

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 **Mesa County, Colorado, a political subdivision of the State of Colorado, by and through the Mesa County Sheriff (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 April 30, 2017 (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 the twelve (12) months following the actual Cutover Date. This Agreement shall be eligible for renewal for a total of four (4) additional terms of one (1) year, each upon the same terms and conditions as set forth herein, by mutual agreement of the parties, submitted in writing, not less than fifteen (15) days from the contract expiration date. 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. In addition, in the event this Agreement is terminated prior to the completion of sixty (60) months (the "Video Amortization Period"), for any reason other than an uncured default by ICS, then County shall reimburse ICS for its investment in the Video Visitation System at the rate of \$5,524.00 per month for each month that would have otherwise remained in the Video Amortization Period.
2. **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, by County without notification to 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 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. 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, excluding telecommunication services being provided to the County on/through electronic tablets
- 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 Mesa 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, inclusive of attached Exhibits referenced herein, the Request for Proposal (RFP-1604-16-DF) and addenda, and the bid proposal submitted by ICS dated December 8, 2016,, 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.

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 contractors under County's supervision. County shall be responsible for damage to the video kiosks resulting from inmate vandalism and shall reimburse ICS for its out of pocket expenses to replace the video kiosk(s).
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. **Indemnification.** To the extent permitted by law, 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 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. 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 ICS 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. **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. Nothing in this Agreement shall be construed to prohibit the County from disclosing records that are not specifically provided to the County as Confidential Information (i.e. this Agreement, contract documents, financial offerings and transactions between ICS and the County) pursuant to valid open records requests, in accordance with the Colorado Open Records Act, C.R.S. 24-72-200.1, *et seq.*

22. **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.
23. **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.
24. **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.
25. **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.

{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

Brendan Philbin
(Signature)

BRENDAN PHILBIN
(Printed Name)

VICE PRESIDENT
(Title)

3/30/17
(Date)

Mesa County, CO

Matt Lewis
(Signature)

MATT LEWIS
(Printed Name)

MESA COUNTY SHERIFF
(Title)

03-30-17
(Date)

Exhibit A – County Addresses

Principle Business Address (used for all notices hereunder):

Mesa County Sheriff's Office
215 Rice Street
Grand Junction, CO 81501

Facilities & Service Locations:

<u>Facility Name</u>	<u>Service Locations</u>
Mesa County Detention Facility (ADP: 418)	215 Rice Street Grand Junction, CO 81501
Mesa County Criminal Justice Services Division (ADP: 145-185)	
	<ul style="list-style-type: none">- Escalante, 559 Pitkin Ave, Grand Junction, CO- Bridger, 636 South Ave, Grand Junction, CO- Powell, 650 South Ave, Grand Junction, CO- Chipeta, 436 S. 7th St, Grand Junction, CO

Equipment to be shipped to:

Mesa County Detention Facility
215 Rice Street
Grand Junction, CO 81501

Commissions to be paid to:

Mesa County Sheriff's Office
P.O. Box 20,000-5017
Grand Junction, CO 81502

Exhibit B – Equipment

Centralized Enforcer® Call Processing, including the following:

- Inmate Telephones & Payphones
 - MCDF – Replace all existing Inmate Telephones and add Inmate Telephones to requested new locations (total of 62 inmate telephones, see table below for list of phones and locations)
 - MCCJSD – Replace 31 Coin Payphones with new models

To include the following:

- 1 x TDD\TTY Unit
- 1 x Workstation & Printer
- Unlimited Enforcer® User licenses
- All calls will be monitored and recorded
- Interface to JMS platform
 - MCDF - New World - Automated Inmate ID\Pin Updates
- The Enforcer® Investigative Suite
 - The Verifier™ – Biometric Inmate Identity Verification
 - Word Detective™ – Phonetic Keyword Search Technology
 - Data Detective™ – Data Mining & Link Analysis
- The Enforcer® IVR Suite
 - The Informer™ – PREA Module
 - The Communicator™ – Inmate Request Portal
 - The Attendant™ – Informational IVR
- Interface to Trinity Banking & Commissary
 - Automated PIN-Based Debit Calling
 - Over-the-Phone Commissary Ordering
- Inmate Voicemail
- **The Visitorsm Video Visitation System**
 - Fully Integrated with The Enforcer® Inmate Phone System
 - Web-based visitor registration
 - Web Based Scheduling for all visits
 - Long Term Recording Storage of visitation sessions
 - 35 x Inmate Kiosks to include 1 monitor located at CJSD
 - 11 x Visitor Kiosks
 - 2 x Control\Monitoring Workstation
 - 1 x Registration\Scheduling Terminal in jail lobby
 - **All Local Visits are provided at No Cost**
 - Remote Visitation Enabled
 - ICS will provide the necessary bandwidth to support remote visitation sessions
 - Turnkey installation encompassing all necessary cable and network infrastructure
 - All-Inclusive warranty, support, repair\replace maintenance agreement

Mesa County Colorado Revised Unit Quantities and Locations

Visitation		
Locations	Inmate Phones	Video Visitation Monitors
Onsite Visitation Room		11
Booking		
Locations	Inmate Phones	Video Visitation Monitors
Holding 5	1	
Holding 6	2	
Holding 7	2	
Holding Waiting	5	1
Holding Waiting	1 enrollment	
Housing Units		
Locations	Inmate Phones	Video Visitation Monitors
Cedar 1	4	1
Cedar 1 Bubble	1	1
Cedar 2	2	1
Cedar 3	1	1
Cedar 3 A	1	1
Cedar 3 B	1	1
Spruce	5	4
Oak	6	4
Willow 1	3	2
Willow 2	3	1
Willow 3	5	2
Pinyon 1	3	2
Pinyon 2	4	3
Aspen 1	2	2
Aspen 2	2	1
Aspen 3	3	2
Aspen 4	1	1 (mobile unit shared with Aspen 5)
Aspen 5	1	
Maple	4	3
	Total: 62 inmate phones	
CJSD	Total: 31 coin payphones	1
		Total Video Visitation Monitors: 46

Exhibit C – Rates & Charges

The following rates apply to calls from the Service Locations:

Collect Calling Rates		
<u>Call Type</u>	<u>Per Call Charge</u>	<u>Per Minute Charge</u>
Local	\$0.00	\$0.25
Intrastate/IntraLATA	\$0.00	\$0.25
Intrastate/InterLATA	\$0.00	\$0.25
Interstate	\$0.00	\$0.25

Prepaid & Debit Calling Rates		
<u>Call Type</u>	<u>Per Call Charge</u>	<u>Per Minute Charge</u>
Local	\$0.00	\$0.21
Intrastate/IntraLATA	\$0.00	\$0.21
Intrastate/InterLATA	\$0.00	\$0.21
Interstate	\$0.00	\$0.21
International	\$0.00	\$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
Bill Statement Fee..... \$2.00
(All other calling-related fees free or waived)

Inmate Voicemail:

Retail fee per inbound message..... \$1.00
(Revenue share applies - see Exhibit D)

Video Visitation:

Remote visitation per 20-minute session increment..... \$10.00
(Revenue share applies - see Exhibit D)

Exhibit D – Commissions

ICS shall retain \$.50 per completed call to offset to costs related to the Video Visitation system. ICS shall pay to County a Commission of 70.5% of the remaining gross call revenue for all call types generated from County's Service Locations. In addition, ICS shall pay County a Commission of 50% on all Inmate Voicemail and Remote video Visitation service fees collected.

Commissions payable to County shall be subject to a minimum annual guarantee ("MAG") of \$168,000 payable in 12 monthly installments of \$14,000. Actual Commissions earned during each Term year shall be reconciled against the MAG and any shortfall paid to County within 30 days of the end of each such Term year.

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