

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON §

INMATE TELEPHONE SERVICES CONTRACT
(Inmate Calling Solutions, LLC, d/b/a ICSolutions)

Important Notice: County Purchase Orders and Contracts constitute expenditures of public funds, and all vendors are hereby placed on notice that such procurement is subject to the extent authorized by Texas law, including but not limited to Tex. Const. art. XI, § 7, the Texas Government Code, the Texas Local Government Code, the Texas Transportation Code, the Texas Health & Safety Code, and Opinions of the Texas Attorney General relevant to local governmental entities.

THIS CONTRACT is made and entered into by and between **Williamson County, Texas** (hereinafter "The County"), a political subdivision of the State of Texas, acting herein by and through its governing body, and Inmate Calling Solutions, LLC, d/b/a ICSolutions, (hereinafter "ICS"). The County agrees to engage ICS as an independent contractor, to assist in providing certain operational services pursuant to the following terms, conditions, and restrictions:

I.

No Agency Relationship & Indemnification: It is understood and agreed that ICS shall not in any sense be considered a partner or joint venturer with The County, nor shall ICS hold itself out as an agent or official representative of The County unless expressly authorized to do so by a majority of the Williamson County Commissioners Court. ICS shall be considered an independent contractor for the purpose of this contract and shall in no manner incur any expense or liability on behalf of The County other than what may be expressly allowed under this contract. The County will not be liable for any loss, cost, expense or damage, whether indirect, incidental, punitive, exemplary, consequential of any kind whatsoever for any acts by ICS or failure to act relating to the services being provided. ICS agrees to indemnify, hold harmless, and defend The County against any claim, demand, loss, injury, damages, action, or liability of any kind against The County resulting from any services ICS performs on behalf of The County.

II.

No Waiver of Sovereign Immunity or Powers: Nothing in this contract will be deemed to constitute a waiver of sovereign immunity or powers of The County, the Williamson County Commissioners Court, or the Williamson County Judge.

III.

No Assignment: ICS may not assign this contract, without express written consent of the Williamson County Commissioners Court.

IV.

Compliance With All Laws: ICS agrees and will comply with any and all local, state or federal requirements with respect to the services rendered.

V.

Effective Date and Term: This contract shall be in full force and effect when signed by all parties and shall continue for a reasonable time period for the specific project and shall terminate upon project completion or when terminated pursuant to paragraph IX above.

VI.

Services: ICS shall provide services *as an independent contractor* pursuant to terms and policies of the Williamson County Commissioners Court. ICS expressly acknowledges that he or she is not an employee of The County. The services include, but are not limited to the following:

As described in the attached 1) Request for Proposal No. 14RFP00222 (and addenda); and 2) ICS's Response and Best & Final Offer, dated July 11, 2014, which are incorporated herein as if copied in full.

VII.

Term of Contract & Termination For Material Economic Change: This Contract shall commence upon the date inmates within the County begin placing telephone calls from the Equipment, which has been estimated to be September 15, 2014 (the "Cutover Date"). The initial contract term shall remain in force and effect for three (3) years from the Cutover Date. The Williamson County Commissioners Court reserves the right to extend this Contract, by mutual contract of both parties, as it deems to be in the best interest of The County. If approved, this extension will be in twelve (12) month increments for up to an

additional twenty four (24) months, with the terms and conditions remaining the same. The total period of this Contract, including all extensions will not exceed a maximum combined period of sixty (60) months). Successful Respondent shall notify the Purchasing Director and the Sheriff's Financial Manager when the initial term or when each option term as the case may be, is within six (6) months from the expiration of the Initial Term , or such Option term as provided in this paragraph. Upon occurrence of this event, successful Respondent shall send written notification to the addresses herein provided. Notwithstanding the foregoing, either party may terminate this Contract, based on a material economic change beyond such party's reasonable control, with sixty (60) day's prior written notice. Upon termination of this Contract, The County shall immediately cease any use of any Equipment provided hereunder.

VIII.

Termination For Convenience: This contract may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving six (6) months written notice thereof.

IX.

Equipment: This Contract applies to the provision of Equipment by ICS within space provided by The County 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 The County, shall remain in all respects the property of ICS. Notwithstanding the foregoing, any Equipment listed as Additional Technology on **Exhibit B** shall become the property of The County at the end of the initial term of this Contract. ICS shall provide software support & warranty for this Equipment throughout the initial term and each renewal term of this Contract. ICS reserves the right to remove or relocate Equipment (Excluding Additional Technology), 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 The County. Upon removal of Equipment by ICS, ICS shall restore the premise to its original condition, ordinary wear and tear excepted.

X.

Alteration and Attachments: The 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 The County without the express written permission of ICS.

XI.

Training: ICS shall provide one (1) full day of on-site training plus up to two (2) hours of internet-based training at no cost to The County. Additional training may be provided upon The County's request based on availability and quotation from ICS.

XII.

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.

XIII.

Commissions to The County: ICS will install, operate and maintain Equipment at no charge to The County. ICS will pay The 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 Locations. No Commissions shall be paid to The 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 The County on a monthly basis on or before the first business day occurring 30 days following the end of the month in which such Commissions are earned or accrued. Such Commissions shall be sent to the address designated by The County or wired to an account designated in writing by The County for such purpose.

The County agrees that all Commissions are subject to change based on any changes that may be required by the applicable Public Service Commission or any policy, regulation or tariff of a regulatory body having jurisdiction over the public communications contemplated herein.

Any commissions due under this contract that are not received by the county within 30 days of the close of the previous month, the County is entitled to recover interest thereon. Said interest shall be at the rate of ten (10) percent per annum or any portion thereof (based upon a 365/366 day year) calculated from the date payment is due.

XIV.

Duties of The County: The County shall:

- a. Advise ICS of any Location or related premise that has been closed.
- b. Throughout the term of this Contract, including any renewal terms, use ICS 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 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 The County's 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.

XV.

Venue and Applicable Law: Venue of this contract shall be Williamson County, Texas, and the laws of the State of Texas shall govern all terms and conditions.

XVI.

Good Faith Clause: ICS agrees to act in good faith in the performance of this contract.

XVII.

Confidentiality: Each party expressly agrees that it will not use any incidental confidential information that may be obtained while working within the scope of this Contract for any other purpose or benefit, and agrees that it's personnel will not enter any unauthorized areas or access confidential information and will not disclose any information to unauthorized third parties, and will take care to guard the security of the information at all times. (See also Section XXXI hereof).

XVIII.

Severability: In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision in this contract and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

XIX.

Right to Audit: ICS agrees that The County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any and all books, documents, papers and records of ICS which are directly pertinent to the services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. ICS agrees that The County shall have access during normal working hours to all necessary ICS facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The County shall give ICS reasonable advance notice of intended audits.

XX.

Entire Contract & Incorporated Documents. This Contract constitutes the entire Contract between the parties and may not be modified or amended other than by a written instrument executed by both parties. Documents expressly incorporated (as if copied in full) into this Contract include the following:

- 1) Request for Proposal No. 14RFP00222 (and addenda);
- 2) ICS's Response and Best & Final Offer, dated July 11, 2014 ;
- 3) Exhibit "A" - Locations;

- 4) Exhibit "B" - Equipment;
- 5) Exhibit "C" - Call Rates ;
- 6) Exhibit "D" - Commissions;
- 7) Required Performance Bond for this project; and
- 8) Any required insurance certificates for this project.

WILLIAMSON COUNTY reserves the right and discretion (pursuant to public policy and Texas Constitutional principles) to determine applicable provisions where there is any conflict between this CONTRACT and any of the above-referenced contract documents/exhibits.

XXI.

Performance Bond: ICS shall purchase and maintain the following:

Performance Bond. ICS shall provide a Performance Bond in the amount of \$100,000.00 for this project. The surety for a Performance Bond shall meet the requirements of Texas law.

XXII.

Risk of Loss: ICS shall relieve The County of all risk of loss or damage to Equipment during the periods of transportation and installation of the Equipment. However, The County shall be responsible for any loss or damage to Equipment located on the premise directly caused by the sole fault or sole negligence of The County, its employees or others under The County's supervision.

XXIII.

Default: In the event either party shall be in breach or default of any terms, conditions, or covenants of this Contract 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 Contract 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.

XXIV.

Notice. Any notice required to be given under the terms of this Contract shall be effective if and when given in writing and mailed by certified mail to the addresses listed below or subsequently provided in writing:

WILLIAMSON COUNTY:

WILLIAMSON COUNTY JUDGE
710 MAIN STREET, SUITE 101
GEORGETOWN, TEXAS 78626

GENERAL COUNSEL:

GENERAL COUNSEL
OFFICE OF WILLIAMSON COUNTY JUDGE
710 MAIN STREET, SUITE 200
GEORGETOWN, TEXAS 78626

SHERIFF'S OFFICE:

WILLIAMSON COUNTY SHERIFF
508 S. ROCK STREET
GEORGETOWN, TEXAS 78626

ICS:

INMATE CALLING SOLUTIONS, LLC
D/B/A ICSOLUTIONS
2200 DANBURY STREET
SAN ANTONIO, TEXAS 78217
ATTN: LEGAL DEPT.

XXV.

Mediation: The parties agree to use mediation for dispute resolution prior to and formal legal action being taken on this Contract.

XXVI.

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.

XXVII.

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 The County.

XXVIII.

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 CONTRACT, IRRESPECTIVE OF WHETHER SUCH PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

XXIX.

Warranty: Subject to The 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 The County in writing, and shall not infringe any patent or trademark. This warranty shall continue while Equipment is in operation at each Location. The 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 The 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 The County with respect to such nonconforming or defective Equipment upon ICS receipt of such nonconforming or defective Equipment. ICS does not warrant that the operation of the Equipment shall be uninterrupted or error-free. No warranty is made with respect to the use of Equipment on or in connection with equipment or software not provided by ICS. Equipment may contain recycled, refurbished or remanufactured parts which are equivalent to new parts. ICS makes no warranties or representations that it will solve any problems or produce any specific results.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES AND ICSOLUTIONS 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 INTIALLY ACCEPTED BY THE COUNTY, WHICH ACCEPTANCE SHALL BE DEEMED TO HAVE OCURRED UPON THE GENERATION OF CALL REVENUE.

XXX.

No Hire/No Solicit: During the term of this Contract, 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 Contract, without the express written consent of the other party.

XXXI.

Confidentiality of Technological Information: During the term of this Contract, 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 Contract (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 Contract. 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 Contract for a period of three (3) years.

This Contract 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 Contract 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.

XXXII.

License to Use Software: With respect to the Equipment provided under this Contract, ICS hereby grants to The 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 Contract including, where applicable to the purposes hereunder, such Use on computers owned by The County. Such license is specific to The County and Location(s) for which the ICS Services are provided and may not be transferred other than through an authorized assignment of this Contract. Upon the termination hereof, this license and all rights of The County to Use the Enforcer[®] software will expire and terminate. The 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.

XXXIII.

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.

XXXIV.

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.

XXXV.

Insurance: At all times during the Term of this Contract, 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 The County.

XXXVI.

County Judge or Presiding Officer Authorized to Sign Contract: The presiding officer of The County's governing body who is authorized to execute this instrument by order duly recorded may execute this contract on behalf of The County.

WITNESS the signatures of all parties in duplicate originals this the ____ day of _____, 2014.

WILLIAMSON COUNTY:

Inmate Calling Solutions, LLC (ICS):

Authorized Signature



Authorized Signature

Exhibit A - Locations

Principal Business Address

Williamson County Sheriff's Office
508 S. Rock Street
Georgetown, TX 78626

Service Location

Williamson County Sheriff's Office
508 S. Rock Street
Georgetown, TX 78626

Commission will be Paid To:

Williamson County Sheriff's Office
508 S. Rock Street
Georgetown, TX 78626

Exhibit B - Equipment

Centralized ENFORCER® call processing

111 x Inmate Telephones

2 x Portable inmate telephones

57 x Visitation Phone, wired to The ENFORCER® for monitoring & recording

Interface to the County's Tyler JMS for PIN automation

Keefe Commissary & Banking System Integration:

DirectLink Cardless Debit Calling

Over-the-Phone Commissary Ordering / Balance Checking

The ENFORCER® Investigative Suite

Word Detective® phoneme-based keyword search powered by Nexidia

Pre-Call Biometric Voice Verification ("Voice Print")

Data Detective Data Mining / Link Analysis

The ENFORCER® IVR Suite (efficiency tools)

The AttendantSM informational IVR for inmates and public callers

The CommunicatorSM 100% paperless inmate communications portal

Online storage of inmate call recordings and data for the life of the contract

Exhibit C – Call Rates

The following rates will apply to calls originating from County:

Collect Calls		
Tariff Type	Surcharge	Per Minute
Local	\$0.00	\$0.25
IntraLATA	\$0.00	\$0.25
Intrastate	\$0.00	\$0.25
Interstate	\$0.00	\$0.25

PrePaid Calls		
Tariff Type	Surcharge	Per Minute
Local	\$0.00	\$0.21
IntraLATA	\$0.00	\$0.21
Intrastate	\$0.00	\$0.21
Interstate	\$0.00	\$0.21

Debit & Debit Card Calls		
Tariff Type	Surcharge	Per Minute
Local	\$0.00	\$0.21
IntraLATA	\$0.00	\$0.21
Intrastate	\$0.00	\$0.21
Interstate	\$0.00	\$0.21
International	\$0.00	\$0.50

Note:

Domestic interstate rates apply for calls to U.S. territories including American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the 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 and regulatory fees.

Billing & Funding Fee

- Billing Fees = Waived
- Debit & Credit Card = \$7.95 per deposit
- Western Union & Mail In = Free

Exhibit D – Commissions

ICS shall pay to County a Commission of **84.1%** of the total gross revenue generated for all call types originating from County locations

ICS further commits to a **Minimum Annual Guarantee (MAG)** of **\$555,000** per full contract year. Commissions will be calculated and paid monthly as specified in the body of the contract based on the percentage shown above. At the end of the first full year of service, the commission total for the first twelve full months of service will be added and compared to the Minimum Annual Guarantee amount. If the Minimum Annual Guarantee is greater than the 12 month commission total, ICS will pay County the difference. If the twelve month total exceeds the Minimum Annual Guarantee; no additional amount is due to County. The same exercise will be repeated at the end of every full contract year.

The MAG calculation is based on the current average daily inmate population with access to telephones materially consistent with industry practice. In the event there is a material decrease in the average daily inmate population, then the parties will renegotiate the MAG in good faith to reach mutual agreement on an appropriate adjustment.