

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 Winnebago County, WI (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 control begin placing telephone calls from the Equipment, which has been estimated to be August 15, 2013 (the "Cutover Date") based on this Agreement being fully executed not less than 45 days prior to such date and shall remain in force and effect for five (5) years from the Cutover Date. This Agreement shall automatically renew for up to three (3) 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 ninety (90) days prior to a scheduled renewal. Notwithstanding the foregoing, either party may terminate this Agreement, based on a material, adverse economic change beyond such party's reasonable control, 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. Equipment.** This Agreement applies to the provision of Equipment by ICS 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 and 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 collect calling services to End-Users, on both a pre-paid and postbilled basis, at the rates and charges set forth on Exhibit C, attached hereto. ICS reserves the right to establish thresholds for the level of collect call credit to be allowed by 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 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.

County agrees that all Commissions are subject to change based on any changes that may be required by the applicable Public Service Commission or any policy, regulation or tariff of a regulatory body having jurisdiction over the public communications contemplated herein. In addition, Commission rates and the revenue MAG, as set forth in Exhibit D, are predicated on County maintaining an average daily inmate population consistent with the monthly average of the three month period preceding the Cutover Date with inmates 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 telephone 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 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 Wisconsin 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 Winnebago County of Wisconsin.

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 above unless otherwise communicated in writing.

10. Entire Agreement. This Agreement, together with the provisions of County's RFP# SH05-13 and ICS's response thereto which are incorporated herein by reference, constitute 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.

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. However, County shall be responsible for any loss or damage to Equipment located on the premise caused by fault or negligence of County, its employees or others under County's supervision.
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; (c) its performance hereunder shall be in compliance with applicable state and federal legal and regulatory requirements.
15. **Indemnification.** Each party shall indemnify, defend and hold harmless the other party from and against any and all claims, losses, injuries, or demands asserted by third parties (collectively "Claims") arising from the material breach, negligent acts or misconduct of such indemnifying party, its agents or employees, in the performance of any of its obligations hereunder. Except for the foregoing express indemnification, each party shall bear its own liability and costs of defense for any third party claims.
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 USE, LOSS OF GOODWILL, CONSEQUENTIAL, SPECIAL 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 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. As County's sole and exclusive remedy, ICS shall, at ICS' sole option and expense, either: (a) correct any nonconformities or defects which substantially impair the functionality of the Equipment in accordance with the aforesaid specifications; (b) use reasonable efforts to provide a work-around for any reproducible nonconformities or defects which substantially impair the functionality of the Equipment in accordance with the aforesaid specifications; (c) replace such nonconforming or defective Equipment; or (d) promptly refund any amounts paid to ICS by County with respect to such nonconforming or defective Equipment upon ICS receipt of such nonconforming or defective Equipment. ICS does not warrant that the operation of the Equipment shall be uninterrupted or error-free. No warranty is made with respect to the use of Equipment on or in connection with equipment or software not provided by ICS. Equipment may contain recycled, refurbished or remanufactured parts which are equivalent to new parts. ICS makes no warranties or representations that it will solve any problems or produce any specific results.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES AND ICSOLUTIONS HEREBY DISCLAIMS ANY OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. THE FOREGOING SHALL BE THE SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMING OR DEFECTIVE EQUIPMENT AND SERVICES. NOTHING CONTAINED HEREIN SHALL OBLIGATE ICS TO ENHANCE OR MODIFY THE SERVICES OR EQUIPMENT BEYOND THE SUBSTANTIAL FUNCTIONALITY INITIALLY ACCEPTED BY COUNTY, WHICH ACCEPTANCE SHALL BE DEEMED TO HAVE OCCURRED UPON THE GENERATION OF CALL REVENUE.

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 and business strategies (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.

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 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.

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.

County shall be named as 'additional insured' on the general liability policy. ICS shall provide certificates evidencing the above coverage amounts upon request from County.

27. Application to Similar Parties. The parties acknowledge that certain counties within the same State as County (each an "Affiliated County") may wish to obtain equipment and related services substantially similar to the Equipment and related services set forth herein. ICS may, at no cost or obligation to County, enter into a definitive agreement with an Affiliated County and incorporate the terms and conditions of this Agreement by reference.

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

Winnebago County, Wisconsin

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

Exhibit A – County Addresses

Principle Business Address (used for all notices hereunder):

Winnebago County Sheriff's Office
4311 Jackson Street Oshkosh, WI 54901

Service Locations:

<u>Location Name</u>	<u>Address</u>
Winnebago County Jail & Work Release	4311 Jackson Street Oshkosh, WI 54901

Equipment to be shipped to:

Winnebago County Jail (address above)

Commissions to be paid to:

Winnebago County Sheriff's Office (address above)

Exhibit B – Equipment

Centralized Enforcer® Call Processor along with the following features:

- 72 x Stainless Steel Inmate Telephones
- 1 x Workstation & Printer
- 2 x TDD\TTY Device
- Voice Print - Voice Biometric Inmate Identity Verification
- Nexidia Word search
- The Attendant Automated Information System.....Static & Dynamic Information
- Interface to JMS for automated PIN
- Interface to Aramark for Automated Debit Calling
- Interface to Aramark for Over-the-Phone Commissary Ordering

Exhibit C – Call Rates

The following rates apply to all call types from all Service Locations:

Calling Rates		
<u>Call Type</u>	<u>Per Call Charge</u>	<u>Total Per Call Charge</u>
Local	\$0.00	\$0.25
IntraLATA	\$0.00	\$0.25
InterLATA	\$0.00	\$0.25
Interstate	\$0.00	\$0.25
International	\$4.00	\$1.00

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 (available on Debit calls only).

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

Exhibit D – Commissions

ICS shall pay to County a Commission of 83.1% of the gross revenue for all call types generated from County's Service Locations plus the remaining 16.9% on the first \$50,000 of Debit usage each term year of the Agreement. In addition, Commissions shall be based on a minimum annual guarantee ("MAG") for gross call revenue of \$300,000 for each Agreement term year. The MAG shall be reconciled annually against actual gross call revenue and, if applicable, any Commission shortfall paid within 30 days following each such term year.

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