

STATE OF TEXAS

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COUNTY OF TRAVIS

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**AMENDMENT 2 TO CONTRACT NUMBER CON0000311**

The **Texas Juvenile Justice Department**, hereinafter **TJJD**, and **Consolidated Telecom, Inc. (C-Tel)**, hereinafter **Service Provider**, acknowledge that they have previously entered into a contract for the provision of Youth Residential Telephone Services for the period of **September 1, 2013**, through **August 31, 2017**. This contract is identified as Contract Number **CON0000311**.

Both parties wish to continue the relationship that exists without a lapse in services. Service Provider agrees to continue to provide services under the aforementioned existing contract, and Service Provider agrees to continue to use Service Provider's services during the term of this contract.

Service Provider represents and warrants that the individual signing this Amendment is authorized to sign this document on behalf of Service Provider and to bind Service Provider under this Amendment.

Both parties hereto agree to be bound by the terms of the existing contract and amendment, subject to the following changes:

1. TJJD is hereby exercising its last option to renew the contract term for an additional two (2) years for the period of **September 1, 2017**, through **August 31, 2019**.

2. Section I. Service Provider, second paragraph, is deleted and replaced in its entirety with the following:

"TJJD will be charged at a rate of \$0.20 cents per minute for purchase of minutes for use by TJJD Youth."

3. Section I. Service Provider, fifth paragraph, is deleted and replaced in its entirety with the following:

"Service Provider will submit monthly invoices for payment to TJJD at the following address: Texas Juvenile Justice Department 11209 Metric Boulevard, Bldg. H, Suite A, Austin, Texas 78758, Attn: Claims Department. The invoice will include total number of minutes to be added for current month, the cost per minute, and a credit of minutes not used in the previous month."

4. Section I. Service Provider, sixth paragraph, is deleted and replaced in its entirety with the following:

"The total contract amount for the period September 1, 2017, through August 31, 2019, shall not exceed **\$507,378.00**."

5. The contract is amended as follows under section III. Certifications:

a. Article 9 is deleted replaced in its entirety with the following:

**"ARTICLE 9: RESTRICTION ON POSSESSION OF WEAPONS**

Service Provider agrees that Service Provider or any employees, contractors, subcontractors, or associates providing services on behalf of Service Provider shall not carry or possess any type of firearm or other weapon listed in Texas Penal Code Section 46.01 while rendering services to TJJD youth under this contract. This prohibition includes the carrying of a handgun licensed under the authority of Chapter 411, Subchapter H, Texas Government Code. Service Provider shall be under an affirmative duty to keep weapons out of the possession of TJJD youth in Service Provider's care."

b. Article 12: Compliance with Child Support, §231.006, Family Code is deleted and replaced in its entirety with the following:

**"ARTICLE 12: COMPLIANCE WITH CHILD SUPPORT, SECTION 231.006, TEXAS FAMILY CODE**

Texas Family Code Section 231.006 provides that neither a child support obligor who is more than thirty (30) days delinquent in paying child support nor a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is eligible to receive payments from state funds under a contract to provide property, materials, or services. **Under Section 231.006, Family Code, the vendor or applicant (Service Provider) certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.**

SERVICE PROVIDER MUST PROVIDE, IN THE SPACE BELOW, THE NAME AND SOCIAL SECURITY NUMBER OF AN INDIVIDUAL OWNER, A SOLE PROPRIETOR, AND ALL PARTNERS, SHAREHOLDERS, OR OWNERS WITH AN OWNERSHIP INTEREST OF AT LEAST TWENTY-FIVE (25) PERCENT OF THE BUSINESS ENTITY ENTERING INTO THIS CONTRACT.

For business entities with no identifiable owner of twenty-five percent (25%) or more of the entity, indicate with "NONE" on the first line below.

Name:	Social Security Number:	Percent Ownership:
Jerome Jacobs	[REDACTED]	50%
Gary Savage	[REDACTED]	50%

- c. Article 16 is deleted and replaced in its entirety with the following:

**"ARTICLE 16: SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST; DEBARMENT; TERRORISM**

Service Provider certifies that it is not on the Specially Designated Nationals and Blocked Persons list (SDN List) maintained by the United States Department of the Treasury Office of Foreign Assets Control (OFAC), <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

Service Provider certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Service Provider is in compliance with the State of Texas statutes and rules relating to procurement and that Service Provider is not listed on the federal government's terrorism watch list as described in Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

The TJJJD is federally mandated to adhere to the directions provided in the President's Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001, and any subsequent changes made to it by cross-referencing service providers/vendors with the System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Department of the Treasury Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list (SDN List), also available at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>."

- d. The last paragraph Article 18: Finger Print and Criminal Background Checks, is deleted and replaced in its entirety with the following:

"The TJJD will approve or deny any Service Provider employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker in accordance with TJJD policies and procedures. The TJJD's designated contact for criminal background checks is the Human Resources Department, Manager of Criminal Background Checks, (512) 490-7674."

- e. The following Articles 20 through 24 are added:

**"ARTICLE 20: CERTAIN BIDS AND CONTRACTS PROHIBITED**

Under Texas Government Code, Section 2155.004, the TJJD may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the TJJD to participate in preparing the specifications or request for proposals on which the bid or contract is based. If Service Provider is not eligible, then this contract may be immediately terminated. **Under Section 2155.004, Government Code, the vendor (Service Provider) certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.**

**ARTICLE 21: BY SIGNATURE HEREON, SERVICE PROVIDER CERTIFIES THAT:**

All statements and information prepared and submitted in relation to this contract are current, complete, and accurate.

**ARTICLE 22: ACCESS TO INFORMATION**

Service Provider is required to make any information created or exchanged with the TJJD pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552), available in a format that is accessible by the public and at no additional charge to the TJJD. Service Provider agrees to provide the TJJD with this information in a format that is accessible to the public, including, but not limited to, in a non-encrypted electronic format, PDF, and HTML.

**ARTICLE 23: PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

If Service Provider is a "company," as defined under Texas Government Code Section 808.001(2), then pursuant to Texas Government Code Section 2270.002, by signing this contract Service Provider certifies that it is a company that does not "boycott Israel," as defined under Texas Government Code Section 808.001(1), and will not do so at any time during the term of this contract.

**ARTICLE 24: PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS**

If Service Provider is a "company" as defined as under Texas Government Code Section 806.001, then pursuant to Texas Government Code, Chapter 2252, Subchapter F, Service Provider certifies by signature that it is not a company engaged in business with Iran, Sudan, or a foreign terrorist organization as identified on a list maintained under Texas Government Code Sections 806.051, 807.051, or 2252.153, and thus not prohibited from entering into this contract with TJJD or that it is a company affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan, Iran, or a foreign terrorist organizations."

6. The contract is amended as follows under section IV. General Provisions:

- a. Article 1 is deleted and replaced in its entirety with the following:

**"ARTICLE 1: RELATIONSHIP OF PARTIES**

Service Provider is acting as an independent contractor and is wholly responsible for the day-to-day operations of its programs and employees. No joint venture, partnership, or agency exists, nor shall be implied by the terms of this contract. No employee of Service Provider shall become an employee of TJJD by virtue of this contract.

Service Provider agrees and acknowledges that during the existence of this contract, Service Provider shall be entirely responsible for the liability and payment of Service Provider's and Service Provider's employees' taxes of whatever kind, arising out of the performance of this contract. Service Provider agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. TJJD shall not be liable to Service Provider, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a TJJD or other state employee. Further, Service Provider shall indemnify and hold harmless TJJD, state agencies, the State of Texas, and/or their employees, agents, representatives, and/or assignees from any liability, actions, claims, demands, or suits, and all related costs, attorneys' fees, and expenses relating to tax liability, unemployment insurance, and/or workers' compensation payments."

- b. The following Sections 5 and 6 are added under Article 6: Termination:

**"Section 5:** Cause/Default/Breach: If Service Provider fails to provide the goods or services contracted for according to the provisions of this contract, or fails to comply with any terms or conditions of this contract, the TJJD may, upon written notice of default or breach to Service Provider, immediately terminate all or any part of this contract. Termination is not an exclusive remedy, but exists in addition to any other rights and remedies provided in equity, by law, or under this contract. The TJJD may exercise any other right, remedy, or privilege available to it under applicable law or may proceed by appropriate court action to enforce the provisions of this contract. The exercise of any of the foregoing remedies will not constitute a termination of this contract unless the TJJD notifies Service Provider in writing prior to the exercise of such remedy. Service Provider shall be liable for all costs and expenses, including court costs, incurred by the TJJD with respect to the enforcement of any of the remedies listed herein.

**Section 6:** Termination of this contract shall not release Service Provider from liability or obligation set forth in the contract that is expressly stated to survive termination or by its nature would be intended to be applicable following termination, including, but not limited to, provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fee verifications."

- c. Article 16: Right to Audit is deleted and replaced in its entirety by the following:

**"ARTICLE 16: AUDIT CLAUSE**

Pursuant to Chapter 321 of the Texas Government Code and Texas Government Code Section 2262.154, Service Provider is hereby notified that, the Texas State Auditor's Office (State Auditor) may conduct an audit or investigation of any entity receiving funds from the state directly under a contract or indirectly through a subcontract under that contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Service Provider shall ensure that this paragraph, concerning the State Auditor's authority to audit funds received indirectly by subcontractors through Service Provider and the requirement to cooperate, is included in any subcontract it awards.

Service Provider shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with TJJD and State of Texas requirements. Service

Provider shall maintain all such documents and other records relating to this contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Service Provider shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this contract, for purposes of inspecting, monitoring, auditing, or evaluating by the TJJD, the State of Texas, or their authorized representatives. Service Provider shall cooperate with auditors and other authorized TJJD and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by the TJJD or the State of Texas. Service Provider's failure to comply with this Article shall constitute a material breach of this contract and shall authorize the TJJD to immediately assess liquidated damages. The TJJD may require, at Service Provider's sole cost and expense, independent audits by a qualified certified public accounting firm of Service Provider's books and records or the State's property. The independent auditor shall provide the TJJD with a copy of such audit at the same time it is provided to Service Provider. The TJJD retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this contract.

The TJJD may unilaterally amend this contract to comply with any rules and procedures of the State Auditor."

- d. Article 33 is deleted and replaced in its entirety with the following:

**"ARTICLE 33: FUNDING OUT CLAUSE**

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article shall apply. In addition, state agencies are prohibited from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. This contract is subject to termination, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature."

- e. Article 47: Notice, last paragraph, is deleted and replaced in its entirety with the following:

**"Texas Juvenile Justice Department Mailing Address**

The address for all purposes under this contract and for all notices hereunder shall be sent by registered mail or certified mail with return receipt to Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, Attn: William Walk."

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment as of the day and year last below written.

For the Texas Juvenile Justice Department:

[Redacted Signature]

David Reilly, Executive Director

8/22/17

Date

For Service Provider:

[Redacted Signature]

Signature

Jerome Jacobs

Printed Name

vice-president

Title

8/22/2017

Date

Approved as to form:

[Redacted Signature]

TJJD Attorney

8/22/17

Date