

ERIE COUNTY CONTRACT

TIMOTHY B. HOWARD
SHERIFF

MARK N. WIPPERMAN
UNDERSHERIFF



SHERIFF OF ERIE COUNTY

ADMINISTRATIVE OFFICES

10 DELAWARE AVENUE
BUFFALO, NEW YORK 14202-3913
(716) 858-7618
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POLICE SERVICES

45 ELM STREET
BUFFALO, NEW YORK 14203
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August 6, 2020

George Dahlbender 01A0341
Green Haven C. F.
594 Rte. 216
Stormville, New York 12582

RE: FOIL Request

Dear Mr. Dahlbender;

Please be advised the Erie County Sheriff's Office is not in possession of any further documentation to satisfy your FOIL request. We do not have an Inmate Tablet Service and the Inmate Tele/Video is included in the 2016 Amendment.

Thank you

John W. Grønan

Undersheriff

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 Erie County Sheriff's Office, NY (the "Facility") having its principal place of business at 10 Delaware Avenue, Buffalo, NY 14202.

- 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 1, 2012 (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 (5) years from the Cutover Date. This Agreement shall automatically renew for up to two (2) 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 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 the 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. ICS shall sub-contract with a local resource for maintenance and support of the Equipment. All services, Equipment and maintenance are provided hereunder at no cost to Facility.
- 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.
- 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

except where the inmate's misuse, destruction, damage, defacement, or vandalism to the Equipment is caused, in whole or in part by Facility's gross negligence or willful misconduct. If an inmate caused damage to Equipment, Facility shall promptly and diligently pursue disciplinary action and restitution from the inmate consistent with Facility's policies and procedures and so far as allowed by law. All sums in restitution recovered by Facility shall promptly be remitted in full to ICS.

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. If, through any cause, ICS fails to fulfill its obligations under this Agreement in a timely and proper manner, the County shall have the right to immediately terminate the Agreement by giving written notice to ICS in accordance with the foregoing. The waiver of any default hereunder by either party shall not constitute, or be construed as, a waiver of any subsequent default.
13. **Assignment.** Upon the written consent of Facility, 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.
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. ICS shall make any alterations to the Equipment as necessary for its correct operation and/or compliance with applicable laws at no cost to Facility.

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 Facility 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 Facility. Such license is specific to the Facility 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 Facility to Use the Enforcer[®] software will expire and terminate. Facility 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.

ICS shall provide to Facility certificates evidencing the above coverage amounts, naming the County of Erie as certificate holder and designating same as an additional insured on all policies. Such certificate(s) shall be updated as needed by ICS in order to remain in full force and effect throughout the life of this Agreement.

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

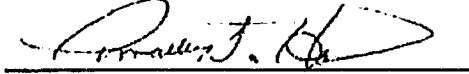

(Signature)

BRENDAN PHILBIN
(Printed Name)

VICE PRESIDENT
(Title)

7/2/2012
(Date)

Erie County Sheriff's Office, NY


(Signature)

Timothy B. Howard
(Printed Name)

Erie County Sheriff
(Title)

June 28, 2012
(Date)

Exhibit B – Equipment

Centralized Enforcer® system configured as follows:

- **Monitoring & Recording of Inmate Phones**
- **Enforcer Licenses as Applicable**
- **Interface to JMS for Inmate ID\PIN**
- **Commissary Ordering by Phone (requires interface to Keefe Commissary)**
- **Debit Calling Utilizing Trust Funds (requires interface to Keefe Banking System)**

- **190 Inmate Telephones**
- **3 TTY\TDD Devices**
- **3 Equipment Racks**
- **8 Adtran IP Gateways**
- **3 Cisco Managed Switches**
- **3 Netscreen Firewalls**
- **3 APC UPS + Power Management Modules**
- **3 Cable & Connector Packages**
- **3 Workstations & Printers**
- **2 Laptop Computers**

Exhibit D – Commissions

ICS shall pay to Facility a Commission of 61.5% of the gross revenue for all call types generated from Facility's locations. ICS shall invoice Facility monthly for total Debit funding/spending on telephone services via inmate trust accounts. Such invoices shall be paid by Facility within thirty (30) days.

Also, ICS shall provide Facility with an annual \$70,000 Technology Fund. This account will be funded on a monthly basis and can be utilized at the discretion of Facility.

In addition, ICS shall establish a payment fund on behalf of Facility calculated at \$500 per inmate based on the most recent three (3) month average daily inmate population in effect as of the Cutover Date. The payment fund shall be maintained by ICS and available to Facility to offset any Facility approved invoice. In the event that this Agreement terminates prior to the end of the Initial Term, Facility shall reimburse ICS the unamortized portion of the payment fund for the period that would have otherwise remained in the Initial Term.

Amended Attachment A

Service Fees

Gross Amount Deposited	Credit/Debit Deposits via Website	Credit/Debit Deposits via Phone	Credit/Debit Deposits via Lobby Kiosk	Cash Deposits via Lobby Kiosk
\$0.01 - \$100.00	\$5.00	\$5.00	\$5.00	\$5.00

**AMENDMENT No. 2 to the
AGREEMENT FOR INMATE TELEPHONE SYSTEM**

This Amendment No. 2 ("Amendment") to the Inmate Telephone Services Agreement dated August 1, 2012, as previously amended, (the "Agreement") is made by and between Inmate Calling Solutions, LLC, d/b/a ICSolutions ("ICS") and Erie County Sheriff's Office, NY ("Facility").

Whereas, the parties wish to amend the Agreement and now agree as follows:

1. Capitalized terms used herein but not defined shall have the meanings ascribed thereto under the Agreement.
2. The second sentence of Section 1 of the Agreement is hereby amended to read as follows: "*This Agreement shall remain in force and effect for an initial term through 9/30/2022*".
3. Services and Equipment under the Agreement are hereby amended to include, at no cost to Facility, a 64-Unit Video Visitation System including installation with all necessary conduit, cabling & network connections. The system shall be remote visitation enabled with remote visits charged at \$.50 per minute charged in 20-minute increments. All-inclusive warranty, support repair/maintenance package.
4. The Calling Rates set forth on Exhibit C of the Agreement are hereby amended to be as follows:

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 Debit	\$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.

Non-Commissionable Billing Fees:

Payment Processing Fee (Live Agent) \$5.95
 Payment Processing Fee (IVR or Internet) \$3.00

Bill Statement Fee (Collect & Direct Billing only)..... \$2.00
(All other fees free or waived)

5. Exhibit D to the Agreement is hereby amended to read as follows:

"ICS shall pay to Facility a Commission of 61.5% of the gross revenue for all call types generated from Facility's locations through the call processing month ended September 30, 2017. Thereafter, ICS shall pay to Facility a Commission of 63.5% of such gross revenue. Additionally, ICS shall pay Facility a Commission of 50% on all service fees collected with respect to remote video visitation.

ICS shall invoice Facility monthly for total Debit funding/spending on telephone services via inmate trust accounts. Such invoices shall be paid by Facility within thirty (30) days.

Also, ICS shall provide Facility with an annual \$70,000 Technology Fund. This account will be funded on a monthly basis and can be utilized at the discretion of Facility."

6. Except as amended hereby, the Agreement shall otherwise remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by their duly authorized representatives:

Inmate Calling Solutions, LLC

Brendan Phibbin
(Signature)

BRENDAN PHIBBIN
(Printed Name)

VICE PRESIDENT
(Title)

9/13/16
(Date)

Erie County Sheriff's Office, NY

Timothy B. Howard
(Signature)

Timothy B. Howard
(Printed Name)

Sheriff of Erie County
(Title)

July 29, 2016
(Date)

Approved as to Form:

Tim McAttee
(Signature)

President
(Title)

9/12/16
(Date)

County of Erie:

Michael J. Donohue
(Signature)

Erie County Executive
(Title)

August 26 2016
(Date)