonable advance notice to DOC seeking access or to comply with any other reasonable access requirements.

Section 6.14 CONTRACT MANAGER AND EXECUTIVE REVIEW

Contract Manager: DOC shall assign a Contract Manager to be the first point of contact regarding any and all issues pertaining to this Contract. Contractor shall assign a singular management Person as the Contract Manager to be the first point of contact regarding any and all issues pertaining to this Contract (except for those areas under the Manager(s)' responsibility described in Section 6.11). The initial Contract Managers are as follows:

DOC Contract Manager: Devon Schrum

Contractor's Contract Manager: Errol Feldman

Each Party may change its Contract Manager by written notice to the other Party of such change.

Section 6.15 DISPUTE RESOLUTION

Should a dispute regarding this Contract arise, it shall first have been addressed at the Contract Manager level, and if found to be irresolvable, it must then be submitted to a panel composed of two executive level principals from each Party (the "Dispute Resolution Panel"). At least one principal from each Party shall be of senior management level; Neither principal shall be the Contract Manager, and one or more will have the authority to enter into an agreement resolving the dispute. The principals shall meet within ten (10) days of receipt of a written request by either Party in an effort to settle the dispute. The Parties may agree to include any third parties in these negotiations and to implement any other procedures or rules that they mutually agree will benefit the resolution process. Should this step of dispute resolution be unsuccessful, the Parties shall submit the dispute to mediation as set forth in Part XI.

Section 6.16 EQUIPMENT

Contractor will provide kiosks as described in the Response over the course of the contract. Contractor equipment standards are to provide kiosks within a facility in one of the following manners: secured to a wall; or stand alone enclosure. In all cases the installation will be done in such a manner that the material will not be easily removed through normal wear and tear; and will be replaced at any time should there be a material breakdown of equipment. At least one kiosk per facility will be accessible to disabled offenders and compliant with the Americans with

Disabilities Act. It is understood that Contractor stocks the kiosks described herein and in the proposal; and as such are considered Contractor Standard.

Contractor shall own all Equipment and Recording Media. DOC shall have no ownership of the Contractor's Equipment.

Section 6.17 DOC PROVIDED EQUIPMENT AND FACILITIES

DOC will provide facilities to support the Services covered by this Contract e.g. adequate floor or wall space, electricity (in the proper voltage), and support structures identified herein.

The Parties may, by mutual agreement, maximize capacity and functionality of equipment, facility and infrastructure activities such as installation of wiring through collaboration in planning and sharing of costs.

Section 6.18 DOC COVENANTS

DOC agrees to:

- (a) Provide electric power (proper voltage, as required) and adequate wall space to mount the kiosks.
- (b) Maintain the area around the kiosks ensure safe and ready access by the offenders or Contractor's personnel.
- (c) Allow Contractor access to perform maintenance during the established business hours of accessibility agreed to by DOC and Contractor, except where accessibility must be denied to ensure the safety of Contractor personnel and/or to maintain institutional control.
- (d) Upon proper prior notification from Contractor following DOC guidelines, DOC shall provide adequate and timely escort service for Contractor and Subcontractors for DOC facilities.
- (e) Notify Contractor in advance of anticipated new or remodel facility project to ensure that the desired kiosks and services are appropriately located in, and configured for, the location. It is understood that standard equipment will be installed at existing or anticipated facilities during the contract term. Requests for customized equipment will be discussed between the Parties; provided that the Parties mutually agree that such customized equipment does not materially increase Contractor's costs of rendering the Services.

Section 6.19 EMERGENCIES

In an Emergency where there is potential loss of life or danger of destruction of property Contractor shall immediately contact the DOC responsible for the facility related to the affected Service, via telephone, paging and confirmatory email or fax. In an Emergency where there is a potential danger of destruction of a material portion of Contractor's Equipment, the DOC located shall notify Contractor, as soon as reasonably possible, of such Emergency, if DOC is aware of such Emergency, via telephone, paging and confirmatory email or fax. In the event of an Emergency, Contractor will make every attempt to fix the problem within four (4) hours or sooner of the problem being reported to Contractor as an Emergency.

Section 6.20 RECORDS MAINTENANCE/ ACCESS

Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that DOC and/or the Washington State Auditor's Office and their duly authorized representatives shall have access to such fiscal

records and to all other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract for the purpose of performing examinations and audits, and making excerpts and transcripts. All such fiscal records, books, documents, papers, plans, and writings shall be retained by Contractor and kept accessible for a minimum of six (6) years following final expiration of the term of this Contract and all extensions, except as required by law to be held longer, following final payment and termination of this Contract and all extensions, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever is later. Contractor shall make these records available to DOC, the Washington Auditor's Office, and their duly authorized representatives for inspection at Contractor's designated facility upon thirty (30) days written notice to Contractor of such intention, provided, however, that Contractor shall deliver to requesting entities or persons, within such thirty (30) days; those records that are necessary to determine compliance with Contractor's obligations under this Contract.

Section 6.21 ASBESTOS AND HAZARDOUS SUBSTANCES

DOC shall, in good faith, disclose to Contractor any known asbestos or other hazardous substance at any location where Contractor is providing Services under this Contract. If Contractor discovers hazardous substances at any DOC facility, Contractor may suspend the performance of the related Services at such facility until removal or containment of such hazardous substances has been completed and approved by the appropriate governmental agency, or until such agency has confirmed that no such removal or containment is necessary. Contractor's performance obligation shall be extended to the extent any delay is caused by clean up or removal of hazardous substances. In no event shall Contractor be responsible for the removal of hazardous substances found on any site where Contractor shall be required to perform Services. As between Contractor and DOC, any such removal shall be the responsibility of DOC.

Section 6.22 TRANSITION RESPONSIBILITIES OF CONTRACTOR

Upon expiration or termination of this Contract, should DOC award any succeeding contract for MP3/E-mail service to a vendor other than the Contractor, Contractor agrees to cooperate fully and in all respects with DOC and the new contracted vendor in accomplishing an efficient and effective transfer of responsibilities.

PART VII. - WARRANTIES AND PERFORMANCE GUARANTEES

Section 7.01 General Warranty

Contractor warrants that the Services, the Equipment and all software used in rendering the Services shall conform to the requirements contained in this Contract and the Solicitation, including, but not limited to, the Specifications, the Response, the relevant Written Authorization(s), and all exhibits and attachments hereto and thereto, and shall be performed in a professionally diligent manner by qualified personnel ("Satisfactory Work"). In addition to and without limiting any other warranty contained in this Contract, the Services shall conform to the Specifications described in the Response and all attachments thereto. Contractor warrants that the Services and the use of the Equipment shall meet the manufacturer's and vendor's specifications. Contractor also warrants that (i) the Services, the Equipment, and all software used in the rendering of Services, contains no computer instructions, circuitry or other technological means whose purpose is to disrupt, damage or interfere with DOC's use of its computer or telecommunications, system or facilities, and (ii) the Services, the Equipment and all software used in rendering of the Services will be installed and will perform in a manner that will not disrupt, damage or interfere with DOC's or any State Entity's use of its computer systems or facilities.

Section 7.02 EQUIPMENT

In addition to and without limiting the other warranties contained in this Contract, (i) the Equipment shall be in good working order and will conform to Contractor's official published specifications, and (ii) all Equipment shall be new or "Like-New.

In addition to and without limiting any other warranty contained in this Contract, the Equipment shall conform to the Specifications described in the Solicitation, the Response and this Contract (including, but not limited to, the Specifications contained in Appendix 2.01 to this Contract). The foregoing notwithstanding, if there exists any conflict among the Specifications contained in (i) the Response, (ii) the Solicitation, or (iii) this Contract (including, but not limited to, the Specifications contained in Appendix 2.01 to this Contract), in addition to and without limiting any other warranty contained in this Contract, the order of precedence to resolve such conflict shall be the following: (1) this Contract (including, but not limited to, the Specifications contained in Appendix 2.01); (2) the Solicitation; then (3) the Response. Any such conflict will be resolved by using the terms most favorable to DOC.

PART VIII. - REMEDIES

Section 8.01 DAMAGES AND OTHER REMEDIES

For any other breach of any of Contractor's obligations under this Contract, DOC shall be 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 DOC and any State Entity in connection with such matter, including, but not limited to, all costs and expenses of DOC in obtaining replacement services for the Services and all attorney's fees and costs.

Notwithstanding the foregoing, nothing contained herein shall limit Contractor's liability for personal injury and damage to property caused by Contractor's negligence or tortuous act.

Section 8.02 CONSEQUENTIAL DAMAGES

DOC shall not be entitled to recover consequential damages (including, but not limited to, lost profits) from Contractor for any breach under this Contract, and Contractor shall not be liable for any lost revenues, lost profits, lost savings or other consequential damages, arising out of any failure to perform its obligations under this Contract. Contractor shall not be entitled to recover consequential damages (including, but not limited to, lost profits) from DOC for any breach under this Contract, and DOC shall not be liable for any lost revenues, lost profits, lost savings or other consequential damages, arising out of any failure to perform its obligations under this Contract.

PART IX. - INDEMNITY, LIABILITIES AND RESPONSIBILITIES

Section 9.01 INDEMNITY

Contractor shall indemnify, defend, and hold harmless each and every Indemnified Party from, against and in respect of any and all loss suffered or incurred by reason of or arising out of (1) any negligent act or omission, or willful misconduct, by Contractor, any of their officers, agents or employees, or (2) any breach of any representation or warranty, or non-fulfillment of any covenant or agreement, by Contractor contained in this Contract.

Section 9.02 INDEMNIFICATION NOTICE

The DOC shall give notice to Contractor within twenty (20) days after it has actual knowledge of any third-party claim as to which indemnity may be sought. However, DOC's failure to provide notice within this time period shall not affect Contractor's indemnity obligation, as set forth in

Section 9.01, unless and only to the extent that such delay in providing notice actually and significantly prejudiced Contractor's ability to fulfill its obligations set forth in Section 9.01.

Section 9.03 PERSONAL LIABILITIES OF PUBLIC OFFICIALS

In carrying out the provisions of this Contract or authority granted by this Contract, Contractor understands and agrees there will be no liability upon the employees or officers of DOC, either personally or as officials of DOC, it being always understood that in such matters they act as the agents and representatives of DOC.

Section 9.04 SURVIVAL

Contractor's obligations under Part VIII (Remedies), Part IX (Indemnity, Liabilities and responsibilities) and Part XI (Miscellaneous) shall survive the termination (regardless of the cause of termination) or expiration of this Contract.

PART X. - TERMINATION

Section 10.01 DOC RIGHT TO TERMINATE FOR CAUSE

DOC may terminate this Contract immediately upon notice to Contractor, or at such later date as DOC may establish in such notice or as required under paragraph (f) of Section 10.01, without any liability of DOC to Contractor, upon the occurrence of any of the following events:

- (a) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that DOC's performance under this Contract or any Written Authorization is prohibited;
- (b) Contractor no longer holds any license or certificate that is required to perform the Services;
- (c) Any proceeding is commenced which challenges this Contract or the Services hereunder, or an injunction or other order is issued which prohibits, limits, or modifies the performance of this Contract or the Services under this Contract;
- (d) Any Change of Control of the Contractor occurs, for which DOC has not given prior written consent, which consent shall not be unreasonably withheld by DOC;
- (e) Any event occurs for which any section of this Contract, including but not limited to, Section 8.01, permits DOC to terminate this Contract; and such breach, default or failure is not cured within thirty (30) calendar days after delivery to Contractor of notice of the same by DOC, or such longer period as DOC may specify in such notice.
- (f) Contractor commits any material breach or default of any representation, warranty, covenant, indemnity or other obligation or agreement under this Contract (including, but not limited to, failure to provide the Services under this Contract within the time specified herein or any extension thereof), or fails to pursue a Written Authorization as to endanger Contractor's performance under this Contract in accordance with its terms and conditions, which breach, default or failure is not covered by any of clauses (a) through (e) above., and such breach, default or failure is not cured within thirty (30) calendar days after delivery to Contractor of notice of the same by DOC, or such longer period as DOC may specify in such notice.

In addition to, and cumulative of, any other remedy available to DOC at law or in equity, (i) if DOC terminates this Contract under this section and is required to install the same or similar Services from another source, Contractor shall be liable to DOC for all costs and expenses to DOC of obtaining and installing the replacement Services, including, but not limited to administrative and legal costs and expenses, and (ii) Contractor shall be liable for any and all actual damages suffered by DOC as the result of Contractor's breach of this Contract.

This Section shall not authorize DOC to terminate this Contract in order to acquire functionally equivalent equipment from a third party.

Section 10.02 DOC's RIGHT TO CANCEL SERVICES

In addition to and without limiting DOC's rights to terminate this Contract in full under any other section of this Contract, if Contractor fails to perform any material obligation under this Contract, and thirty (30) calendar days after receipt of written notice describing with reasonable particularity the character of the default Contractor has not cured the failure, then DOC may cancel Services under this Contract which, relate to the performance, without penalty, until such failure to perform is cured or finally adjudicated. This remedy shall be in addition to, and cumulative of, any other remedy available to DOC, and the exercise of this remedy by DOC shall not prejudice or impair the availability to DOC of any other remedy at law or in equity for breach of this Contract.

Section 10.03 TERMINATION FOR INSOLVENCY

Either Party may terminate this Contract immediately if the other Party: (i) institutes or has instituted against it insolvency, receivership, or bankruptcy proceedings; (ii) is adjudged bankrupt, or makes an assignment for the benefit of creditors, or a receiver is appointed on account of such Party's insolvency; or (iii) ceases doing business on a regular basis.

Section 10.04 TERMINATION FOR CONVENIENCE

After initiation of any of the Services, DOC may terminate this Contract, in whole or part, for its convenience under the following conditions by providing notice of such termination to Contractor, specifying the extent and effective date of such termination:

- (a) Withdrawal by the legislature of the statutory authority of the Secretary to operate the correctional facilities covered under this Contract or the offender phone program; or
- (b) Reduction of allotments by the Governor pursuant to RCW 43.88.110(2); or
- (c) Reduction by the legislature of appropriated funds or
- (d) When, in the opinion of the Secretary, continuation of the Contract would seriously disrupt or prevent substantial performance of the operations or activities of the Department and the Secretary has stated, in writing, to the Contractor the need to terminate the Contract in whole or in part.

On the specified termination date, Contractor shall (i) stop work under this Contract to the extent specified in the termination notice, and (ii) cease shipment and delivery of all Services, goods, Equipment, and software covered by the termination notice, other than those already delivered and accepted in accordance with this Contract as of the termination date specified in the termination notice. Contractor shall continue to perform those obligations under this Contract to the extent not terminated. DOC shall not have any liability for DOC's termination of this Contract in whole or in part under this section.

Section 10.05 NOTICE OF TERMINATION

In the event either Party elects to terminate this Contract, termination shall be effected by delivery via Certified mail, RETURN RECEIPT REQUESTED, to the other Party of a Notice of Termination specifying the extent to which the Contract is terminated, the reasons for such termination and the date upon which such termination becomes effective.

Section 10.06 EFFECT OF TERMINATION

Within ninety (90) days following the termination of this Contract for any reason whatsoever, DOC shall have access to the Recording Media via Contractor's Monitoring Systems.

Section 10.07 NON-PREJUDICE FOR TERMINATION

DOC's termination of this Contract shall be without waiver of prejudice to any other remedy available to DOC in connection with this Contract.

PART XI. - MISCELLANEOUS

Section 11.01 GOVERNING LAW, JURISDICTION, VENUE

This Contract shall be governed and construed in accordance with the laws of the state of Washington, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any Proceeding between DOC and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Superior Court of Thurston County for the State of Washington. Provided, however, if a Proceeding must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Western District of Washington. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 11.02 RESOLUTION OF DISPUTES

Mediation: Each Party agrees not to institute any Proceeding in connection with this Contract until the Parties shall have attempted in good faith to submit the matters in dispute to a non-binding mediation process. Submission of the dispute to mediation shall not be a precondition to any action or proceeding involving temporary or emergency relief, or the enforcement of this clause itself.

Choosing a Mediator: If a dispute arises under this Contract, the Parties shall discuss the desired qualifications of the mediator. Either Party may suggest one or more candidates, or may recommend that the mediator be chosen from a roster. The mediator must be selected by agreement of both Parties. Each Party shall promptly disclose to the Other Party any circumstances, which would cause reasonable doubt regarding the impartiality of the individual under consideration or appointed as mediator. Any such individual shall promptly disclose any such circumstances to the Parties. If any circumstances have been disclosed, before or after the individual's appointment as mediator, the individual shall not serve, unless the Parties agree.

Mediator Compensation: The mediator's compensation rate will be determined at or before his or her appointment. Such compensation, and any other costs of the mediation, will be shared equally by the Parties, unless otherwise agreed.

Mediation Ground Rules: The ground rules for the mediation shall be:

- (a) The process is voluntary and non-binding. Either Party may withdraw at anytime by notifying the mediator and the other Party in writing of its intent to withdraw.
- (b) The mediator shall be neutral and impartial.
- (c) The mediator controls the procedural aspects of the mediation. The Parties will cooperate fully with the mediator.
- (d) There will be no direct communication between the Parties or between their attorneys regarding the mater in dispute without the concurrence of the mediator.
- (e) The mediator is to meet and communicate separately with each Party.

(f) The mediator will decide when to hold separate meetings with the Parties and when to hold joint meetings. The mediator will fix the time and place of each session and the agenda, in consultation with the Parties.

(g) Each Party may be represented by more than one Person, e.g., a staff member and an attorney. To the fullest extent possible under the law, at least one representative of each Party will be authorized to negotiate a settlement of the dispute.

(h) The process will be conducted expeditiously. Each representative will make every effort to be available for meetings.

(i) The mediator will not transmit information given to him or her by either Party to another party, unless authorized to do so.

(j) To the fullest extent authorized or permitted by the law, the entire process will be confidential. The Parties and the mediator will not disclose information regarding the process, including settlement terms, to third parties, unless the Parties otherwise agreed or unless required by law to do so. The process shall be treated as a compromise negotiation for the purposes of the Federal Rules of Evidence and Washington Evidence Code. The mediator will not be disqualified as a witness, consultant or expert in any pending or future action relating to the subject matter of the mediation including those between Persons not parties to the mediation.

(k) The mediator, if a lawyer, may freely express his or her views to the Parties on the legal issues of the dispute, unless a Party objects to him or her so doing.

(l) The mediator may obtain assistance and independent expert advice with the agreement of and at the expense of the Parties.

(m) The mediator will not be liable for any act or omission in connection with his or her role as a mediator.

(n) The Parties will refrain from court proceedings during the mediation process, insofar as they can do so without prejudicing their legal rights. If litigation is pending between the Parties regarding the subject matter of the mediation, the Parties may agree to inform the court of the mediation process and the name of the mediator, and they may request a stay of court proceedings. Insofar as possible, discovery will be suspended while mediation is ongoing.

Preliminary Meetings: Once a mediator is selected, the Parties will meet jointly with the mediator to discuss the above ground rules and any different or additional ground rules the mediator or either Party wishes to propose. The Parties and the mediator may agree on whether the Parties will be the first to make settlement proposals, or whether they wish the mediator to make such a proposal once he or she has familiarized herself with the dispute.

Submission of Material: Upon entering into mediation each Party shall submit to the mediator such material and information as it deems necessary to familiarize the mediator with the dispute. The mediator may request any Party to provide clarification and additional information. The mediator may request each Party, separately or at a joint meeting, to present its case informally to the mediator.

Negotiation of Settlement Terms: Once the mediator has familiarized himself or herself with the case, he or she will hold discussions with the representatives of the Parties. The mediator will decide when to meet or confer separately with each Party, and when to hold joint meetings. The mediator may assist the Parties in arriving at a settlement in a variety of ways.

If the Parties fail to develop mutually acceptable settlement terms, the mediator, before terminating the procedure, may submit to the parties a final settlement proposal that he or she considers equitable to all Parties. The Parties will carefully consider such proposal and at the request of the mediator will discuss the proposal with him or her. Efforts to reach a settlement will continue until (a) a settlement is reached, or (b) one of the Parties withdraws from the process, or (c) the mediator concludes and informs the Parties that further efforts would not be useful.

If a settlement is reached, the mediator, or one of the Parties at the mediator's request, will draft a written settlement document incorporating all settlement terms. The draft will be circulated among the Parties, edited as necessary, and if acceptable, formally executed.

Section 11.03 SEVERABILITY

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected; and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

Section 11.04 TIME

Time is of the essence in this Contract.

Section 11.05 ASSIGNMENT

Except as otherwise provided herein, without the prior written consent of DOC (which shall not be unreasonably withheld), Contractor shall not assign, delegate or transfer its rights, duties, or obligations under this Contract to any Person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise. Notwithstanding the foregoing or the provisions of Part X (Termination) above, Contractor may assign its rights hereunder to a parent, subsidiary or affiliate without DOC's consent; provided that (i) the assignment does not increase the obligations of DOC regarding this Contract, (ii) such assignee or transferee shall be subject to all defenses of DOC under this Contract, (iii) such assignee or transferee shall be responsible for all of Contractor's obligations under this Contract, and (iv) Contractor shall not be released from its obligations under this Contract and Contractor shall remain primarily liable for all of its obligations under this Contract as if no assignment had occurred. Any attempt by Contractor, except as provided herein, to assign or in any way transfer its interest in the Contract without such prior written consent of DOC shall be deemed a material breach of this Contract. Written requests for DOC's consent to an assignment, delegation or transfer shall be provided to DOC at least ninety (90) calendar days prior to the proposed effective date of the assignment. If DOC consents to such assignment, delegation or transfer, the assignee or transferee shall be entitled to all of Contractor's rights under this Contract, provided that (i) the assignment does not increase the obligations of DOC under this Contract, (ii) such assignee or transferee shall be subject to all defenses of DOC under this Contract, (iii) such assignee or transferee shall be responsible for all of Contractor's obligations under this Contract, and (iv) Contractor shall not be released from its obligations under this Contract and Contractor shall remain primarily liable for all of its obligations Under this Contract as if no assignment had occurred.

The foregoing notwithstanding, Contractor may assign, delegate or transfer its rights, duties or obligations under this Contract to an Affiliate of Contractor, provided that (i) the assignment, delegation or transfer does not increase the obligations of DOC under this Contract, (ii) such assignee or transferee shall be subject to all defenses of DOC under this Contract, (iii) no change of control of Contractor shall have occurred, and (iv) Contractor shall not be released

from its obligations under this Contract and Contractor shall remain primarily liable for its obligations under this Contract as if no assignment had occurred.

Section 11.06 SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties to this Contract and their respective permitted successors and assigns.

Section 11.07 ENTIRE AGREEMENT

This Contract, together with the Solicitation, the Response, all written clarification materials, all supplementary documents incorporated by reference, all Written Authorizations, and all exhibits and attachments hereto and thereto, constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, whether oral, written, implied or expressed, relating to the subject matter hereof.

Section 11.08 INTERPRETATION OF DOCUMENTS

The documents forming this Contract (the "Contract Documents") consist of: (i) this Contract; (ii) the Exhibits and/or Appendices to this Contract, which describe the specific Service to be provided, the rates to be charged users of the Kiosks, and other information as may be necessary regarding the Service; (iii) the other Exhibits and/or Appendices and/or Attachments to this Contract; (iv) the Solicitation and all materials provided as part of or adjunct to the Solicitation, and written requests for clarification or additional information; and (v) Contractor's Response, including all its submittals, pricing information, reference materials, and any other documentation submitted with the Response and accepted by DOC, or in response to a written request for clarifications to the Proposal. The Contract Documents are complementary and what is called for by one shall be as binding as if it were called for by all. The Contract Documents are intended to include all details of the Services to be provided and the manner of provision, in case of conflict among any of the Contract Documents, the order of precedence to resolve such conflict shall be the following: (1) this Contract and its Appendices, Exhibits, and Attachments; (2) the Solicitation; (3) the Response; (4) written clarifications; (5) written submittals; then (6) Certificates of Insurance. Without limiting the foregoing, any comments by Contractor contained in the Response or any attachments to the Response which limit the requirements contained in this Contract or the Solicitation or which contain descriptive language or items which are not as favorable to DOC as the language or items contained in this Contract or the Solicitation shall not be deemed to be accepted and agreed to by DOC unless such comments are specifically written into this Contract or the Appendices to this Contract.

Section 11.09 AMENDMENTS, WAIVERS

This Contract may not be amended except by an instrument in writing signed on behalf of each of the Parties hereto. No term or condition of this Contract may be waived except by an instrument in writing signed by the Party against whom such waiver is sought to be enforced.

Section 11.10 CAPTIONS

The captions or headings in this Contract are for convenience only, and in no way define, limit, or amend the scope or intent of any provision of this Contract. Any cross-references provided are for convenience only and in no way limit all references to a particular subject.

Section 11.11 WAIVER

Failure of DOC to enforce any provision of this Contract shall not constitute a waiver or relinquishment by DOC of the right to such performance in the future nor of the right to enforce

that or any other provision of this Contract, nor bar DOC from enforcing strict performance of such provision in any subsequent instance.

Section 11.12 FORCE MAJEURE

Neither Party shall be held responsible for any delay in performance or failure to perform caused by fires, strikes, embargoes, computer failures resulting from situations out of Contractor's control, power outage, civil or military authorities, acts of God, or other conditions beyond the reasonable control and not caused or contributed to by fault or negligence of the Party (each a "Force Majeure Event"). This provision as it relates to strikes shall apply only to failure to perform or delay in installation of the Services, and does not relieve Contractor from making every reasonable effort to maintain, repair, or restore the Services. If the delays are caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both Contractor and its Subcontractor, and without the fault or negligence of any of them, Contractor will not be liable for damages for delays, unless the Supplies or services to be furnished by their Subcontractors were obtainable from other sources in sufficient time to permit Contractor to meet the required schedule.

In the event of a reduction or interruption of Services subject to this Section, Contractor shall employ its best efforts to restore the Services to DOC on the highest priority basis consistent with applicable statutes, roles, regulations, or other valid law.

Section 11.13 NOTICES

All notices, requests, demands or other communications required by or otherwise with respect to this Contract shall be in writing and shall be deemed to have been duly given to any party when delivered personally (by courier service or otherwise), when delivered by facsimile and confirmed by return facsimile, or seven days after being mailed by first-class mail, postage prepaid and return receipt requested in each case to the applicable addresses set forth below:

- IF TO CONTRACTOR: 12864 Biscayne Blvd., Suite 243
Miami, FL 33181
Attn: Legal Department
- IF TO DOC (by mail): P O Box 41114
Olympia, Washington 98504-1114
Attn: Contracts and Legal Affairs
- IF TO DOC (by carrier): 7345 Linderson Way SW
Tumwater, Washington 98511
Attn: Contracts and Legal Affairs

or to such other address as such Party shall have designated by notice so given to each other Party.

Section 11.14 CONTRACTOR'S INFORMATION AND PROPERTY

"Confidential Information" shall mean any technical or business information, including third-party information, marked as confidential or proprietary and furnished, disclosed or made available in connection with this Contract, in any form or medium, by one Party to the other, including, without limitation, specifications, prototypes, software, models, drawings, marketing plans, financial data and personnel statistics. Confidential Information does not include information which (1) the recipient knew or had in its possession prior to disclosure, without confidential limitation; (2) is independently developed by the recipient without breach of this Contract; (3) becomes publicly available without breach of this Contract; (4) is received rightfully from a third

party and without obligation of confidentiality; or (5) is disclosed without restriction by the disclosing party.

Except as may be required by applicable law (including without limitation Washington's Public Records law, RCW 42.56), regulations, legal or agency order, demand or process, neither Party shall disclose to a third party any Confidential Information without the prior written consent of the other Party.

Section 11.15 INCORPORATION BY REFERENCE

All of the provisions of the Solicitation and the Response are incorporated herein and made a part of this Contract, except to the extent specifically modified by the terms of this Contract. If there should exist a conflict between the express requirements of terms of this Contract or the Appendices or other Attachments hereto and the provisions of the Solicitation, such conflict shall be resolved according to the order of precedence described in Section 11.08. Any reference in the Solicitation to the term Service shall be deemed to be a reference to the term "Services" as defined in this Contract. To the extent not in conflict with the obligations under this Contract, the Parties hereto agree (and Contractor agrees to cause all Subcontractors) to comply with the obligations contained in Part II, Terms and Conditions, of the Solicitation.

Section 11.16 DISCLOSURE OF INFORMATION

The Contractor may not give or sell information regarding consumers of their services to any third party other than the Department.

Section 11.17 EXECUTION AND COUNTERPARTS

This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

State of Washington
Department of Corrections

JPay, Inc.

Gary Banning
Contracts Administrator

Ryan Shapiro
CEO

Date

Date

Approved as to Form:

By Timothy Lang
Assistant Attorney General

APPENDIX 1.01

DEFINITIONS

Additional Services: Any Services initiated or installed under this Contract beyond the Initial Services, including, but not limited to, (i) any installation of new kiosks or new kiosk applications requested to be installed by DOC, or (ii) any removal of kiosks or kiosk applications requested to be removed by DOC.

Change of Control: Any transfer of more than fifty percent (50%) of the voting securities of a Person or transfer of the power to direct or cause the direction of management policies (whether through ownership of securities or partnership or other ownership interest, by contract, operation of law or otherwise).

Customer: Friends and families of offenders who use the email and music services of the Contractor

Day: A calendar day, except as otherwise so stated.

DOC: State of Washington, Department of Corrections.

Emergency: A problem or outage that could potentially result in injury, loss of life, or is security threatening.

Equipment: All equipment installed or made available by Contractor in connection with the delivery of the Services.

Extended Term: Is as defined in Part IV.

GAAP or generally accepted accounting principles: United States generally accepted accounting principles recommended from time to time by the Financial Accounting Standards Board.

Indemnified Parties or Indemnified Party: DOC, all State Entities, their officers, divisions, agents, employees, and representatives.

Initial Services: Any Services required under Appendix 2.01 to be installed and operational as soon as possible after the date of execution of this Contract without the need for any Written Authorization.

Initial Term: Is as defined in Part IV.

IRS: Internal Revenue Service:

Key Personnel: Specific personnel of Contractor deemed by DOC to be key personnel to the support of this Contract.

Kiosk: The device used to order MP3 digital media, receive/send e-mail messages and conduct video visitation.

Like-New: Equipment that is refurbished, at a minimum, to all original factory specifications. Refurbishing shall be done by Contractor or its contracted representatives at an ISO 9000 qualified refurbishment facility. Appearance and operation of the Equipment shall be the same as new.

Loss: Any and all loss, damage, claim, obligation, liability, cost and expense (including, but not limited to, reasonable attorney and other professional fees and costs and expenses incurred in investigating, preparing, defending against or prosecuting any Proceeding).

Monitoring Services: The monitoring services for the kiosks described more fully in Appendix 2.01.

Monitoring Systems: The Equipment, software and other products utilized by DOC and Contractor to provide the services described in Appendix 2.01.

Person: Any individual or corporation, company, general partnership, limited partnership, limited liability company, limited liability partnership, trust, incorporated or unincorporated association, joint venture, governmental authority or other entity of any kind.

Proceeding: Any protest, investigation, arbitration, claim, action, or suit.

RCW: Revised Code of Washington

Recording Media: Any data gathered in connection with Contractor's services.

Response: Contractor's written Response to RFP8262, Digital Media for Offenders submitted by JPay Communications, Inc., including all pricing information, attachments, reference materials, and written clarifications submitted as part of the response to the Solicitation, and additional information provided in response to subsequent requests or inquiries from DOC.

Specifications: All requirements and specifications set forth in this Contract, the Solicitation, the Response and all appendices and other attachments to this Contract, the Solicitation and the Response, including, but not limited to, the performance requirements and specifications for the Service set forth in Appendix 2.01 to this Contract.

TAS: Trust Accounting System. The accounting system that manages the offender funds in possession of the department.

Term: The Initial Term together with any Extended Term.

Transfer: To grant, sell, assign, encumber, permit the utilization of, license, lease, sublease or otherwise convey, directly or indirectly, in whole or in part.

WAC: The Washington Administrative Code.

APPENDIX 2.01 SERVICE

Contractor agrees to provide to DOC, the following Services:

1. Wall-mounted, hardened, computer terminal kiosks designed to host a variety of offender service applications. The kiosk applications may be used by offenders to perform everyday tasks such as:
 - Downloading digital media to an MP3 player
 - Sending and receiving e-Messages (Email)
 - Offender banking
 - Ordering commissary
 - Conducting video visits.
 - Incoming e-mail, screened by the system using keyword search before download is allowed. Keyword screening would evaluate risk level of e-mail. Unacceptable or questionable (moderate to high risk) e-mail is held or staged at a central computer for DOC approval before it is available to an offender for download.
 - Keyword search function may be edited at any time.
 - System allows all messages for a particular offender to be stored or to be transferred to DOC storage.
 - System provides e-mail send/reply capability (after keyword screening/review protocols identical to incoming messages).
 - System provides translation of foreign language e-mail.
2. Kiosk will be placed in mutually agreeable locations within the following institutions:
 - Coyote Ridge Corrections Center (CC)
 - Airway Heights CC
 - Washington State Penitentiary
 - Stafford Creek CC
 - WA CC for Women
 - Washington CC
 - Monroe Correctional Complex
 - Clallam Bay CC
 - Olympic CC
 - Cedar Creek CC
 - McNeil Island CC
 - Mission Creek CC for Women

The numbers of Kiosks per institutions will be determined by mutual agreement of the parties following the Contractor's survey of the facilities.

3. MP3 Player
 - MP3 player has a video screen capable of displaying e-mail or other required information.
 - MP3 player must display the offender's DOC number or unique offender identifier upon start up or query.
 - MP3 player connects and accepts downloads only from the secure kiosk or secure network
 - MP3 player audio is provided through headphone/ear buds only.
 - MP3 players use rechargeable batteries.
 - Player Security Functions
 - MP3 players are preloaded with the offender's name and ID so when the

player boots up, the offender name and ID appear.

- To prevent the player from being connected with an unauthorized application, the device is configured to be constantly “locked.” Locked is defined as unable to connect to any machine other than the offender kiosk.
- Only JPay applications have the ability to unlock a player. A player can only be unlocked in the following cases:
 - When the offender logs into the kiosk and the offender’s kiosk account matches the connected player.
 - When the DOC is logged into the Facility System, connects a player to the computer and uses the unlock feature.
 - When a released offender logs into JPay.com, connects the player to the computer and activates the release feature.
- In the case of unauthorized use, a notification alert is sent via email to appropriate DOC personnel. The email contains the name and ID of the offender kiosk account, kiosk location identifier code as well as the player’s serial number and owner information.

4. Kiosk Installation Process

- 1) JPay and DOC conduct preliminary sessions to discuss the scope of work. These sessions involve central office staff from Information Technology (IT), Finance, Operations and Security. The purpose of these sessions is to establish expectations and target dates for the deployment of services and products. In these sessions, the parties finalize discussions about network and power solutions. JPay also aligns the product offering with the DOC’s administrative regulations.
- 2) JPay and the DOC’s Trust Account Provider, Syscon, establish data integration.
- 3) Senior level facility staff conduct site tours with JPay for equipment installation. These tours should include staff who understand the facility network architecture. Here, JPay works with the staff to identify specific kiosk locations in each living unit. These locations are then communicated to the technicians for equipment installation. It is important that the appropriate staff are available when deciding upon kiosk locations, in order to avoid adjustments. All site tours conclude with a roundtable discussion to review and confirm the findings.
- 4) Kiosks are then installed in the living units, libraries and recreational areas. Computers and printers are installed in the mailrooms to support the email operation.
- 5) Tests are conducted onsite and remotely by JPay to ensure the security of each deployment. JPay tests network connectivity, power, line speed, port security, application stability and emergency scenarios. JPay also tests remote monitoring and deployment tools to prepare for ongoing maintenance and support.
- 6) Staff training is conducted both onsite (by region) and remotely via WebEx. These training methods remain available throughout the term of the contract.
- 7) Training and marketing materials are distributed to each facility (or regional manager). These materials include offender orientation pamphlets, offender commercials and instructional videos, commissary bag stuffers (aka “buckslips”), visitor handouts, visitor deposit slips, web design for the DOC website and posters in the living units.

- 8) Sell and distribute MP3 players. JPay works with the DOC to distribute MP3 players to the offenders. MP3 players can be offered for sale on offender kiosks and through the commissary. JPay is responsible for inventory management, order processing, and shipment.
- 9) Turn on email and media applications on the kiosks.
- 10) JPay continues to provide support, maintenance and training throughout the contract. JPay assigns account representatives to support DOC staff.

5. Projected Installation Timeline

Task	Assignee	Timing
Within one week of contract signing, Implementation Plan meeting to discuss integration, kiosk implementation and marketing	JPay and DOC	Week 1
Submit file documentation to DOC stipulating technical specifications (JPay will work with Syscon where necessary)	JPay, DOC and Syscon	Week 2
Map out kiosk rollout	JPay and DOC	Week 3
Establish necessary network and server access to prepare for file testing and to provide access to JPay servers from each mailroom and living unit	JPay and DOC	Week 3
Product review meeting (including facility operations personnel) to align the products with administrative regulations	JPay and DOC	Week 3
Site tour of facilities – identify kiosk locations	JPay	Week 3-6
Finalize QA testing on offender data integration with DOC and Syscon	JPay, DOC and Syscon	Week 4 -5
Create and administer user names for mailroom staff and investigators	JPay	Week 5 -7
Install network and power equipment	JPay	Week 5 -20
Install wall brackets and kiosk mounting units	JPay	Week 5 -20
Test the network and power connectivity in mailrooms and living units	JPay	Week 5 -20
Train DOC staff on how to administer user names, i.e. establish “super users” within DOC	JPay and DOC	Week 7
Kiosk training	JPay	Week 7 -20
Train mailroom and facility staff statewide to distribute email	JPay	Week 7
Deploy email at the facilities that are completely installed	JPay	Week 7
Begin selling MP3 players	JPay	Week 9
Deploy MP3 Purchasing Application on all live kiosks	JPay	Week 9 -20
Finalize statewide mailroom equipment installation and training	JPay and DOC	Weeks 8-20
Finalize the initial and “refresher” statewide Intel training	JPay and DOC	Weeks 8-20
Distribute marketing materials to offenders and Customers	JPay	Week 9 -20

Finalize statewide deployment of email and media on all kiosks	JPay	Week 20
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6. Operations

- The Contractor must design and provide the wireless infrastructure necessary to connect the kiosks in the correctional facilities. This design must be reviewed and approved by the Washington Department of Information Services (DIS). The design must include a Wireless Intrusion Detection System (WIDS).
- The Contractor must provide an online interface (Facility System) for DOC staff to administer the services. Customizable management reports are available from this system as described in the Response.
- The Contractor will operate its Help Desk as described in the Response to resolve issues raised by DOC, offenders and customers.
- The Contractor warrants that it has contractual rights to distribute digital media from major music labels or other entertainment fields that it offers for sale. The Contractor must maintain insurance to protect against charges of copyright infringement.
- The Contractor will provide complete reports of offender purchases and can track the number, source and amount of deposits to offender accounts.
- E-mail charges are less than the cost of an equivalent written letter.
- Digital media purchases are comparable to cost from major providers such as iTunes.

7. Transfer of Funds to TAS

The Contractor will use its website, phone and MoneyGram system to collect funds from Customers to be deposited onto offender accounts. The Contractor will establish an interface with the TAS vendor to deposit funds onto offender accounts. All funds corresponding to each day's deposits are remitted to DOC's bank via an Automated Clearing House (ACH) Credit each banking day.

APPENDIX 3.01

A. E-mail Plans

Contractor will offer a \$2.00 one-time trial to Customers and offenders allowing them to send 6 emails. Thereafter they must purchase a monthly subscription plan. The following plans are available:

\$5.00 = up to 20 email messages (\$0.40 per email)

\$7.50 = up to 35 email messages (\$0.21 per email)

\$10.00 = up to 60 email messages (\$0.16 per email)

Digital images count as two email messages

The monthly billing cycle begins when the subscription is purchased. This subscription recurs each month unless the subscription is cancelled. The subscription may be cancelled any time which will end the following month's subscription renewal. For example, if the subscription is purchased on March 15, the subscription will automatically renew on April 15 unless the Customer cancels the subscription.

B. Offenders purchasing MP3 Players/Media

- 4 GB MP3 players will be made available to offenders for \$39.99.
- Song and music video prices are also comparable to suggested retail prices from the record labels.
 - The cost per song ranges between \$0.99 and \$2.00 depending on the label and song
 - The cost per album ranges between \$9.99 and \$16.00 depending on the label and number of songs on the album
 - The cost per double album ranges between \$18.00 and \$22.00 depending on the label and number of songs on the album.
 - The cost per music video ranges between \$1.99 and \$4.00 depending on the label and video.

C. Customers purchasing Email/media

Customers can purchase email subscriptions on www.jpap.com with a credit/debit card to send email messages to offenders. Customers can also add attachments to their email. There are no additional or hidden costs for setting up accounts, account maintenance, and/or closing of accounts.

Once Contractor completes statewide deployment of email and media, Contractor will provide, in phases, the ability for Customers to purchase email subscriptions and MP3 players/media for offenders.

D. Customers depositing funds to offender accounts

Deposit Amount	Internet Fee	Phone Fee
\$0.01 - \$20.00	\$3.95	\$4.95
\$20.01 - \$100.00	\$7.95	\$8.95
\$100.01 - \$200.00	\$9.95	\$10.95

\$200.01 - \$300.00	\$11.95	\$12.95
Deposit Amount	MoneyGram	
\$0.01 - \$5,000.00	\$8.95	

E. Basis for Commissions Paid to DOC

1. Player = \$2.00/player sold

2. Music Commission

Song or Video = \$0.04

Music Album = \$0.20

3. Email = 5% of gross Revenue

4. TAS Deposit = \$0.25

5. The commission for the sale of other digital media, e.g. books, will be negotiated when such media is made available for sale.

6. Contractor shall provide a monthly report to the Department of Corrections indicating the number of MP3 players sold, the number of songs and albums sold and the gross revenue from email messaging. The report shall reflect such numbers and amounts on both a facility level and in aggregate totals for the Department, and shall be submitted to the Department no later than the 30th day of the following month.

C. Payment of Commissions

1. The Contractor shall pay the commission to the Department monthly with the revenue/sales report.

2. Any change in rates or commission will be mutually agreed upon and will not create a substantial impact to the expenses incurred by the vendor.

APPENDIX 4.01

KEY PERSONNEL

JPay, Inc.

<u>Name</u>	<u>Title</u>
Errol Feldman	General Counsel
Danny Shapiro	Chief Operations Officer
Lee Posner	Senior Account Manager
Burt Grinley	Senior Deployment Manager
Javier Pico	Help Desk Manager