

# Solutions Services Agreement

## Archuleta County Sheriff's Office



This Agreement ("AGREEMENT"), submitted as of this date of March 6, 2020 ("Submitted Date") between the **Archuleta County Sheriff's Office**, with an address of 125 Harman Park Drive, Pagosa Springs, Colorado, 81147, herein referred to as "PARTICIPANT" and Encartele, Inc., a Nebraska corporation, with an address of 8210 South 109th, La Vista, NE, 68128, herein referred to as "ENCARTELE". PARTICIPANT and ENCARTELE are sometimes referred to individually as a "PARTY" or collectively as the "PARTIES".

### **RECITALS**

**WHEREAS**, the PARTICIPANT has requested, and ENCARTELE has submitted, a proposal for the installation of hardware and software as outlined in Exhibit A of this AGREEMENT, herein referred to as "SERVICES" and PARTICIPANT has agreed to accept the terms of the proposal presented;

**WHEREAS**, the SERVICES will be installed and operated in the PARTICIPANT'S facility and/or facilities, herein referred to as "FACILITY";

**WHEREAS**, ENCARTELE shall provide the hardware and software, as set forth on Exhibit A hereto (the "EQUIPMENT"), and will use that EQUIPMENT to operate ENCARTELE's proprietary software platform (the "SOFTWARE" and, together with the EQUIPMENT, the "SYSTEM");

**WHEREAS**, ENCARTELE will deliver the EQUIPMENT and provide the PARTICIPANT with a limited license to use the SOFTWARE, and the PARTICIPANT will accept the EQUIPMENT and make use of the SOFTWARE and the SYSTEM, in each case, pursuant to the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties, agree as follows:

**AGREEMENT TERM:** This AGREEMENT shall have a term of 5 years commencing on the completion of the first transaction ("**Effective Date**") and terminating sixty (60) months thereafter. After this Agreement has been signed by both Parties, Encartele will issue written notice of the Effective Date to the Participant. Upon completion of the initial term, ENCARTELE agrees to offer to PARTICIPANT the option of extending the term of this AGREEMENT for two (2) additional one (1) year periods. This renewal or extension shall be upon the same terms and conditions as the original AGREEMENT, unless otherwise changed and agreed upon by both parties, and shall be automatically renewed at the end of the initial term. If PARTICIPANT intends not to exercise its option, it shall specifically notify ENCARTELE in writing at least ninety (90) days prior to expiration of this AGREEMENT. In addition, ENCARTELE will supply PARTICIPANT with a notice in writing of the upcoming termination of the contract, at least one hundred and twenty (120) days prior to the expiration of this contract.

**TERMINATION:** This AGREEMENT may be terminated by either party, for cause. In such case, the party requesting termination must define in writing the reason for said termination and allow the other party the opportunity to cure the said reason within 30 days after receipt of the termination request letter. If the said reason is not cured within the 30-day time frame, the party requesting termination may terminate the contract.

**EXCLUSIVITY:** For the duration of this AGREEMENT (which includes any extensions hereto), the PARTICIPANT agrees to use ENCARTELE as the exclusive provider of the SERVICES listed in Exhibit A for the Facility and agrees not to use, purchase, lease or accept any software, equipment or system, similar to the SOFTWARE, the EQUIPMENT or the SYSTEM for use at the FACILITY.

**SERVICES FIRST RIGHT OF REFUSAL:** PARTICIPANT agrees that in the event that it wishes to acquire/install equipment and/or services that ENCARTELE currently provides but are not listed as a part of this agreement, that PARTICIPANT will consult with ENCARTELE and offer/provide the opportunity for ENCARTELE to fulfill the requirement prior to reaching out to external vendors and/or competitors of ENCARTELE.

**NO COST INSTALLATION:** ENCARTELE will: (i) arrange for the delivery of the EQUIPMENT to the FACILITY, (ii) load the SOFTWARE onto the EQUIPMENT, (iii) coordinate the installation of the EQUIPMENT in designated locations within the FACILITY, (iv) reuse/extend existing data cables to necessary locations, (v) provide updated staff training on administrative SYSTEM features and functionality, all at no charge to the PARTICIPANT.

**NO COST SERVICE & MAINTENANCE:** ENCARTELE will service and maintain the EQUIPMENT in each Facility pursuant to the Software and Hardware Service Level Agreement, (the "Service Agreement") as set forth on Exhibit C.

**EQUIPMENT TITLE:** ENCARTELE shall retain title to the EQUIPMENT and the SYSTEM during the term of this agreement. The PARTICIPANT agrees to make reasonable efforts to ensure that none of the EQUIPMENT is damaged by misuse or neglect, including, without limitation, by misuse by the inmates.

**RATES:** Inmates, friends and family, and visitors of the FACILITY shall be charged rates as outlined in Exhibit B - Commission and Usage Rates, for SERVICES provided by the SYSTEM by ENCARTELE. ENCARTELE reserves the right to change the usage rates, upon (30) days' notice to PARTICIPANT.

**SOFTWARE LICENSE:** ENCARTELE hereby grants to the PARTICIPANT a non-assignable and nonexclusive license to use the SOFTWARE for the limited purpose of providing the services outlined in Exhibit A to inmates at the FACILITY. Access is granted to the PARTICIPANT to view or monitor records relative to the SERVICES in accordance to the Terms of Use accepted by the Facility's inmates and visitors.

**REVENUE SHARING:** The PARTICIPANT shall receive a revenue share as set forth in Exhibit B - Commission and Usage Rates, on gross revenues generated from the SERVICES. ENCARTELE shall pay the PARTICIPANT, on a monthly basis, sixty days from the last day of the month that the commissions are earned.

**SYSTEM INTEGRATION:** The PARTICIPANT agrees to provide, when necessary, jail management software data or commissary inmate data for integration with the SYSTEM.

**VIDEO MONITORING:** The PARTICIPANT hereby agrees that ENCARTELE shall have no obligation to review or monitor the contents of any video visit made or received using the SYSTEM and shall have no obligation to notify the PARTICIPANT in connection with any use or misuse of the SYSTEM. The PARTICIPANT hereby agrees that ENCARTELE shall have no obligation to verify the users of the SYSTEM and shall not be liable for any use of the SYSTEM that is in violation of the Terms of Use accepted by the Facility's inmates and visitors.

**BROADCAST APPLICATION TERMS:** In the event that the CIDNET Broadcast System is included in this Agreement, ENCARTELE will store and manage all content used for the CIDNET Broadcast application for the Term of this Agreement. When requested, ENCARTELE will complete any content edits, revisions or changes as directed by the PARTICIPANT within a reasonable amount of time as agreed upon by both parties. PARTICIPANT is responsible for the cost of maintenance and replacement of all hardware related to the Broadcast Application, not provided by ENCARTELE. PARTICIPANT must provide power outlets for operation of the Broadcast Devices.

**AGREEMENT DOCUMENTS:** The attached Exhibit A, describing the Scope of Work is made part of this AGREEMENT and is incorporated herein by this reference. The attached Exhibit B describing Commission and Usage Rates is made part of this AGREEMENT and is incorporated herein by this reference. The attached Exhibit C, describing the Software and Hardware Service Level Agreement is made part of this AGREEMENT and is incorporated by this reference.

**FORCE MAJEURE:** ENCARTELE shall be excused from performance under this AGREEMENT to the extent such performance is prevented by any act of government or regulatory action, war, civil disobedience, terrorism, labor strike, or failure of a third party to perform. In addition, ENCARTELE shall be excused from performance due to the failure, fluctuation or outage of electrical power, heat, air-conditioning or equipment failure or similar event beyond its reasonable control; provided that ENCARTELE shall use reasonable efforts to return to full performance as expeditiously as possible. ENCARTELE reserves, but shall not unreasonably exercise, the right to renegotiate the terms of this AGREEMENT upon 60 days advance written notice to PARTICIPANT when any government body, or its regulatory agents, change service rates, adopt restrictive regulations, or mandate operations by law, or where the inmate population or capacity of the FACILITY materially changes. PARTICIPANT acknowledges that the services provided by ENCARTELE are subject to federal, state, and local regulatory requirements, and ENCARTELE must perform in compliance therewith.

**GOVERNING LAW AND VENUE:** The substantive laws of the State of Colorado (and not its conflicts of law principles) govern all matters arising out of, or relating to, this AGREEMENT and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Venue for any action hereunder shall be in the District Court, County of Archuleta, State of Colorado. ENCARTELE expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

**INDEMNIFICATION BY CONTRACTOR:** ENCARTELE will indemnify and shall keep, save and hold harmless PARTICIPANT from and against loss and any all claims, demands, causes of action, damages, costs or liability arising from or out of any breach of this contract by ENCARTELE.

**SEVERABILITY:** If any provision of this AGREEMENT is declared illegal, void, or unenforceable the remaining provisions shall not be affected but shall remain in force and in effect.

**NOTICES:** All notice or other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be deemed to have been duly given if delivered personally by hand, via overnight courier, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

PARTICIPANT

ENCARTELE

125 Harman Park Drive Pagosa Springs, Colorado 81147

8210 S 109th Street La Vista, NE 68128

Attn: Sheriff Richard Valdez

Attn: Scott Moreland

**ASSIGNMENT AND SUBCONTRACTING:** This AGREEMENT and the covenants and agreements contained herein shall be binding upon and inure to the benefit of successors and assigns of the parties hereto and may not be assigned by either party hereto without the prior written consent of the other party. Any attempt to assign this AGREEMENT in violation of this Paragraph is void and of no effect.

**LIABILITY LIMITATION:** Notwithstanding anything to the contrary in this AGREEMENT, neither ENCARTELE nor PARTICIPANT shall be liable to the other for any indirect, incidental, special or consequential damages, loss of profit or income, or loss of data, regardless of cause, ENCARTELE's total liability to PARTICIPANT is to provide the EQUIPMENT, SYSTEMS, Service and Commissions to PARTICIPANT as is required in this AGREEMENT.

**NON-ASSUMPTION OF LIABILITY:** Neither party shall be liable to anyone for the acts or failures to act of either party, its agents or employees. Further, notwithstanding anything herein to the contrary, neither party shall be liable to the other, or to an inmate or inmate's family, for any incidental, indirect, special, consequential or other damages or for lost profits even if advised in advance of the possibility of such. If ENCARTELE is unable to perform due to events beyond its reasonable control, ENCARTELE shall be relieved of its obligations so affected only for as long as such circumstances prevail.

**NO THIRD-PARTY BENEFICIARIES:** The parties do not enter into this AGREEMENT for the benefit of any person other than the parties to this AGREEMENT, nor do they intend that any person be or become a third-party beneficiary to this AGREEMENT.

**SOLE AND EXCLUSIVE AGREEMENT; MODIFICATION:** This AGREEMENT represents the sole and exclusive agreement between the parties hereto, and this contract shall not be changed, modified or amended except by a written agreement executed by the parties.

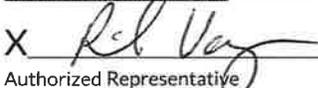
**COUNTERPARTS:** This AGREEMENT may be executed in one or more counterparts, each of which is to be deemed an original, and all of which constitute, collectively, one AGREEMENT.

**APPROPRIATION OF PUBLIC FUNDS:** Because this AGREEMENT may involve the expenditure of public funds, this AGREEMENT is contingent upon continued availability and appropriation of such funds by PARTICIPANT. The obligations described herein shall not constitute a general obligation, indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the constitution or the laws of the State of Colorado.

**SIGNATORY AUTHORITY:** Each person signing this AGREEMENT in a representative capacity expressly represents that the signatory has the subject Party's authority to so sign and that the subject Party will be bound by the signatory's execution of this AGREEMENT.

**NO WAIVER OF GOVERNMENTAL IMMUNITY ACT:** The Parties hereto understand and agree that the PARTICIPANT, its commissioners, elected officers, directors, agents, and employees are relying on, and do not waive or intend to waive by any provision of this AGREEMENT, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act. Sections 24-10-101 to 120 C.R.S., or otherwise available to PARTICIPANT.

**IN WITNESS WHEREOF:** This contract has been executed by each of the parties by their duly authorized legal representatives.

X   
Authorized Representative  
Archuleta County Sheriff's Office  
Acceptance Date: 3/12/20

X   
Scott Moreland - President & CEO  
Encartele  
Acceptance Date: 3-23-2020

# Exhibit A

## SCOPE OF WORK

The following table is a summary of the EQUIPMENT to be installed at the Facility.

Deliverable Equipment	Quantity
 <p><b>6Q Stainless Inmate Telephone:</b> Detention grade inmate telecommunications device.</p> <p><b>Installation Locations:</b> Housing Units 1 - 5, Booking Area, Visit Booth 1, Visit Booth 2</p>	8
 <p><b>Wintel Visitation Telephone:</b> Detention grade telephone without keypad.</p> <p><b>Installation Locations:</b> Visit Booth 1, Visit Booth 2</p>	2
 <p><b>CID Device - 7" display with handset</b> Detention grade POE touch screen communications device with back-plate</p> <p><b>Installation Locations:</b> Housing Units 1 - 5, Private Room</p>	6
 <p><b>40" Broadcast Display</b> Includes a 40" HDTV, Tilting Wall Mount, HDMI Cable, DC Power Cable, &amp; Broadcast Device</p> <p><b>Installation Locations:</b> Booking Area</p>	1
 <p><b>Adtran Total Access Gateway</b></p>	1
 <p><b>Open-Mesh PoE Cloud Managed Switch</b></p>	1

# Exhibit B

## COMMISSION AND USAGE RATES

The following table outlines the monetary rates borne by those using the communication services related to Encartele systems. Encartele has outlined the revenue share payments to be awarded to PARTICIPANT on the gross billed revenue or data used from Encartele systems.

Communication Type	Rate	PARTICIPANT Commission
In-State Calls	\$0.31 / minute	25%
Inter-State Calls	\$0.21 / minute	25%
CIDNET Video	\$0.30 / megabyte	25%
CIDNET Mail	\$0.30 / megabyte	25%
CIDNET Voice	\$0.30 / megabyte	25%

## TECHNOLOGY FUND

In addition to the Twenty-Five Percent (25%) commission, Encartele will pay PARTICIPANT on gross billed revenue or data used from Encartele systems, ENCARTELE will withhold and manage an additional Twenty-Five Percent (25%) commission in a Technology Fund on behalf of the PARTICIPANT. The purpose of this Technology Fund is to acquire technologies to benefit the Facility. Every month for the term of this Agreement, 25% of the gross billed revenue and costs of data used will be paid directly to Jail Tracker until \$51,997.20 is paid in full. If this AGREEMENT ends or terminates prior to monthly payments totaling \$51,997.20 being paid to JailTracker, no further payments will be made to Jail Tracker. Once \$51,997.20 in monthly payments have been made to Jail Tracker, ENCARTELE will continue to add 25% of the gross billed revenue and costs of data used to the Technology Fund. PARTICIPANT may then access the Technology Fund by sending invoices for purchased technology to Encartele and directing payment for said technology from the then available Technology Fund.

# Exhibit C

## SOFTWARE AND HARDWARE SERVICE LEVEL AGREEMENT

### SUPPORT AND MAINTENANCE

Support and maintenance will be provided through phone support, remote access or testing and on-site support. Phone support, remote access and testing of EQUIPMENT are available between 9:00 a.m. and 6:00 p.m. on business days. To the extent that any service window described herein is not practicable given the security protocols at the applicable facility, the parties will work together to address the problem in a timely manner.

Maintenance/repair calls from the facility will be resolved in the manner outlined in this section (subject to the limitations set forth above):

"Major Emergency" shall be defined as an occurrence of any one of the following conditions:

- A failure of any device, prohibiting the use of any application
- A failure of the handset, prohibiting the audio functionality for video visits
- A failure of network equipment due to inclement weather, lightning storms, etc. that prohibit system operation

For a "Major Emergency", Encartele will attempt to respond to the service problem within thirty (30) minutes of initial trouble report by the facility through the use of remote testing or access. If the system is not accessible for remote access, Encartele will dispatch a qualified technician on site at the facility.

"Minor Failure" shall be defined as a system failure or problem other than a "Major Emergency" item as listed above.

For a "Minor Failure" Encartele will attempt to respond to the service problem within four (4) hours of the initial trouble report using remote testing or access or, if the Routine Service is an issue/defect, the issue/defect will be resolved using the Support Ticket Process described below. In the event of minor failure, Encartele will ship necessary parts for facility staff or Encartele technicians to conduct maintenance or repairs.

### SUPPORT TICKET PROCESS

1. Encartele's Support Team will take the issue/defect, and have it documented for analysis.
2. Next, the contents of the support ticket are analyzed by a combination of importance, cost effectiveness and resolution time.
3. Any error fixes related to the service ticket are then assigned to a system-wide release based on priority.

*Note:* Users may also undergo the same ticket process to request enhancements to the system. All enhancement requests are analyzed by the Support Team to determine whether it is a necessary universal upgrade to the system.