

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 5883 Rue Ferrari, San Jose, CA 95138, and **County of Ulster**, a municipal corporation, a County of the State of New York, with principal offices at 244 Fair Street, Kingston, New York, by and through its **Ulster County Law Enforcement Center** (the "Facility").

- 1. Term of Contract.** This Agreement shall commence upon the date inmates within the Facility begin placing telephone calls from the Equipment, which has been estimated to be August 19, 2009 (the "Cutover Date") based on this Agreement being fully executed not less than 45 days prior to such date. This Agreement shall remain in force and effect for five years from the Cutover Date. This Agreement shall automatically renew for two additional terms of one 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 economic change beyond such party's reasonable control, with sixty (60) day's prior written notice. Upon termination of this Agreement, Facility shall immediately cease any use of any Equipment provided hereunder.
- 2. Equipment.** This Agreement applies to the provision of Equipment by ICS within space provided by the Facility at each of the locations listed on Exhibit A, attached hereto (each a "Location"). 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 Facility, shall remain in all respects the property of ICS. ICS reserves the right to remove or relocate Equipment, which 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 Facility. Upon removal of Equipment by ICS, ICS shall restore the premise to its original condition, ordinary wear and tear excepted.
- 3. Alteration and Attachments.** Facility 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 Facility without the express written permission of ICS.
- 4. Training.** ICS shall provide one full day of on-site training plus up to two hours of internet-based training at no cost to Facility. Additional training may be provided upon Facility's request based on availability and quotation from ICS.
- 5. Call Rates.** ICS shall provide collect calling services to End-Users, on both a pre-paid and 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 collect call credit to be allowed by the billed consumer. Such threshold shall be initially set to [\$75] per calendar month.
- 6. Commissions to Facility.** ICS will install, operate, and maintain Equipment at no charge to Facility. ICS will pay Facility the commission amounts set forth on Exhibit D, attached hereto (collectively the "Commissions"), in consideration of the Facility granting ICS exclusive rights for the installation and operation of Equipment servicing the Locations. No Commissions shall be paid to Facility 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 Facility 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 Facility or wired to an account designated in writing by Facility for such purpose.

Facility 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 are predicated on Facility maintaining an average daily inmate population of not less than 40 with access to telephones materially consistent with industry practice.

7. Facility shall:

- a. Advise ICS of any 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 Facility'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.
- i. Provide ICS with Facility's Federal Tax ID: 14 600 2575

8. Law and Venue. The domestic law of the State of New York 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 Ulster County of New York.

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 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 Facility hereunder shall be incorporated herein by mutual consent of the parties and shall supplement but not supersede the provisions of this Agreement. The Facility represents and warrants that it has the legal authority to make decisions concerning the provisions of space for telephones placed by ICS at the locations covered by the 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 Facility of all risk of loss or damage to Equipment during the periods of transportation and installation of the Equipment. However, Facility shall be responsible for any loss or damage to Equipment located on the premise caused by fault or negligence of Facility, its employees or others under Facility'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 Facility 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. If, at the written request of Facility, ICS makes alterations to the Equipment, other than as necessary for its correct operation and/or compliance with applicable laws, then all reasonable costs of such alterations shall be reimbursed by Facility or, at ICS discretion, may be deducted from any Commissions otherwise payable hereunder.
- 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 Facility'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 Facility in writing, and shall not infringe any patent or trademark. This warranty shall continue while Equipment is in operation at each Location. Facility 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 Facility'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 Facility 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 FACILITY, 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, 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.

23. 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.

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 the have full authority to execute this Agreement on behalf of their respective parties:

Inmate Calling Solutions, LLC



(Signature)

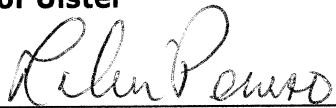
Michael R. Smith

PResident

10/21/09

(Date)

County of Ulster



(Signature)

Robin Peruso

Director of Purchasing

12-7-09

(Date)

EXHIBIT A – LOCATIONS

Location Name

Address

Ulster County Law Enf. Ctr.

380 Boulevard
Kingston, NY 12401

EXHIBIT B – EQUIPMENT

- 1) THE ENFORCER® configured as follows:
 - 55 Inmate Station Ports
 - 1 Hour UPS unit
 - Collect, PrePaid Collect & Optional Debit Call Processing
 - 1 Workstation & Printer
 - Monitoring & Recording
 - 5 Year on-Line Call Record & Recording Storage
 - Administrator Software Application Licenses for use on County-Provided workstations
 - Investigator PRO™ Voice Biometrics

- 2) Inmate Telephone Instruments
 - 55 Stainless Steel Inmate Phone Instruments
 - Configured with 18" Armored Handset Cords
 - 1 TTY/TDD Upon request
 - 2 Portable Inmate Phone Carts

EXHIBIT C – CALL RATES

The Facility has selected the option indicated by a checkmark:

✓	Option	Rates		
✓	1 + Investigator PRO™	<u>Call Type</u>	<u>Per Call Charge</u>	<u>Per Minute Charge</u>
		Local	\$1.58	\$0.09
		IntraLATA	\$1.58	\$0.18
		InterLATA	\$3.95	\$0.40
		Interstate	\$3.95	\$0.89
	2 + Investigator PRO™	<u>Call Type</u>	<u>Per Call Charge</u>	<u>Per Minute Charge</u>
		Local	\$1.34	\$0.077
		IntraLATA	\$1.34	\$0.153
		InterLATA	\$3.36	\$0.340
		Interstate	\$3.36	\$0.757
	3 + Investigator PRO™	<u>Call Type</u>	<u>Per Call Charge</u>	<u>Per Minute Charge</u>
		Local	\$1.11	\$0.630
		IntraLATA	\$1.11	\$0.123
		InterLATA	\$2.77	\$0.280
		Interstate	\$2.77	\$0.623

The Facility is permitted to change the selected rate option and corresponding commission at any time. The change request must be confirmed in writing as an amendment to this Agreement. Rates will remain in place for a minimum of six months before a change may be requested.

NOTE: Call Rates shown do not include local, county, state and federal taxes, mandated Universal Service Fund fees and billing fees. Prepaid collect and debit calls to cell phones within the LATA are rated at the IntraLATA rate

EXHIBIT D – COMMISSIONS

ICS will pay commission based upon the rate option selected in Exhibit C of this Agreement. Commissions are paid on gross completed, accepted call revenue with no deductions for any cost associated with providing the proposed service. Revenue includes collect, prepaid collect and debit call activity.

ICS offers a Minimum Monthly Guarantee ("MMG") for each Rate Option listed below. Each month, ICS will pay facility a commission equal to the percentage of gross revenue or the applicable MMG, whichever is higher.

Rate Option Selected	Commission
1 + Investigator PRO™	47% MMG \$15,600
2 + Investigator PRO™	43% MMG \$12,000
3 + Investigator PRO™	37% MMG \$8,500

Note: The MMG calculation is based on an estimated inmate population of 320 at the Facility. ICSolutions reserves the right to adjust the MMG in the event of a decrease in population of 10% or more which continues for a period of three months or more.

**AMENDMENT NO. 1 to the
INMATE TELEPHONE SERVICES AGREEMENT**

This Amendment No. 1 to the Inmate Telephone Services Agreement dated August 19, 2009 (the "Agreement") is made by and between Inmate Calling Solutions, LLC, d/b/a ICSolutions ("ICS") and County of Ulster, NY (the "Facility") effective as of first day of the month following full execution hereof ("Amendment Date"). Whereas, the parties agree as follows:

1. The Term of the Agreement is hereby extended until 8/19/2019. Thereafter the Agreement shall renew for up to two (2) additional terms of one (1) year, each upon the same terms and conditions as amended hereby, unless either party provides written notice to the other of their desire not to renew at least sixty (60) days prior to such renewal.
2. The Equipment, as defined under the Agreement and more fully described on Exhibit B thereof, is hereby amended and supplemented with the following:

Transition to Centralized Enforcer® Call Processing

- Move all call records and call recordings to central platform
- Implement The Verifier – Biometric Inmate Identity Verification
- Refresh\Replace all inmate telephones
- Provide new Workstation & Printer
- Provide new TDD\TTY devise

Provide Inmate Tablet program

- 160 x Ruggedized Inmate Tablets from JES
- 10 x Mobile Charge Cards (1 per housing area)
- Mobile charge carts equipped for secure storage\charging of tablet devises plus carrying cases for easy transport
- 20 x WiFi hotspots to provide wireless access coverage in the 10 housing areas.
- Edovo Educational Content
- Library of content focusing on educational, treatment and vocational courses.
- Rewards-Based Learning Approach with Free access to entertainment (Music\Movies\Games)
- Equipped with data tracking for course\module completion
- Access to fee-based content (music, movies, games etc.)
- ICS will remit 50% of the NET Revenue generated for the sale of content
- Equipped with data tracking for investigative and security measures
- Phone Calling Enabled
- Local content hosting such as inmate handbook, religious services etc.
- Access to educational suite for released inmates to complete course work.

3. Exhibit C – Call Rates, is hereby replaced with the attached Exhibit C.
4. The Commission rate, as more fully described on Exhibit D to the Agreement, is hereby amended to be 55% and shall otherwise continue to be applied to all gross call revenue with no deductions for any costs. ICS shall provide a Monthly Minimum Guarantee in Commissions payable to County of \$13,500 (the "MMG") applied as needed on each monthly reporting statement.
5. Except as amended herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by their duly authorized representatives on the dates set forth below, to be effective as of the Amendment Date first set forth above:

Inmate Calling Solutions, LLC

Brendan Philbin
(Signature)

BRENDAN PHILBIN
(Printed Name)

VICE PRESIDENT
(Title)

2/11/16
(Date)

County of Ulster, NY

Paul J. VanBlaricum
(Signature)

PAUL J. VANBLARICUM
(Printed Name)

Sheriff
(Title)

2/8/16
(Date)

Exhibit C – Call Rates

The following rates apply to all calls from the Ulster County Law Enforcement Center (ADP - 320):

Calling Rates		
<u>Call Type</u>	<u>Per Call Charge</u>	<u>Per Minute Charge</u>
Local	\$0.00	\$0.22
Intrastate/IntraLATA	\$0.00	\$0.22
Intrastate/InterLATA	\$0.00	\$0.22
Interstate	\$0.00	\$0.22
International	\$0.00	\$0.75

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

(No other fees shall apply other than third-party)



**AMENDMENT NO. 2 TO CONTRACT #C09-00591
INMATE CALLING SOLUTIONS, LLC, d/b/a ICSolutions
INMATE TELEPHONE SERVICES AGREEMENT**

This Amendment No. 2 (“Amendment No. 2”) is effective as of August 19, 2017 (the “Amendment Effective Date”) and entered into by and between the **COUNTY OF ULSTER**, a municipal corporation, a county of the State of New York, with principal offices at 244 Fair Street, Kingston, New York 12401 by and through its Ulster County Law Enforcement Center (the “**FACILITY**”) and **INMATE CALLING SOLUTIONS, LLC, d/b/a ICSolutions**, a limited liability company having its principal place of business at 5883 Rue Ferrari, San Jose, California 95138 (the “**ICS**”); (each a “Party”; collectively, the “Parties”).

RECITALS

WHEREAS, ICS and the **FACILITY** entered into an agreement dated December 7, 2009 (County Contract No. C09-00591) wherein ICS agreed to provide Equipment and services for inmate telephone usage, as amended by that certain amendment No. 1 (as amended the “Agreement”); and

WHEREAS, the Facility desires an additional thirty (30) Ruggedized Inmate Tablets; and

WHEREAS, ICS is willing and able to provide the additional thirty (30) tablets at a purchase price of \$7,500.00 which ICS shall deduct directly from the commissions due the County; and

WHEREAS, the Parties have agreed to amend the terms and conditions of the Agreement to increase the number of tablets by thirty (30) at a cost of \$7,500.00, as further outlined below.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

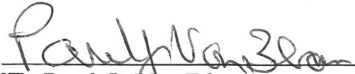
AGREEMENT

- 1.) Exhibit B of the Agreement is hereby amended to increase the number of Ruggedized Inmate Tablets from Edevo by thirty (30).
- 2.) The Parties hereby agree to have the Seven Thousand, Five Hundred and 00/100 (\$7,500.00) Dollar purchase price for the thirty (30) Ruggedized Inmate Tablets from Edevo deducted from the commissions owed to the Facility.
- 3.) Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement.


- 4.) Except as expressly set forth herein, the terms and conditions of the Agreement shall continue in full force and effect.
- 5.) In the event of a conflict between the Agreement and this Amendment No. 2 the terms and conditions of this Amendment No. 2 shall control.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to enter into this Amendment No. 1, effective as of the Amendment Effective Date.

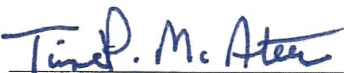
ULSTER COUNTY SHERIFF
(Approved as to content)

BY: 
NAME: Paul J. VanBlarcum
TITLE: Sheriff
DATE: 9/28/17

COUNTY OF ULSTER

By: 
NAME: Marc Rider
TITLE: Director of Purchasing
DATE: 10/5/2017

INMATE CALLING SOLUTIONS, LLC,
d/b/a ICSOLUTIONS

By: 
NAME: Tim McAteer
TITLE: President
DATE: 9/25/2017