

FRANKLIN COUNTY RESOLUTION 2004 509

BEFORE THE BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY, WASHINGTON

RE: FACILITY INMATE SERVICES AGREEMENT BETWEEN FRANKLIN COUNTY AND EVERCOM SYSTEMS, INC. FOR THE TELEPHONE SYSTEM FOR INMATES IN THE CORRECTIONS CENTER

WHEREAS, an agreement with Evercom Systems, Inc., was received by the Captain of the Corrections Facility granting Evercom the exclusive right and license to install, maintain and derive revenue from the Evercom Inmate Telecommunication System; and

WHEREAS, the Agreement will commence upon signature of all parties, and will continue until a 90-day notification is received by either party with a five (5) year option; and

WHEREAS, pursuant to R.C.W. 36.01.010 and R.C.W. 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the County and have the care of County property and management of County funds and business; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and desires to enter into this arrangement as being in the best interest of Franklin County;

NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves the attached Facility Inmate Services Agreement between Franklin County and Evercom Systems, Inc.

BE IT FURTHER RESOLVED the Franklin County Board of Commissioners hereby authorizes the Chairman to sign said agreement.

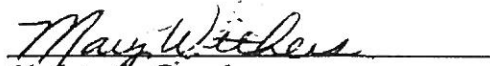
APPROVED this 8th day of November 2004.

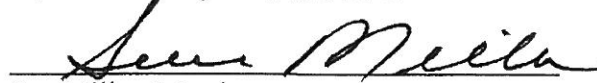
BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON


Neva J. Corkrum, Chair


Frank H. Brock, Chair Pro Tem

Attest:


Clerk to the Board


Sue Miller, Member

Originals: Auditor
Minutes
Evercom Systems, Inc.

cc: Information Services
Franklin County Corrections
Franklin County Sheriff

Facility Inmate Services Agreement (Franklin County, WA—5 year option)

This Facility Inmate Services Agreement (this "Agreement") is by and between Franklin County Sheriff's Office ("Customer") located at 1015 N. 5th Avenue, Pasco, Washington 99301 and Evercom Systems, Inc. ("Evercom") located at 8201 Tristar Drive, Irving, Texas 75063. The parties agree that this Agreement shall govern the relationship between the parties at all of Customer's current and future facilities (collectively, the "Facility").

<p>"Commencement Date" means (check one blank):</p> <p>_____ Date the Equipment is installed and ready in first Facility</p> <p><input checked="" type="checkbox"/> Last date this Agreement is signed by a party</p> <p>_____ Specific date: _____</p>	<p>"Commissions" means collectively:</p> <table style="width: 100%;"> <tr> <td style="width: 80%;">*Collect Call Commission Percentage:</td> <td style="text-align: right;">35%</td> </tr> <tr> <td>*Prepaid Card Discount:</td> <td style="text-align: right;">30%</td> </tr> <tr> <td>*Debit Account Commission Percentage:</td> <td style="text-align: right;">N/A</td> </tr> </table>	*Collect Call Commission Percentage:	35%	*Prepaid Card Discount:	30%	*Debit Account Commission Percentage:	N/A
*Collect Call Commission Percentage:	35%						
*Prepaid Card Discount:	30%						
*Debit Account Commission Percentage:	N/A						
<p>"Initial Term" means the period beginning on the Commencement Date and ending on the date that is five years thereafter.</p>							

1. **Term.** This Agreement shall be effective on the Commencement Date (defined above) and shall remain in effect during the Initial Term. Thereafter, unless one party delivers to the other written notice of non-renewal at least 90 days prior to the end of then current term, this Agreement shall automatically renew for successive periods equal to one year each (the "Renewal Terms"). The Initial Term together with the Renewal Terms shall be collectively referred to as the "Term." If, because of strikes, riots, wars, or for any other reason, business operations at a Facility are interrupted, then the Term shall be extended for a period of time equal to the period of such business interruption.

2. **Exclusive Right.** In consideration for the Commissions (defined above) and for the services provided by Evercom as described in Exhibit A (the "Services"), Customer grants to Evercom the exclusive right and license to install, maintain, and derive revenue from the Evercom inmate telecommunications system, as well as the related hardware, software and services provided by Evercom, including, without limitation, inmate telephone services (whether local or long distance collect, coin, prepaid, or debit calls). With regard to the Services, Evercom shall install the equipment and other items listed on Exhibit A at the Facility.

3. **Compensation.** In consideration for the exclusive right granted to Evercom pursuant to this Agreement:

a. **Collect Calls.** Evercom shall pay Customer the applicable Collect Call Commission Percentage of the Gross Revenue earned by Evercom through the completion of collect calls ("Collect Calls") placed from the Facility.

b. **Inmate Prepaid Calling Cards.** Upon written request by Customer, Evercom shall provide inmate prepaid calling cards for resale to inmates by Customer. Customer shall pay Evercom the face value of the cards less the Prepaid Card Discount within 30 days after Customer's receipt of an invoice. If Evercom does not receive Customer's payment for the prepaid calling cards within such 30 days, then Evercom reserves the right to charge interest on the overdue amount at the rate of one and one-half percent (1-1/2%) per month and to deduct the cost of the cards plus any accrued interest from the Commissions until paid in full. Prepaid calling cards are not returnable or refundable; all sales are final. Each prepaid calling card will be valid for no more than 12 months from the date it is activated.

c. **Debit Account Calls.** Evercom shall pay Customer the applicable Debit Account Commission Percentage of the Gross Revenue earned by Evercom through the completion of calls placed from the Facility that are paid from designated prepaid Evercom debit accounts, the records of which are stored in the Equipment ("Debit Account Calls").

d. **Gross Revenue.** "Gross Revenue" means all charges (excluding taxes and bill statement surcharges, if any) billed by Evercom relating to either Collect Calls or Debit Account Calls.

e. **Rates.** Evercom shall charge telephone rates (the "Rates") that are allowed by tariff, if applicable. The Rates may be amended from time to time by the parties or in accordance with Section 12(b).

f. **Additional Services.** Evercom shall have the right to offer additional services and equipment features to County. The terms and conditions (including, without limitation, the cost) for

such additional services and equipment features shall be memorialized by a written addendum signed by both parties.

h. **Technology Fund.** As further partial consideration for this Agreement, Evercom shall provide Customer with a fund in the amount of \$4,000 from which Customer may draw to pay for technology services or equipment purchased by Customer from third party vendors (the "Bonus Equipment"). For payment to third party vendors, Customer shall submit an invoice to Evercom and authorize Evercom in writing to pay such invoice from the technology fund. In addition, Customer may withdraw the balance from the fund at any time during the Term to be used in Customer's discretion by authorizing Evercom in writing to pay such balance to Customer. The fund may be used only during the Term. Any amount remaining in the fund at the time of the expiration or termination of this Agreement shall be the property of Evercom. Provision of the Bonus Equipment shall be subject to the terms and conditions of Exhibit D.

4. **Payment of Commissions.** Evercom shall remit the Commissions to Customer on or before the 30th day after the end of the reporting month in which the revenues were recognized by Evercom (the "Payment Date"). All Commission payments shall be final and binding upon Customer unless Evercom receives written objection within 60 days after the Payment Date. Customer shall notify Evercom in writing at least 60 days prior to a Payment Date of any change in Customer's remittance address.

5. **Maintenance and Repair.** During the Term, Evercom shall repair and maintain the Evercom hardware and software delivered and installed at the Facility (the "Equipment") in good operating condition (ordinary wear and tear excepted), including, without limitation, furnishing all parts and labor. All such maintenance shall be conducted in accordance with the service level commitments in Exhibit B. All such maintenance shall be provided at Evercom's sole cost and expense unless necessitated by any misuse of, or destruction, damage, or vandalism to, the Equipment by Customer (not inmates at the Facility), in which case, Evercom may recoup the cost of such repair and maintenance through either a Commission deduction or direct invoicing, at Evercom's option. Customer must promptly notify Evercom in writing after discovering any misuse of, or destruction, damage, or vandalism to the Equipment. Customer shall permit Evercom's employees and contractors access to the Facility for the purpose of installing, operating, repairing, and maintaining the Equipment. If any Equipment is interfaced with other devices or software owned or used by Customer or a third party, then Evercom shall have no obligation to repair or maintain such other devices or software.

6. **Liability Insurance.** Evercom shall maintain comprehensive general liability insurance having limits of not less than \$1,000,000.00 in the aggregate. Customer shall provide Evercom with reasonable and timely written notice of any claim, demand, or cause of action made or brought against Customer arising out of or related to the utilization of the Equipment or related services. Evercom shall have the right to defend any such claim, demand, or cause of action at its sole cost and expense and within its sole and exclusive discretion. Customer shall not compromise or settle any claim or cause of action arising out of or related to the utilization of the Equipment or

related services without the prior written consent of Evercom. Customer agrees to use good faith efforts to assist Evercom with its defense of any such claim, demand, or cause of action.

7. Indemnity. EVERCOM SHALL DEFEND, INDEMNIFY AND HOLD CUSTOMER, AND ITS AFFILIATES, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, AND SUCCESSORS HARMLESS FROM ANY LOSS, COST, EXPENSES, DAMAGE, OR LIABILITY RESULTING FROM ANY THIRD PARTY ACTION BROUGHT OR THREATENED AGAINST CUSTOMER BASED ON ANY (I) NEGLIGENT FAILURE BY EVERCOM TO PERFORM A MATERIAL OBLIGATION UNDER THIS AGREEMENT OR (II) ALLEGATION THAT THE SERVICES INFRINGE A PATENT, COPYRIGHT, TRADEMARK, OR ANY OTHER PROPRIETARY RIGHTS OF A THIRD PARTY, PROVIDED THAT CUSTOMER PROVIDES EVERCOM WITH PROMPT WRITTEN NOTICE OF THE SAME. IN THE EVENT ANY SUCH INFRINGEMENT CLAIM IS MADE OR THREATENED AGAINST CUSTOMER, OR INJUNCTIVE RELIEF IS GRANTED TO A CLAIMANT, EVERCOM SHALL (a) OBTAIN THE RIGHT FOR CUSTOMER TO CONTINUE USE OF THE SERVICES; OR (b) SUBSTITUTE OTHER SERVICES OF LIKE CAPABILITY; OR (c) REPLACE OR MODIFY THE SERVICES TO RENDER THEM NON-INFRINGEMENT WHILE RETAINING LIKE CAPABILITY. IF EVERCOM IS UNABLE TO PERFORM ANY OF THE ACTIONS IN CLAUSE (a), (b), or (c) ABOVE, THEN CUSTOMER MAY TERMINATE THIS AGREEMENT UPON PRIOR WRITTEN NOTICE TO EVERCOM WITHOUT INCURRING ANY TERMINATION PENALTIES. INDEMNIFICATION BY EVERCOM PURSUANT TO THIS SECTION SHALL BE CUSTOMER'S SOLE REMEDY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIRD PARTY CLAIMS. THE INDEMNITIES HEREIN SHALL SURVIVE THE EXPIRATION OR OTHER TERMINATION OF THIS AGREEMENT.

8. Default and Termination. If either party defaults in the performance of any obligation under this Agreement, then the non-defaulting party shall give the defaulting party written notice of its default setting forth with specificity the nature of the default. If the defaulting party fails to cure its default within 30 days after receipt of the notice of default, then the non-defaulting party shall have the right to immediately terminate this Agreement and pursue all other remedies available to the non-defaulting party, either at law or in equity.

9. Force Majeure. Either party may be excused from performance under this Agreement to the extent that performance is prevented by any act of God, war, civil disturbance, supply or market, failure of a third party's performance, failure, fluctuation or non-availability of electrical power, heat light, air conditioning or telecommunications equipment, other equipment failure or similar event beyond its reasonable control; provided, however that the affected party shall use reasonable efforts to remove such causes of non-performance. If any law or regulation prevents Evercom from providing services hereunder or if such law or regulation makes continuation of this Agreement impractical for economic reasons or otherwise, then Evercom, at its sole discretion, may terminate this Agreement without liability to Customer or any third party.

10. Limitation of Liability and Disclaimer of Warranties. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EVERCOM SHALL HAVE NO LIABILITY FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR INCOME, LOST OR CORRUPTED DATA, OR LOSS OF USE OR OTHER BENEFITS ARISING OUT OF OR IN ANY WAY RELATED TO ANY PRODUCT OR SERVICE PROVIDED PURSUANT TO THIS AGREEMENT. ANY LIABILITY OF EVERCOM UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID TO CUSTOMER DURING THE

TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CLAIM ARISES. EXCEPT AS SET FORTH ON EXHIBIT B, EVERCOM'S OBLIGATIONS UNDER THIS AGREEMENT ARE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED. EVERCOM MAKES NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NON-INFRINGEMENT WITH REGARD TO ANY PRODUCT OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. EVERCOM IS NOT RESPONSIBLE FOR ANY MANUFACTURER'S WARRANTIES.

11. Notices. Any notice or demand made by either party under the terms of this Agreement or under any statute shall be in writing and shall be given or made by mail, postage prepaid, addressed to the respective party as set forth in the introductory paragraph of this Agreement, or to such other address as a party may designate by written notice in compliance with this Section.

12. Miscellaneous.

a. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

b. Notwithstanding anything to the contrary in this Agreement, Evercom may, in its sole discretion, change the Rates or other terms set forth herein upon prior notice to Customer if Evercom deems such change necessary to comply with applicable law or regulation or if Evercom determines that a change in applicable law or regulation substantially affects Evercom's operating costs.

c. No waiver by either party of any event of default under this Agreement shall operate as a waiver of any subsequent default under the terms of this Agreement.

d. If any provision of this Agreement is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

e. This Agreement shall be binding upon and inure to the benefit of Evercom and Customer and their respective successors and assigns.

f. Customer acknowledges that the Equipment shall at all times remain the sole and exclusive property of Evercom and that any software provided by Evercom in conjunction with the Equipment and the Services is subject to the terms and conditions of the Master Proprietary Software Agreement attached as Exhibit C.

g. If Evercom, in its sole discretion, determines that the revenue generated by the Facility is insufficient to justify continued service or that the Equipment requirements of the Facility were not contemplated under this Agreement, Evercom shall have the right to terminate or renegotiate this Agreement upon 30 days' prior written notice to Customer or to modify the Rates.

h. All information, software, equipment and related services provided by Evercom hereunder ("Confidential Information") shall at all times remain proprietary and confidential to Evercom. Customer shall not disclose such Confidential Information to any third party without Evercom's prior written consent.

i. This Agreement constitutes the entire agreement of the parties and supersedes any prior or contemporaneous oral or written agreements. This Agreement cannot be modified orally and can only be modified by a written instrument signed by all parties. Each signatory to this Agreement warrants and represents that he or she has the unrestricted right and requisite authority to enter into and execute this Agreement, to bind his or her respective party, and to authorize the installation and operation of the Equipment. This Agreement may be executed in counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument.

EXECUTED as of the Commencement Date.

Evercom Systems, Inc. By: <u>[Signature]</u> Name: <u>OSHA DIVISION</u> Title: <u>VPS GM</u> Date: <u>11/17/07</u> <small>Signature must be a SVP or higher at Evercom Systems, Inc.</small>	Franklin County Sheriff's Office By: <u>[Signature]</u> Name: <u>Neva J. Corkrum</u> Title: <u>Chairman</u> Date: <u>11/17/2007</u>
---	---

Reviewed: [Signature]
 Kevin Scott
 I.S. Director

Approved as to Form:
[Signature]
 Steve M. Lowe
 Prosecutor
 Chief Civil Deputy

1. **Services.** The parties agree that the Services checked below shall be provided at the costs below in accordance with and subject to the terms and conditions of the Master Proprietary Software Agreement attached to the Agreement as Exhibit C. **UNLESS OTHERWISE EXPRESSLY SET FORTH IN WRITING IN THIS AGREEMENT, NO SERVICES OTHER THAN THE SERVICES LISTED BELOW WILL BE PROVIDED; NO ORAL AGREEMENTS OR STATEMENTS ARE BINDING:**

Call Manager	NO CHARGE
Covert Investigator	NO CHARGE
Rev-Up Prepaid Calling Cards	NO CHARGE

2. **Equipment.** In connection with providing the Services, Evercom shall be obligated to provide only the following hardware and software. **UNLESS OTHERWISE EXPRESSLY SET FORTH IN WRITING IN THIS AGREEMENT, NO EQUIPMENT OTHER THAN THE EQUIPMENT LISTED BELOW WILL BE PROVIDED; NO ORAL AGREEMENTS OR STATEMENTS ARE BINDING:**

Equipment in place at the Facility as of the Commencement Date
--

3. **Installation Specifications.**

N/A

4. **Installation Dates.** Subject to Section 7 of the Agreement, the following is the schedule of installation and turn-up of the Equipment:

N/A

1. **Outage Report Technical Support.** If either of the following occurs: (a) Customer experiences an Equipment outage or malfunction or (b) the Equipment requires maintenance (each a "System Event"), then Customer shall promptly report the System Event to Evercom's Technical Support Department ("Technical Support"). Customer may contact Technical Support 24 hours a day, seven days a week (except in the event of planned or emergency outages) by telephone at 866-558-2323, by email at TechnicalSupport@Evercom.net, or by facsimile at 800-368-3168. Evercom shall provide Customer commercially reasonable notice, when practical, prior to any Technical Support outage. For Customer's calls to Technical Support, the average monthly call answer time will be 120 seconds or less, provided however, that Evercom shall endeavor (but shall not be obligated) to achieve an average monthly call answer time of 30 seconds.
2. **Priority Classifications.** Upon receipt of Customer's report of a System Event, Technical Support shall classify the System Event as one of the following four priority levels:
 - a. "Priority 1" means that 60% or more of the functionality of the Equipment is adversely affected by the System Event.
 - b. "Priority 2" means that 30%-59% of the functionality of the Equipment is adversely affected by the System Event.
 - c. "Priority 3" means that 5%-29% of the functionality of the Equipment is adversely affected by the System Event.
 - d. "Priority 4" means that less than 5% of the functionality of the Equipment is adversely affected by the System Event.
3. **Response Times.** After receipt notice of the System Event, Evercom shall respond to the System Event within the following time periods with a 95% or greater rate of accuracy:
 - a. Priority 1: 4 hours;
 - b. Priority 2: 12 hours;
 - c. Priority 3: 24 hours; and
 - d. Priority 4: 36 hours.
4. **Response Process.** In all instances, Technical Support shall either initiate remote diagnosis and correction of the System Event or dispatch a field technician to the Facility (in which case the applicable regional dispatcher shall contact Customer with the technician's estimated time of arrival), as necessary.
5. **Performance of Service.** All repair and maintenance of the Equipment performed by Evercom shall be done in a good and workmanlike manner at no cost to Customer except as may be otherwise set forth in the Agreement. Any requested modification or upgrade to the Equipment that is agreed upon by Customer and Evercom may be subject to a charge as set forth in the Agreement and shall be implemented within the time period agreed by the parties.
6. **Escalation Contacts.** Customer's account will be monitored by the applicable Territory Manager and Regional Service Manager. In addition, Customer may use the following escalation list if Evercom's response time exceeds 36 hours: first to the Technical Support Manager or Regional Service Manager, as applicable, then to the Director of Field Services, then to the Executive Director, Service.
7. **Notice of Resolution.** After receiving internal notification that a Priority 1 System Event has been resolved, a member of Evercom's management team will contact Customer to confirm resolution. For a Priority 2 or 3 System Event, a member of Evercom's customer satisfaction team will confirm resolution.
8. **Monitoring.** Evercom shall monitor its back office and validation systems 24 hours a day, seven days a week.
9. **Required IGR.** Customer shall provide a dedicated isolated grounded receptacle ("IGR") for use in connection with the primary system Equipment. Upon request Evercom shall provide Customer with the specifications for the IGR. If Customer is unable to or does not provide the IGR, then Evercom will provide the IGR on a time and materials basis at the installer's then-current billing rates, provided that Evercom shall not be responsible for any delay caused by the failure of Customer to provide the IGR.
10. **End-User Billing Services and Customer Care.** Evercom's Correctional Billing Services division shall maintain dedicated customer service representatives to handle end-user issues such as call blocking or unblocking and setting up end-user payment accounts. The customer service representatives shall be available during reasonable business hours Monday through Saturday by telephone at 800-844-6591, by email at Support@CorrectionalBillingServices.com, and by facsimile at 800-578-2627. In addition, Evercom shall maintain an automated inquiry system on its toll-free customer service phone line that shall be available to end-users 24 hours a day, 7 days a week to provide basic information and handle most routine activities. Evercom shall also accept payments from end-users by credit card, check, and cash deposit (such as by money order or Western Union transfer).
11. **Reasonable Accommodation.** If Evercom fails to meet the service commitments in this Exhibit B and such failure materially adversely impacts Customer, then Evercom shall promptly make a reasonable accommodation. To be eligible for the accommodation, Customer must submit written notice to Evercom within 10 days after Evercom's failure to meet a service requirement. Notwithstanding anything set forth in the Agreement to the contrary, this Section 11 sets forth Customer's sole remedy and Evercom's sole liability for Evercom's failure to meet a service commitment.

This Master Proprietary Software License Agreement (this "License Agreement") is attached to, and made a part of, that certain Facility Inmate Services Agreement. This License Agreement shall apply to any and all Software provided by Evercom to Customer (including, without limitation, Software provided pursuant to the Agreement). The terms and conditions of the Agreement are incorporated in this License Agreement by reference except to the extent expressly contradicted by this License Agreement. Any capitalized term used herein, but not defined, shall have the meaning set forth in the Agreement.

1. **Grant.** Subject to the terms and conditions of this License Agreement, Evercom hereby grants to Customer, and Customer hereby accepts, a personal, non-exclusive, non-transferable license (without the right to sublicense) to access and use certain proprietary computer software products and materials specified in Exhibit A to the Agreement (the "Software") and to use any related user manuals, documentation, and any other supporting materials provided by Evercom, as such may be modified from time to time in Evercom's sole discretion (the "Documentation"). Customer may reproduce the Documentation, provided that Customer shall ensure that all relevant trademark and copyright information is maintained with the copied Documentation.

2. **Term.** The term of this License Agreement shall begin on the License Date and shall be coterminous with the Agreement.

3. **Restrictions on Use.** Customer shall use the Software solely for Customer's internal business purposes in connection with the Facility. Customer shall not (i) permit any parent, subsidiary, affiliated entity, or third party to use the Software, (ii) assign, sublicense, lease, encumber, or otherwise transfer or attempt to transfer the Software or any portion thereof, (iii) process or permit to be processed any data of any other party with the Software, (iv) alter, maintain, enhance, disassemble, decompile, reverse engineer or otherwise modify the Software or allow any third party to do so, or (v) ship, transfer, or export the Software into any country, or use the Software in any manner prohibited by the export laws of the United States.

4. **Third Party Information.** Customer acknowledges that through use of the Software Customer will be able to access confidential information of third parties that is protected by certain federal and state privacy laws ("Third Party Information"). Customer agrees that due to the vulnerability of computer systems and software to unauthorized access via the Internet, Customer and its authorized employees will only access the Software with computer systems that have effective firewall and anti-virus protection. During the term of this License Agreement, Customer shall: (i) adopt and enforce such internal policies, procedures and monitoring mechanisms as are necessary to ensure that the Software is used only in accordance with the terms of this License Agreement, (ii) take all steps reasonably necessary to ensure that no person or entity will have unauthorized access to the Software, and (iii) treat Third Party Information in accordance with all applicable federal and state laws. To the extent allowed by applicable law, Customer shall indemnify, defend, and hold harmless Evercom and its affiliates against all costs (including, without limitation, attorneys' fees) arising out of or related to Customer's breach of the terms of this Section, including, without limitation, Customer's failure to maintain the confidentiality of all Third Party Information in accordance with applicable federal and state laws. Notwithstanding any cure period for default in the Agreement, if Customer breaches its obligations in the sections entitled "Restrictions on Use" and "Third Party Information," then Evercom shall have the right to terminate this License Agreement immediately.

5. **Fees.** All fees related to Software receipts, updates, and modifications thereto shall be set forth in Exhibit A to the Agreement. Customer shall pay all such fees in accordance with the terms set forth in the Agreement. In addition, Customer shall pay all sales, use, and other taxes (excluding taxes on Evercom's income) imposed by any jurisdiction arising out of or related to the license granted in this License Agreement or to Customer's use of the Software, regardless of when such tax liability is asserted.

6. **Updates.** All Updates to the Software provided by Evercom will be subject to the terms and conditions of this License Agreement and will be billed on a time and materials basis at Evercom's then-current billing rates (unless otherwise agreed upon by the parties in writing). Evercom shall support all previous versions of the Software for six months (the "Support Period") after Evercom has made an upgraded version of the Software commercially available. If Customer fails to upgrade its Software during the Support Period, Evercom shall have no obligation to support the previous versions of Software after the Support Period and shall not be liable for any errors, omissions or other damages that occur as a result of Customer's use of such previous versions.

7. **Intellectual Property.**

a. Customer acknowledges and agrees that Evercom (or its licensors, if any) have and will retain all right, title, interest, and ownership in and to (i) the Software and any copies, custom versions, modifications, or updates of the Software, (ii) all Documentation, and (iii) any trade secrets, know-how, methodologies, and processes related to Evercom's products or services (the "Licensor Materials"). Customer acknowledges that the Licensor Materials constitute proprietary information and trade secrets of Evercom and its licensors, whether or not any portion thereof is or may be the subject of a valid copyright or patent. Customer shall have no right, title or interest in such proprietary rights.

b. Evercom may (i) place proprietary notices of Evercom and its suppliers (including hypertext links related thereto) on the Licensor Materials, and (ii) change or update such notices from time to time. In no event may Customer remove or alter any Evercom proprietary notice from the Licensor Materials.

8. **Termination.** Upon termination of this License Agreement, Customer shall: (i) discontinue all use of the Software; (ii) deliver to Evercom all physical copies of the Software, if any, (iii) destroy the Software and all copies of the Software contained in any computer memory or data storage apparatus under the control of Customer, and (iv) certify to Evercom within one week after the termination of this License Agreement that Customer has complied with the provisions of this Section.

9. **Warranty and Disclaimer of Warranties.**

a. Evercom warrants that the Software will perform substantially as specified in the applicable user product manual, if any (as it may be updated from time to time in connection with updates provided by Evercom), provided, however, that Evercom shall not be liable under this warranty if the Software has been modified or altered by anyone other than Evercom, if the Software has been abused or misapplied, or if Customer has failed to incorporate all updates provided to Customer by Evercom. In the event of a breach of this warranty, Customer may return the defective Software to Evercom, and Evercom, at Evercom's option, will either: (i) refund any fee paid to Evercom by Customer for the specific piece of defective Software or (ii) correct or replace the Software without charge. Such refund, correction, or replacement is Customer's sole and exclusive remedy for breach of this warranty. Evercom does not represent or warrant that the Software will meet Customer's requirements or that its operation will be uninterrupted or error-free.

b. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, EVERCOM DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SOFTWARE OR THE APPLICATION, OPERATION, OR USE THEREOF, THE DATA GENERATED BY THE OPERATION OR USE THEREOF, OR ANY SUPPORT OR MAINTENANCE SERVICES RENDERED WITH RESPECT THERETO. EVERCOM HEREBY EXCLUDES ALL IMPLIED WARRANTIES TO THE EXTENT PERMITTED BY LAW, INCLUDING, SPECIFICALLY, (I) ANY

IMPLIED WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, (II) THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND (III) NONINFRINGEMENT.

10. Limitation of Remedies. Customer assumes the entire risk related to the use of the Software. In no event shall Evercom's liability in connection with the Software or this License Agreement exceed the fee paid to Evercom by Customer for the Software. In addition to the limitations of Evercom's liability set forth in the Agreement, neither Evercom nor its licensors shall have any obligation to Customer, or otherwise be liable to Customer, for any third party claim based on: (i) Customer's operation of Software, (ii) Customer's combination of any of the Software with other products not furnished by Evercom, or (iii) Customer's use of a superseded or altered version of the Software. THE REMEDIES DESCRIBED IN SECTION 7 OF THE AGREEMENT STATE THE EXCLUSIVE LIABILITY OF EVERCOM AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ANY CLAIM, INCLUDING, WITHOUT LIMITATION, CLAIMS OF PATENT, COPYRIGHT, OR TRADE SECRET INFRINGEMENT. CUSTOMER SHALL MAKE NO CLAIM AGAINST ANY OF EVERCOM'S LICENSORS ON ACCOUNT THEREOF.

11. Confidentiality. This Section supplements the confidentiality obligations in the Agreement. The parties acknowledge that each party hereto, its employees, agents, affiliates, or subcontractors (collectively, the "Recipient") may be exposed to certain Confidential Information of the other party (the "Disclosing Party"). Any Confidential Information of the Disclosing Party disclosed pursuant to this License Agreement may be used only for the purpose related to this License Agreement. The Recipient (i) will hold the Disclosing Party's Confidential Information in strict confidence; (ii) will not disclose the Confidential Information to any third party without the written consent of the Disclosing Party and will take all reasonable steps to prevent such disclosure (which steps will include, without limitation, at least the same degree of care, but not less than a reasonable degree of care, and security precautions that the Recipient uses to protect its own confidential information); and (iii) will only use or disclose such Confidential Information within the Recipient's own organization on a need-to-know basis. Moreover, the Recipient agrees to transmit Confidential Information only to the Recipient's partners, directors, officers, employees, agents, advisors, and affiliates or those of the Recipient's affiliates only on a need-to-know basis and who are informed by the Recipient of the confidential nature of the Confidential Information and who agree to be bound by a confidentiality agreement with terms at least as restrictive as those set forth herein. The Recipient will be responsible for any breach of any provision of this Agreement by the Recipient's affiliates, partners, directors, officers, employees, agents, and advisors and those of the Recipient's affiliates. Confidential

Information will be maintained in confidence indefinitely. Each party shall immediately notify the other in writing of any known or perceived misappropriation of the Confidential Information, whether such misappropriation is a result of a negligent or an intentional act of the Recipient or a third party. For purposes of this License Agreement, "Confidential Information" means (i) all ideas, concepts, techniques or know-how tending to give the Disclosing Party a commercial advantage (including, without limitation, any patentable inventions and original works of authorship, such as computer software, customer lists, specifications, business plans, trade secrets, and the like) and (ii) any other information labeled "CONFIDENTIAL" and provided to the Recipient by the Disclosing Party. Notwithstanding the foregoing, Evercom shall have the right to implement, use, and license any and all improvements or enhancements to its Software developed in the course of performance of this License Agreement.

12. Injunctive Relief. Customer recognizes that Evercom will be irreparably harmed in the event of Customer's breach or threatened breach of the sections entitled "Restrictions on Use," "Third Party Information," "Intellectual Property," and "Confidentiality," and that, notwithstanding anything contained herein to the contrary, Evercom shall be entitled, as a matter of right, to injunctive relief, both temporary and permanent, without the necessity of providing actual damages or posting bond or other security. If Evercom is required to post bond or other security, the parties hereby stipulate that \$1,000 is sufficient for such bond or other security. The right to injunctive relief shall be cumulative with any other remedies available to Evercom and includes, without limitation, the right to pursue a temporary restraining order, whether ex parte or not. Customer shall reimburse Evercom for all fees, costs, and expenses (including, without limitation, attorneys' fees) incurred by Evercom in taking such court action to obtain equitable relief.

13. Independent Contractors. Nothing in this License Agreement shall be deemed or construed by the parties or any other entity to create an agency, partnership, or joint venture between Customer and Evercom.

14. Miscellaneous. This License Agreement, together with all schedules and exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supercedes all prior agreements and understandings, oral or written, between the parties with respect to the subject matter hereof. No amendment of this License Agreement shall be effective without the written consent of both parties. Customer represents and warrants that Customer has the power and authority to enter into and perform its obligations under this License Agreement. The parties' obligations under the sections entitled "Restrictions on Use," "Third Party Information," "Intellectual Property," "Termination," "Limitation of Remedies," "Confidentiality," "Injunctive Relief," and this Section 14, shall survive the termination of this License Agreement.

Evercom shall provide the video equipment listed in the attached invoice (the "Bonus Equipment") to Customer as a bonus subject to the following terms and conditions:

1. Evercom shall provide Customer with the booking equipment comprised exclusively of the Bonus Equipment. Any upgrades or extended warranties to the Bonus Equipment not itemized in this response may be purchased directly from Evercom's vendor at additional cost. In addition to these terms, Evercom's conveyance of the equipment to Customer will be subject to the terms and conditions of Evercom's underlying purchase agreement with the vendor.
2. Customer acknowledges that Evercom's vendor shall install the Bonus Equipment and conduct all training and maintenance on the equipment and shall provide all technical support in compliance with the service levels that such vendor typically provides to its customers. Notwithstanding anything to the contrary, Evercom shall have no liability or obligation of any kind to Customer or any third party for, or relating to, the equipment (including, without limitation, the equipment's installation, interface, operation, reliability, and maintenance), and Customer releases Evercom from such liability or obligation.
3. CUSTOMER AGREES THAT THE BONUS EQUIPMENT AND ALL OTHER RELATED PRODUCTS PROVIDED BY EVERCOM TO CUSTOMER WILL BE DELIVERED "AS IS." EVERCOM MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE BONUS EQUIPMENT OR THE VENDOR, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. IN NO EVENT WILL EVERCOM HAVE ANY LIABILITY WHATSOEVER FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE, OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING FROM CUSTOMER'S USE OF THE BONUS EQUIPMENT, EVEN IF EVERCOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, EVERCOM SHALL HAVE NO LIABILITY FOR ANY ACTUAL DAMAGES INCURRED IN CONNECTION WITH THE BONUS EQUIPMENT OR THE VENDOR REGARDLESS OF WHETHER SUCH DAMAGES ARISES DUE TO NEGLIGENCE OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EVERCOM DOES NOT WARRANT THAT THE USE OF THE BONUS EQUIPMENT, OR OF ANY INFORMATION CONTAINED IN OR RELATED TO THE BONUS EQUIPMENT, WILL NOT INFRINGE ANY PATENT, COPYRIGHT, OR TRADEMARK OF ANY THIRD PERSON.