

# Solutions Services Agreement

## Crowley County Sheriff's Office



This Agreement ("AGREEMENT"), submitted as of this date of March 16, 2020 ("Submitted Date") between the **Crowley County Sheriff's Office**, with an address of 110 East 6th Street, Ordway, Colorado, 81063, 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. 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.

**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:** This AGREEMENT shall be governed by the laws of the State of Nebraska (without regard to the choice of law provisions thereof) and the parties agree that venue for any legal proceedings or otherwise shall exclusively be in the state and federal courts located in the State of Nebraska.

**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

110 East 6th Street Ordway, Colorado 81063

8210 S 109th Street La Vista, NE 68128

Attn: Sheriff John Kurtz

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.

**INTERNET:** In the event that it is agreed that the Internet will be provided by the PARTICIPANT, PARTICIPANT will, at its sole cost, arrange for high speed Internet service, both fixed and/or wireless with a minimum system requirement of 80 kilobits per second per audio phone applications, and 500 kilobits per second upload speed and 500 kilobits per second download speed per video device applications, and any equipment associated therewith to be provided to the FACILITY, and the PARTICIPANT will maintain the high-speed Internet service and any equipment associated therewith. The PARTICIPANT will provide, at its sole cost, electricity necessary to run, install and service the high-speed Internet Service and operation of EQUIPMENT. The PARTICIPANT will provide ENCARTELE a SSID for the operation of the EQUIPMENT required to utilize a wireless internet connection.

PARTICIPANT WILL provide internet for the SYSTEM and SERVICES as indicated.

PARTICIPANT WILL NOT provide internet for the SYSTEM and SERVICES as indicated.

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

X

  
Authorized Representative  
Crowley County Sheriff's Office

Acceptance Date: 03-17-2020

X





  
Scott Moreland - President & CEO  
Encartele

Acceptance Date: 3-17-2020

# Exhibit A

## SCOPE OF WORK

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

Deliverable Equipment		Total Quantity
	<p><b>6Q Stainless Inmate Telephone</b> Detention grade inmate telecommunications device</p> <ul style="list-style-type: none"><li>• Currently Installed</li></ul>	3
	<p><b>CID Device - 7" display with handset</b> Detention grade POE touch screen communications device with back-plate</p> <ul style="list-style-type: none"><li>• Public Visitation Area - 1</li><li>• Housing Areas - 4</li></ul>	5
	<p><b>ADTRAN Phone System Gateway</b></p> <p>Network device used to route and manage inmate telecommunication.</p>	1
	<p><b>Network Switch</b></p> <p>Networking device used to support operation of CID Devices</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 generated from Encartele systems.

Communication Type	Rate	PARTICIPANT Commission
In-State Calls	\$0.31 / minute	35%
Inter-State Calls	\$0.21 / minute	35%
CIDNET Video	\$0.30 / megabyte	20%
CIDNET Mail	\$0.30 / megabyte	20%
CIDNET Voice	\$0.30 / megabyte	20%