

INMATE TELEPHONE SERVICES AGREEMENT

This Inmate Telephone Services Agreement ("Agreement") is made by and between Inmate Calling Solutions, LLC, d/b/a ICSolutions ("ICS"), having its principal place of business at 2200 Danbury Street, San Antonio, TX 78217, and **County of Larimer, Colorado, Criminal Justice Services Division** (the "County") having its principal address as set forth on Exhibit A, attached hereto.

- 1. Term of Contract.** This Agreement shall commence upon the date inmates within the County's Criminal Justice Services Division's control begin placing telephone calls from the Equipment, which has been estimated to be April 1st, 2019 (the "Cutover Date") and shall remain in force and effect for an initial term of three (3) years. This Agreement shall automatically renew for additional terms of one (1) year, each upon the same terms and conditions as set forth herein, unless either party otherwise provides written notice to the other party at least one hundred twenty (120) days prior to a scheduled renewal. Notwithstanding the foregoing, either party may also terminate this Agreement with sixty (60) day's prior written notice. Upon termination of this Agreement, County shall immediately cease the use of any Equipment provided hereunder.
- 2. Service & Equipment.** This Agreement applies to the provision of inmate telephone services by ICS using Equipment either centrally located or within space provided by the County at each of the "Service Locations" listed on Exhibit A, attached hereto. The term "Equipment" is defined herein as telephone sets, computer systems and software, all as more fully described on Exhibit B, attached hereto. All Equipment shall be installed by properly trained personnel and in a good, workmanlike manner. Any Equipment of ICS installed upon the premises owned, leased or otherwise under the supervision of County, shall remain in all respects the property of ICS. ICS reserves the right to remove or relocate any Equipment that is subjected to recurring vandalism or insufficient usage. ICS shall not exercise such right of removal or relocation unreasonably and, in any case with at least thirty (30) days prior notice to County. Upon removal of Equipment by ICS, ICS shall restore the premise to its original condition, ordinary wear and tear excepted.
- 3. Alteration and Attachments.** County shall not make alterations or place any attachments to Equipment and Equipment shall not be moved, removed, rendered inoperable or unusable, or made inaccessible to inmates or users by County without the express written permission of ICS.
- 4. Training.** ICS shall provide on-site training plus internet-based training at no cost to County. Additional training may be provided upon County's request based on availability of ICS.
- 5. Call Rates.** ICS shall provide calling services to retail consumers, on a pre-paid and/or post-billed basis, at the rates and charges set forth on Exhibit C, attached hereto. ICS reserves the right to establish thresholds for the level of any collect call credit to be allowed for the billed consumer. Rates and charges may be subject to change based on an order or rule of a regulatory authority having applicable jurisdiction.
- 6. Commissions to County.** ICS will install, operate and maintain Equipment at no charge to County. ICS will pay County the commission amounts set forth on Exhibit D, attached hereto (collectively the "Commissions"), in consideration of the County granting ICS exclusive rights for the installation and operation of Equipment servicing the Service Locations. No Commissions shall be paid to County on amounts relating to taxes, regulatory surcharges such as universal service fund, or other fees and charges not applicable to the billed calls.

ICS will pay Commissions to County on a monthly basis on or before the first business day occurring 45 days following the end of the month in which such Commissions are earned or accrued. Such Commissions shall be sent to the address designated by County or wired to an account designated in writing by County for such purpose.

The parties agree that all financial consideration for services hereunder is predicated on the rates and charges applicable at the time of execution and is, therefore, subject to adjustment based on any changes that may be required by any law, rule, tariff, order or policy (any of which, a "Regulatory Change") of, or governed by, a regulatory body having jurisdiction over the public communications contemplated herein. In the event that a Regulatory Change affects such rates and charges, the parties agree to enter into good faith negotiations to amend this Agreement in a manner that provides sufficient consideration to ICS for ongoing services, as well as complies with the Regulatory Change. If the parties cannot reach an agreement as to the amendment necessary within 30 days of public notice of the Regulatory Change, then either party may terminate this Agreement with an additional 60 days' prior written notice. In addition, Commission rates are predicated on County maintaining an average daily inmate population consistent with the average of the three months preceding the Cutover Date and having access to telephones materially consistent with industry practice.

7. County shall:

- a. Advise ICS of any Services Location or related premise that has been closed.
- b. Throughout the term of this Agreement, including any renewal terms, use ICS as its exclusive provider for all matters relating to inmate telecommunication services.
- c. Reasonably protect the Equipment against willful abuse and promptly report any damage, service failure or hazardous conditions to ICS.
- d. Provide necessary power and power source, at no cost to ICS, and an operating environment with reasonable cooling consistent with general office use.
- e. Provide suitable space and accessibility for inmates' use of telephone services.
- f. Permit ICS to display reasonable signs furnished by ICS and not affix or allow to be affixed any other signs, equipment or information to the Equipment.
- g. Permit reasonable access by ICS to County's Service Locations as reasonably necessary for ICS to install, support and maintain the Equipment.
- h. Comply with all federal, state and local statutes, rules, regulations, ordinances or codes governing or applicable to the telephone services offered by ICS.

8. Law and Venue. The domestic law of the State of Colorado shall govern the construction, interpretation and performance of this Agreement and all transactions hereunder. All disputes hereunder shall be resolved exclusively in state or federal jurisdictions located in Larimer County of Colorado.

9. Notices. Any notice or demand required hereunder shall be given or made by mail, postage prepaid, addressed to the respective party at the address first set forth or referenced above unless otherwise communicated in writing.

10. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and may not be modified or amended other than by a written instrument executed by both parties. Any orders placed by County hereunder shall be incorporated herein by mutual consent of the parties and shall supplement but not supersede the provisions of this Agreement. The County represents and warrants that it has the legal authority to make decisions concerning the provisions of space for telephones placed by ICS at the Service Locations covered by this Agreement and that ICS may rely thereon. This Agreement supersedes any prior written or oral understanding between the parties with respect to the subject matter including, without limitation, the Prior Phone Contract.

11. **Risk of Loss.** ICS shall relieve County of all risk of loss or damage to Equipment during the periods of transportation and installation of the Equipment.
12. **Default.** In the event either party shall be in breach or default of any terms, conditions, or covenants of this Agreement and such breach or default shall continue for a period of thirty (30) days after the giving of written notice thereof by the other party, then, in addition to all other rights and remedies at law or in equity or otherwise, including recovering of attorney fees and court cost, the non-breaching party shall have the right to cancel this Agreement without charge or liability. The waiver of any default hereunder by either party shall not constitute, or be construed as, a waiver of any subsequent default.
13. **Assignment.** This Agreement may be transferred or assigned, in whole or in part, by ICS to any parent, successor, subsidiary, or affiliate of ICS. ICS may sub-contract any portion of its duties hereunder provided, however, it shall remain at all times responsible for such sub-contracted duties. This Agreement may otherwise only be transferred or assigned by a party with the written consent of the other party, which consent shall not be unreasonably withheld or delayed.
14. **Relationship.** The parties hereto are independent contractors and this Agreement shall not be construed as a contract of agency or employment. Each party shall be solely responsible for compliance with all laws, rules and regulations and payment of all wages, unemployment, social security and any taxes applicable to such party's employees. Each party represents and warrants that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate actions; and (c) its performance hereunder shall be in compliance with applicable state and federal legal and regulatory requirements.
15. **{Intentionally deleted}**
16. **Force Majeure.** Either party may suspend all or part of its obligations hereunder and such party shall not otherwise be held responsible for any damages, delays or performance failures caused by acts of God, events of nature, civil disobedience, military action or similar events beyond the reasonable control of such party.
17. **Severability.** If any of the provisions of this Agreement shall be deemed invalid or unenforceable under the laws of the applicable jurisdiction, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of ICS and County shall be construed and enforced accordingly.
18. **Special ADA.** ICS will install Equipment in accordance with the Americans with Disabilities Act and any related federal, state and local regulations in effect at the time of installation. ICS shall make any alterations to the Equipment as necessary for its correct operation and/or compliance with applicable laws at no cost to County.
19. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF PROFITS, LOSS OF GOODWILL, CONSEQUENTIAL OR PUNITIVE DAMAGES REGARDLESS OF THE FORM OF ANY CLAIM, WHETHER IN CONTRACT OR IN TORT OR WHETHER FROM BREACH OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.
20. **Warranty.** Subject to County's compliance with its obligations hereunder, Equipment shall be free from defects in workmanship and material, shall conform to ICS' published specifications in effect on the date of delivery or as otherwise proposed to County in writing, and shall not infringe any patent or trademark. This warranty shall continue while Equipment is in operation at each Service Location.

County shall provide ICS with prompt written notification as to the specifics of any nonconformity or defect and ICS shall have a commercially reasonable timeframe to investigate such nonconformity or defect.

21. **No Hire/No Solicit.** During the term of this Agreement, and for a period of six (6) months thereafter, neither party shall solicit or hire the other party's employees, agents or representatives engaged by such party to perform work relating to this Agreement, without the express written consent of the other party.

22. **Confidentiality.** During the term of this Agreement, each party may disclose to the other certain proprietary information including, without limitation, trade secrets, know how, software, source code, techniques, future product plans, marketing plans, inventions, discoveries, improvements, financial data, business strategies and the terms of this Agreement (collectively, "Confidential Information") of a character identified by the disclosing party as confidential and that should reasonably have been understood by recipient, because of legends or markings, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the disclosing party. Each party and each of its employees or consultants to whom disclosure is made shall hold all Confidential Information in confidence, and shall not disclose such information to any third party or apply it to uses other than in connection with the performance of this Agreement. Each party shall use the same degree of care that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable duty of care, to prevent the unauthorized use or disclosure of any Confidential Information. A recipient may not alter, decompile, disassemble, reverse engineer, or otherwise modify any Confidential Information received hereunder and the mingling of the Confidential Information with information of the recipient shall not affect the confidential nature or ownership of the same as provided hereunder. The obligations of this paragraph shall survive termination of this Agreement for a period of three (3) years.

This Agreement shall impose no obligation of confidentiality upon a recipient with respect to any portion of the Confidential Information received hereunder which is: (a) now or hereafter, through no unauthorized act or failure to act on recipient's part, becomes generally known or available; (b) lawfully known to the recipient without an obligation of confidentiality at the time recipient receives the same from the disclosing party, as evidenced by written records; (c) hereafter lawfully furnished to the recipient by a third party without restriction on disclosure; or (d) independently developed by the recipient without use of the disclosing party's Confidential Information.

Nothing in this Agreement shall prevent the receiving party from disclosing Confidential Information to the extent the receiving party is legally compelled to do so by any governmental or judicial agency having jurisdiction, or pursuant to lawful process, including but not limited to the Colorado Open Records Act.

23. **License to Use Software.** With respect to the Equipment provided under this Agreement, ICS hereby grants to County a nontransferable, nonexclusive license to install, store, load, execute, operate, utilize and display (collectively, "Use") the runtime versions of the Enforcer[®] software in performance of this Agreement including, where applicable to the purposes hereunder, such Use on computers owned by County. Such license is specific to the County and Service Location(s) for which the ICS Services are provided and may not be transferred other than through an authorized assignment of this Agreement. Upon the termination hereof, this license and all rights of County to Use the Enforcer[®] software will expire and terminate. County will not transform, decompile, reverse engineer, disassemble or in any way modify any of the Enforcer[®] software or otherwise determine or attempt to determine source code from executable code of any elements of the Enforcer[®] software.

24. **Third Party Software.** Third-party software licenses may be contained in certain software included with equipment and may therefore require a click-through acceptance by any users. Such software licenses are incorporated herein by reference and can be made available upon request.

25. **Taxes.** Except as expressly provided for herein, each party shall bear responsibility for its own taxes and such other costs and expenses arising in connection with the performance of their respective obligations hereunder. This shall not alter or obligate retention or payment of taxes for any entity that is exempt.
26. **Insurance.** At all times during the Term of this Agreement, ICS shall maintain in effect the following types and amounts of insurance:
- a. General Liability Insurance: \$1,000,000 per occurrence; \$1,000,000 personal injury; \$2,000,000 general aggregate; \$2,000,000 products/completed operations.
 - b. Commercial Automobile Liability: \$1,000,000 Combined Single Limit.
 - c. Workers' Compensation: ICS shall comply with all workers' compensation requirements for the jurisdictions in which employees/representatives perform applicable duties.
- ICS shall provide certificates evidencing the above coverage amounts upon request from County.
27. **Special Provisions.** The provisions outlined in Exhibit E, incorporated by this reference, shall be binding and controlling despite any other provisions in conflict.

{Remainder of page intentionally left blank. Signature page and Exhibits follow.}

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the dates set forth below, and represent and warrant that they have full authority to execute this Agreement on behalf of their respective parties:

Inmate Calling Solutions, LLC
d/b/a ICSolutions

County of Larimer, Colorado,
Criminal Justice Services Division

Brendan Philbin
(Signature)

TSH
(Signature)

BRENDAN PHILBIN
(Printed Name)

Timothy S. Hand
(Printed Name)

VICE PRESIDENT
(Title)

Director
(Title)

3-5-19
(Date)

3-5-19
(Date)

Exhibit A – County Addresses

Principle Business Address (used for all notices hereunder):

Larimer County Community Corrections Dept.
2255 Midpoint Drive
Fort Collins, CO 80525

Facilities & Service Locations:

| <u>Facility Name</u> | <u>Service Locations</u> |
|---------------------------------------|---|
| Larimer County Community Corrections | 2255 Midpoint Drive Fort Collins, CO 80525 |
| Larimer County Alternative Sentencing | 2307 Midpoint Drive Fort Collins, CO 80525 |

Equipment to be shipped to:

Larimer County Community Corrections Dept.
2255 Midpoint Drive
Fort Collins, CO 80525

Commissions to be paid to:

Larimer County Criminal Justice Services Division
Att: Julie Rohloff
2307 Midpoint Drive
Fort Collins, CO 80525

Exhibit B – Equipment

Centralized Enforcer® inmate calling platform, housed in ICS' San Antonio data center and backed up at its data center in Atlanta, including:

- 30 x Stainless Steel Inmate Telephones
- TDD & VRS Units as required
- Unlimited Enforcer® user licenses
- Interface to County's JMS
- Interface to County's Commissary & Banking systems
- Enforcer® Investigative Suite
 - The Verifier™ – biometric inmate identity verification
 - The Imposter™ – continuous voice biometrics
 - The Word Detector™ – phonetic word search technology
 - The Analyzer™ – data mining & link analysis
- Enforcer® IVR Suite
 - The Informer™ – PREA Module
 - The Communicator™ – inmate communications portal
 - The Attendant™ – automated information line
- Online recording storage for entire contract term plus one year

Deposit & Banking Service *provided by VendEngine*

- VendEngine Banking Software
- 1 x Lobby Deposit Kiosk accepting Credit/Debit Card and Cash Deposits

Exhibit C – Rates & Charges

The following rates apply to calls from all Service Locations:

| Prepaid, Debit and Direct Bill (collect) Calling Rates | |
|---|----------------------------------|
| <u>Call Type</u> | <u>Per Minute Charge</u> |
| Local | \$0.07 |
| Intrastate/IntraLATA | \$0.07 |
| Intrastate/InterLATA | \$0.07 |
| Interstate | \$0.07 |
| International (Debit only) | \$0.95 |

***NOTES:** Domestic interstate rates apply for calls to U.S. territories including American Samoa, Guam, Northern Mariana Islands, Puerto Rico and U.S. Virgin Islands. All non-U.S. destinations are rated as international.*

Call rates shown do not include local, county, state and federal taxes, regulatory fees and billing fees.

Billing Fees:

Payment Processing Fee (Live Agent) \$5.95
Payment Processing Fee (IVR or Internet) \$3.00

VendEngine Deposit Services:

Cash Deposits Fee \$2.50
Credit/Debit Card Deposit Fee \$2.50 + 5% of Deposit Amount

(All other fees free or waived)

Exhibit D – Commissions

ICS shall pay to County a Commission of 50% of the gross call revenue for all call types generated from County's Service Locations.

Note: Commissions shall be made payable and sent to the address so designated on Exhibit A to this Agreement.

Exhibit E – Special Provisions

The Special Provisions apply to all Contracts, Agreements and Purchase Orders. All Contracts, Agreements and Purchase Orders shall be referred to in the following provisions as "Contract". If any provision of the Contract conflicts with these Special Provisions, these Special Provisions shall prevail.

1. SIGNATURE AUTHORITY: This Contract shall not be valid unless it has been approved and signed by someone authorized by Larimer County Administrative Policy and Procedure 100.2M.
2. FUND AVAILABILITY: Financial obligations of the County payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. If funds are not appropriated, budgeted or made available, this Contract shall immediately terminate without further obligation on the part of the County.
3. GOVERNMENTAL IMMUNITY: No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq. as applicable now or hereafter amended.
4. INDEPENDENT CONTRACTOR: Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any employee of Contractor shall be deemed to be an employee or agent of the County. Contractor and its employees are not entitled to unemployment insurance or workers compensation benefits through the County and the County shall not pay for or otherwise provide such coverage. Contractor shall be responsible for all employment taxes, income taxes or other taxes incurred in performing this Contract. Contractor shall provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, and provide proof thereof when requested, and to be solely responsible for its acts and those of its employees and agents.
5. COMPLIANCE WITH LAW: Contractor shall strictly comply with all applicable Federal, State and Local laws, rules and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. CHOICE OF LAW: This Contract shall be applied and interpreted under Colorado law. Any provision included or incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Contract.
7. BINDING ARBITRATION PROHIBITED: Larimer County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary is null and void.
8. CONFLICT OF INTEREST: The Contractor avers that to their knowledge, no employee of the County has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
9. EMPLOYMENT ELIGIBILITY: Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment directly or indirectly related to this Contract through participation in the E-Verify Program. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the County within 3 days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation undertaken by the Colorado Department of Labor and Employment or the County. If Contractor fails to comply with any requirement of this provision, the County may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.
10. PROHIBITION OF PLEDGING CREDIT AND NO AID TO CORPORATIONS: Pursuant to Colorado Constitution Article XI, Sections 1 and 2 and Article X, section 20, the County shall not indemnify or hold harmless Contractor or any party related or operating under this Contract. No provision in the Contract shall limit or set the amount of damages available to the County to any amount other than the actual direct and indirect damages to the County, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Contract.