

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND INMATE CALLING SOLUTIONS, LLC

This Agreement is entered into this 5th day of March, 2018, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Inmate Calling Solutions, LLC dba ICSolutions hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained to provide inmate telephone and associated services at the County Correctional Centers.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. EXHIBITS AND ATTACHMENTS

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Rates and Fees
- Attachment I—§ 504 Compliance
- Attachment II – Request for Proposal
- Attachment III – IC Solutions Response to Request for Proposal

2. SERVICES TO BE PERFORMED BY CONTRACTOR

In consideration of the County granting Contractor the exclusive right and license to install, maintain, and operate inmate telephone services and related hardware and software and to provide associated services within the identified County Correctional Centers, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A. In no event shall County be required to provide payment of any type to Contractor for performance of these services.

3. TERM

Subject to compliance with all terms and conditions, the term of this Agreement shall be from **July 1, 2018** through **June 30, 2021**. At its sole discretion, County may exercise the option to extend this agreement for an additional two one (1) year renewals thereafter, by written notice to Contractor by County, or no later than thirty (30) days prior to the termination of the original three-year term or first one-year renewal term.

4. TERMINATION

This Agreement may be terminated by the Sheriff or Sheriff's designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to Contractor.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement where Contractor becomes insolvent, becomes the subject of voluntary or involuntary bankruptcy proceedings, fails to pay its bills when due, makes an assignment for the benefit of creditors, or goes out of business.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and what constitutes a material breach, and County shall use reasonable judgment in making these determinations.

5. CONTRACT MATERIALS

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as “contract materials”) prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

6. RELATIONSHIP OF PARTIES

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

7. HOLD HARMLESS

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor’s failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor’s duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. ASSIGNABILITY AND SUBCONTRACTING

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County’s prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

However, this Agreement may be transferred or assigned, in whole or in part, by contractor to any parent, successor, subsidiary, or affiliate of Contractor. Contractor may sub-contract any portion of its duties hereunder provided, however, it shall remain at all times responsible for such sub-contracted duties.

9. INSURANCE

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability.....\$1,000,000
- (b) Motor Vehicle Liability Insurance.....\$1,000,000
- (c) Professional Liability.....\$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

10. COMPLIANCE WITH LAWS

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504

of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. NON-DISCRIMINATION AND OTHER REQUIREMENTS

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

12. COMPLIANCE WITH COUNTY EMPLOYEE JURY SERVICE ORDINANCE

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

13. RETENTION OF RECORDS; RIGHT TO MONITOR AND AUDIT

(a) Contractor shall maintain all required records relating to services provided under this Agreement for six (6) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

14. MERGER CLAUSE; AMENDMENTS

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

15. CONTROLLING LAW; VENUE

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. NOTICES

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

<i>In the case of County, to:</i> Veronica Ruiz, Management Analyst San Mateo County Sheriff's Office 400 County Center Redwood City, CA 94063 (650) 363-7819 vruiz@smcgov.org	<i>In the case of Contractor, to:</i> Inmate Calling Solutions, LLC Attn: Contracts Department 2200 Danbury St. San Antonio, TX 78217 (210) 693-1016 (fax) rfp@icsolutions.com
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17. ELECTRONIC SIGNATURE

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

18. CONFLICTS OF INTEREST

Contractor represents that entry into this Agreement will not result in a conflict of interest prohibited by California Government Code section 1090, et seq. nor will Contractor permit any conflict of interest prohibited by such statutes to arise during the performance of this Agreement or for one year thereafter. No member, officer, or employee of a local public body, during his tenure or for one year thereafter, may have any interest, direct or indirect, in this Agreement or any proceeds from it. If requested by County, Contractor will require its employees to sign agreements regarding confidentiality and/or conflicts of interest, submit to additional background check requirements, or submit forms disclosing financial interests.

19. NO WAIVER

County's review, approval, acceptance, or payment for any deliverables required under this Agreement shall not constitute a waiver of any rights or any cause of action arising out of the Agreement, nor is it to be construed as a waiver of any subsequent breach of the same or any other provision of this Agreement, nor does any delay or omission on the part of County to avail itself of any right it may have operate as a waiver of any right or remedy.

20. LANGUAGE OF THE CONTRACT

Unless otherwise stated, all directions and imperatives in the Agreement are understood to be requirements for Contractor. Captions and titles in the Agreement are for convenience and reference only.

21. PAYMENT OF PERMITS/LICENSES

Contractor bears responsibility to obtain and maintain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to and commencement of, and throughout provision of, said work/services.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

FOR CONTRACTOR: INMATE CALLING SOLUTIONS, LLC


Contractor Signature

3/20/18
Date

BRENDAN PHILBIN
Contractor Name (please print)

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: Clerk of Said Board

EXHIBIT A **SERVICES**

Contractor shall provide the services and County shall have the responsibilities set forth herein:

1. Description of Services to be Performed by Contractor

Furnish and install a state-of the-art, fully operational, flexible, secure and reliable inmate telephone system and to provide County the means to ensure the lawful and legitimate use of the system by the inmate population.

A. Facilities and Service Locations

- 1.) Maple Street Correctional Center – 1300 Maple Street, Redwood City, CA
- 2.) Maguire Correctional Facility – 300 Bradford Street, Redwood City, CA

B. Service & Equipment. The term “Equipment” is defined herein as telephone sets, computer systems and software, all as more fully described in Exhibit A-1. All Equipment shall be installed by properly trained personnel and in a good, workmanlike manner. Any Equipment installed upon the premises owned, leased or otherwise under the supervision of County, shall remain in all respects the property of Contractor. Contractor reserves the right to remove or relocate any Equipment that is subjected to recurring vandalism or insufficient usage. Contractor 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 Contractor, Contractor shall restore the premise to its original condition, ordinary wear and tear excepted.

C. Training. Contractor shall provide initial and ongoing training covering all features, including equipment and related software at no cost to County. Training shall include on-site and internet based training. Contractor shall provide staff training prior to "cut over" on the use of all equipment, its functionality and the options available to the facility.

D. Special ADA. Contractor 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. Contractor shall make any alterations to the Equipment as necessary for its correct operation and/or compliance with applicable laws at no cost to County.

E. Warranty. Subject to County's compliance with its obligations hereunder, Equipment shall be free from defects in workmanship and material, shall conform to Contractor's 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 Contractor with prompt written notification as to the specifics of any nonconformity or defect and Contractor shall have a commercially reasonable timeframe to investigate such nonconformity or defect. As County's sole and exclusive remedy, Contractor shall, at its 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 Contractor by County with respect to such nonconforming or defective Equipment upon Contractor's receipt of such nonconforming or defective Equipment. Contractor 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 Contractor. Equipment may contain recycled, refurbished or

remanufactured parts which are equivalent to new parts. Contractor 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 CONTRACTOR 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.

F. **License to Use Software.** With respect to the Equipment provided under this Agreement, Contractor 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 Contractor 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.

1.) 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.

2. County Responsibilities.

The County will:

- A. Advise Contractor of any Services Location or related premise that has been closed.
- B. Throughout the term of this Agreement, including any renewal terms, use Contractor 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 Contractor.
- D. Provide necessary power and power source, at no cost to Contractor, 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 Contractor to display reasonable signs furnished by Contractor and not affix or allow to be affixed any other signs, equipment or information to the Equipment.
- G. Permit reasonable access by Contractor to County's Service Locations as reasonably necessary for Contractor 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 Contractor.
3. **Call Rates.** Contractor shall provide calling services to retail consumers, on a pre-paid and/or post-billed basis, at the rates and charges set forth in Exhibit B. Rates and charges may be subject to change based on an order or rule of a regulatory authority having applicable jurisdiction. Contractor shall obtain written approval of the Sheriff prior to any change in call rates.
 4. **Risk of Loss.** Contractor 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.
 5. **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. Force majeure does not modify Contractor's obligations regarding indemnification, redundancy, disaster recovery, non-performance by subcontractors, or responsibility for any malware or code introduced or permitted to be introduced by Contractor or any Subcontractor. Force Majeure does not include increased cost of performance or failure of Contractor's source of supply.
 6. **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.
 7. **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 clearly identified 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 or as required by law. 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 required to do so under applicable law or compelled to do so by any governmental or judicial agency having jurisdiction. Each party understands and agrees that County must comply with the California Public Records Act and that Contractor, not the County, shall be solely responsible for asserting, in whatever fashion and to the extent it so desires, any applicable exceptions to the Act in order to protect information Contractor believes is exempt from disclosure.

EXHIBIT A-1
Equipment and Services

- 1. Centralized Enforcer Call Processing:**
 - A. 161 x Stainless Steel Inmate Telephones
 - B. 4 x Inmate Cart Phones
 - C. 51 x Visitation Phone Sets
 - D. 6 x TDD\TTY units
 - E. 2 x Video Relay Service units
 - F. 5 x Workstations with printers
 - G. Unlimited Enforcer User Licenses
 - H. Electronic and Paper Records of Call Records & Recordings for Life of Contract plus 6 Years

- 2. Interface to JMS Platform**
 - A. Automated Inmate ID\PIN Updates
 - B. Automated Inmate Location Updates

- 3. Interface to Commissary System – with County’s and Commissary Vendor’s Approval**
 - A. Automated PIN-Based Debit Calling
 - B. Over-the-Phone Commissary Ordering

- 4. Enforcer Investigative Suite**
 - A. The Verifier – Inmate Identity Verification
 - B. The Imposter – Real-time Imposter Detection
 - C. Argus Echo – Post Call Voice Analysis
 - D. The Analyzer – Data Mining & Link Analysis
 - E. Word Detective – Phonetic Word Search Technology

- 5. Enforcer IVR Suite**
 - A. The Informer – PREA Module
 - B. The Communicator – Inmate Communications Portal
 - C. The Attendant – Informational IVR

- 6. Inmate Voicemail**
 - A. Inbound Voicemail – 30 Second Message Duration

- 7. Service & Support**
 - A. Full-Time On-Site Service Technician: Monday – Friday, 8 AM – 5 PM
 - B. Back-Up Service provided by local field technicians
 - C. 24x7 Helpdesk Support

- 8. Operational Services**
 - A. Inmate Tablets *provided by Smart Communications*: 1 Tablet for every 6 inmates, available at no cost to the County while retaining the 4.5 cents per minute call rate

EXHIBIT B
RATES & FEES

1. **Call Rates:** 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.

Collect Calling Rates		
Call Type	Per Call Charge	Per Minute Charge
Local	\$0.00	\$0.045
Intrastate/IntraLATA	\$0.00	\$0.045
Intrastate/InterLATA	\$0.00	\$0.045
Interstate	\$0.00	\$0.045
Prepaid & Debit Calling Rates		
Local	\$0.00	\$0.045
Intrastate/IntraLATA	\$0.00	\$0.045
Intrastate/InterLATA	\$0.00	\$0.045
Interstate	\$0.00	\$0.045
International (Debit Only)	\$0.00	\$0.50

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

2. **Inmate Tablet Services. The following rates apply:**

Inmate Tablet Services	
Messaging:	
Electronic Messaging:	\$0.50 per Message (1 Credit)
Photo Share:	\$1.00 per Photo (2 Credits)
Entertainment Streaming:	
Music:	\$0.01 per Minute
Movies:	\$0.01 per Minute
White-Listed Websites:	\$0.01 per Minute
Education:	
Khan Academy Lite:	Free
Purplemath:	Free
Essential Education:	Free
Life Skills Learning:	Free
Law Library:	
Casemaker:	Free
Inmate Portal:	
Grievances/Requests	Free
Facility Rules	Free

*Each inmate will receive 2 Free Message Credits per Week (these do not rollover if they do not use them)

3. **Fees:**

Billing Fees	
Payment Processing Fee (Live Agent)	\$5.95
Payment Processing Fee (IVR or Internet)	\$3.00
Bill Statement Fee (collect only)	\$2.00
Inmate Voicemail	
Inmate Voicemail - Per message fee (funded from prepaid account)	\$1.00

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

Chris Smith, Controller

Name of Contractor(s):

Inmate Calling Solutions, LLC

Street Address or P.O. Box:

2200 Danbury Street

City, State, Zip Code:

San Antonio, TX 78217

I certify that the above information is complete and correct to the best of my knowledge

Signature:

Brendan Phill

Title of Authorized Official:

VICE PRESIDENT

Date:

3/20/18

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."