

INMATE TELEPHONE SERVICES AGREEMENT

This Inmate Telephone Services Agreement ("Agreement") is made pursuant to Chapter 2269.151, of the Texas Government Code (Contracts for facilities: Competitive Sealed Proposals) 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 **Webb County, TX** a political subdivision of the State of Texas ("County"), acting herein by the Honorable Tano E. Tijerina, Webb County Judge, as authorized by its Commissioners Court on July 11, 2016 for the Webb County Purchasing Agent to solicit Request for Proposals (RFP) for Inmate Phone Services for the Webb County Jail, and having its principal address as set forth on Exhibit A, attached hereto.

WHEREAS, The Contract for Inmate Services with Synergy will be expiring at the end of July 31, 2017 after its one year renewal, and

WHEREAS, Webb County desires to enter into an agreement with the lowest and best responsible bidder, and

WHEREAS, Webb County, gave public notice pursuant to RFP 2016-008 "Webb County Sheriff's Office – Inmate Phone Services" which was published December 4, 2016 and December 11, 2016 in the Laredo Morning Times and published on the Webb County Website on December 5, 2016 and was closed on December 29, 2016, and

WHEREAS, on February 13, 2017 the Webb County Commissioners Court took action and awarded RFP 2016-008 to ICS and authorized the County Judge to sign all relevant documents and any other matters incident thereto; and

WHEREAS, the inmate phone service system will provide a means for detainees and prisoners to have access to telephone communications for a fee and permit the County to recover a commission for the benefit of the Webb County Jail.

NOW, THEREFORE, the parties agree as follows:

- 1. Term of Contract.** This Agreement shall commence upon the installation of equipment and shall remain in effect for three (3) years. Upon expiration of the initial term, this Agreement may be renewed for up to two (2) consecutive one (1) year terms, provided both parties mutually agree in writing. Notice to renew under this provision shall be provided to ICS no less than sixty (60) days prior to the expiration date. If no notice is sent requesting renewal by County this Agreement shall terminate by law and with no liability of any kind to County. 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. ICS acknowledges and accepts that County has the right to terminate this Agreement with no less than sixty (60) days' notice without cause during the initial term or any renewal term without liability of any kind.
- 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. The proposal submitted by ICS regarding equipment shall be binding and is incorporated into this Agreement; attached as Exhibit E. ICS acknowledges that the proposal made by ICS is binding and that County has relied on the proposal that was submitted in scoring ICS. Therefore, County will not accept anything less than what ICS offered in its proposal to County.

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, or made inaccessible to inmates or users by County without the express written permission of 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. Training of County staff shall be conducted by ICS and ICS shall provide up to 16 hours of training at no cost to County every year this Agreement is in effect.
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. 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. Any modification in the rates due to a Regulatory Change will not form the basis of extending this Agreement in either the initial or any renewal term. 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.

1. A copy of current rates shall be on file with the County. ICS must notify the County in writing with a courtesy copy via email of any proposed increases or decreases in the rates charged.
2. Any change in Tariff (Increase or Decrease) which is not approved by Webb County in writing in advance of the changed shall be grounds for termination of this Agreement.

3. The commission offered to the County shall be based on total gross revenues, with no deductions for fraud, bad debt, uncollectible, unbillable calls. No deduction shall be made for any cost of providing the services described.
4. Commissions shall be paid on all call types and tariff types to County: Collect, Direct Billed, Prepaid Collect, Debit and Debit Card, Local, Intrastate, Interstate, and International.
5. Commissions shall be paid monthly and shall be accompanied by an inmate telephone commission and summary report which shall include, at a minimum, the following information:
 - a. Date of Report
 - b. Time Period Covered
 - c. Total Number Calls by Call Type
 - d. Total Calls by Tariff Type
 - e. Total Number Minutes
 - f. Total Gross Revenue

Such payment shall arrive no later than 20 days following the calendar month for which commissions are being paid, All payments, along with the commission report should be mailed to the Webb County Sheriff's Office, 902 Victoria Street, Laredo, Texas, 78040 (Attention: Mr. Martin Aguirre, Finance Director or Inmate Telephone System Supervisor).

6. ICS's failure to pay accurate commissions on a regular, monthly basis shall be grounds for cancellation, without penalty in either law or equity to County, of this Agreement.
7. County shall have immediate access to dated call records on a real-time or near real-time basis. Once a call has ended the rated call detail records should be available for reporting using the web based inmate phone system. Remote report generation by ICS is not an acceptable alternative; intervention by ICS shall not be necessary for authorized facility personnel to access rated call detail records.

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.
- 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 Texas shall govern the construction, interpretation and performance of this Agreement and all transactions hereunder. All disputes hereunder shall be resolved exclusively in state jurisdictions located in Webb County of Texas.
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. A courtesy copy of any notice shall be emailed with a scanned copy of the letter along with the tracking number to County. Such notices shall be sent as indicated in Exhibit A which is attached and incorporated herein. Any modification of where to send notice will be submitted in writing to the other party of this Agreement.
10. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties and may not be modified or amended other than by a written instrument executed by both parties. Any orders placed by 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 incorporates the proposal of ICS which is attached as Exhibit E and otherwise 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, or its employees.
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. ICS shall be responsible for maintenance and support on a twenty-four (24) hour, seven (7) day per week basis as provide by the proposal of ICS attached and incorporated into this Agreement as Exhibit E.
13. **Assignment.** 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 NOT otherwise be transferred or assigned by ICS. ICS acknowledges and understands that County has evaluated the proposal of ICS and any assignment of this contract to another entity who did not submit a proposal would deny County of the financial benefits and services offered by ICS in this Agreement.
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.** The County will not indemnify the Contractor nor third parties. Contractor Acknowledges and agrees that County does not have the ability under Article XI, Section 7 of the Texas Constitution to indemnify Contractor or any other third party for damages arising under this Agreement.

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. ICS warrants that equipment installed will conformed to ADA standards when complying with this paragraph.
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. This paragraph shall not apply to any ADA claim regarding equipment or services provided by ICS either directly or subcontracted by ICS. Notwithstanding any other paragraph, ICS shall pay all royalties and license fees for software for equipment that is installed, shall defend suits or claims for infringement or patent rights, and shall hold Customer harmless from loss on account thereof. Customer has no duty and shall not pay anything to defend suits or claims regarding royalties, license fees, infringement or patent rights. ICS shall defend and hold harmless any ADA claim regarding equipment or services provided by ICS either directly or subcontracted by ICS. Notwithstanding the limitation of liability in this paragraph, County reserves the right to file a claim to recover unpaid Commissions, attorney's fees, court costs, consequential and incidental damages to recover said Commissions.
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.

NOTHING CONTAINED HEREIN SHALL OBLIGATE ICS TO ENHANCE OR MODIFY THE SERVICES OR EQUIPMENT BEYOND THE SUBSTANTIAL FUNCTIONALITY INITIALLY ACCEPTED BY FACILITY, WHICH WAS PROPOSED BY ICS AND IS ATTACHED AS EXHIBIT E.

21. **No Hire/No Solicit.** During the term of this Agreement, and for a period of six (6) months thereafter, neither party shall solicit or hire the other party's employees, agents or representatives engaged by such party to perform work relating to this Agreement, without the express written consent of the other party.
22. **Confidentiality.** Subject to Texas Government Code §552.001 (the Texas Public Information Act), 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. This contract is subject to the Texas Government Code 552 (Texas Public Information Act).

23. **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.
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 certificates evidencing the above coverage amounts upon request from County.

27. The proposal submitted by ICS regarding equipment and services shall be binding on ICS and is incorporated into this Agreement attached as Exhibit E. ICS acknowledges that the proposal made by ICS is binding and the County's scoring committee has relied on the proposal that was submitted by ICS. Therefore, County will not accept anything less in quantity or quality that ICS offered in its proposal to County.

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

Webb County, TX

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

Exhibit A – County Addresses

Principle Business Address (used for all notices hereunder):

**Attention: Martine Aguirre or
Inmate Telephone Services Contract Supervisor**
Webb County Sheriff's Office
902 Victoria Street
Laredo, TX 78040

Courtesy Copy Sent Via Email
Subject: Inmate Telephone Services CONTRACT NOTICE
Ponce Trevino, Jail Commander
Email: ptrevino@webbcountytx.gov

Courtesy Copy Sent Via Email
Subject: Inmate Telephone Services CONTRACT NOTICE
Mr. Martin Aguirre, Finance Director
Email: maguirre@webbcountytx.gov

Facilities & Service Locations:

Facility Name

Service Locations

Webb County Jail
(ADP 453)

1001 Washington Street
Laredo, TX 78040

Equipment to be shipped to:

Webb County Jail
1001 Washington Street
Laredo, TX 78040

Commissions to be paid to:

Webb County Sheriff's Office
1001 Washington Street
Laredo, TX 78040

Exhibit B – Equipment

Centralized Enforcer® Call Processing, including the following:

- 110 x Stainless Steel Inmate Telephones
- 1 x TDD\TTY Unit
- 1 x Printer
- 2 x Laptops with Headsets
- 10 x Workstations with MS Office
- Unlimited Enforcer User licenses
- Interface to JMS platform
 - Automated Inmate ID\Pin Updates
- The Enforcer® Investigative Suite
 - Argus Echo – Continuous Voice Identification
 - Automated Enrollment
 - Language Independent
 - Called Party Voice Matching
 - Data DetectiveSM – Data Mining & Link Analysis
- The Enforcer® IVR Suite
 - The InformerSM – PREA Module
 - The CommunicatorSM – Inmate Request Portal
 - The AttendantSM – Informational IVR
- Interface to Banking & Commissary System
 - Automated PIN-Based Debit Calling
 - Over-the-Phone Commissary Ordering
- 2 x Lobby Deposit Kiosks from ICS affiliate, Access Corrections
 - Supports cash, credit/debit card deposits
 - All deposits are assessed a \$4.00 transaction fee
 - Includes armored car service for cash pick-up

Exhibit C – Rates & Charges

The following rates apply to calls from all 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	\$0.25
Intrastate/IntraLATA	\$0.00	\$0.25
Intrastate/InterLATA	\$0.00	\$0.25
Interstate	\$0.00	\$0.21
International (Debit only)	\$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
<i>(All other call-related fees free or waived)</i>	

Inmate Voicemail:

Retail Fee per inbound message.....	\$1.00
<i>(Revenue share applies, see Exhibit D)</i>	

Exhibit D – Commissions

ICS shall pay to County a Commission of 70.1% of the 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 service fees.

Commissions payable to County under this Agreement shall be subject to a minimum annual guarantee ("MAG") of \$250,000. Actual Commissions paid 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.