

INMATE TELECOMMUNICATION LOCATION AGREEMENT

SH 13-19

This Inmate Telecommunication Location Agreement ("Agreement") is made as of January 18, 2013 (the "Effective Date"), by and between Clark County Jail, whose principal address is 707 W. 13th Street, Vancouver, WA 98660, ("Customer") and Telmate, LLC ("Telmate").

WHEREAS, Telmate is engaged in the business of operating, vending, and maintaining coin operated and non-coin operated inmate electronic communications equipment and systems ("Equipment") and,

WHEREAS, Customer desires to utilize the service, expertise, and Equipment of Telmate,

NOW, THEREFORE, in consideration of the mutual promises and covenants set out herein, Telmate and Customer hereby agree as follows:

1. **Agreement.** Customer grants to Telmate the exclusive right and license to install, implement, maintain, and derive revenue from the use of Equipment located at an incarceration facility commonly known as Clark County Jail, and whose physical address is 707 W. 13th Street, Vancouver, WA 98660 ("Facility"). Customer appoints Telmate as its exclusive inmate communications agent, charged and authorized with making changes, implementing and updating features, and otherwise establishing such functionality and taking such steps which Telmate considers, in its sole discretion, in best interest and designed to keep Facility using the best features with a state-of-the-art, leading system.

2. **Term.** This Agreement shall commence on the Effective Date and shall end five (5) years from the latter of (a) sixty (60) days after the Effective Date or (b) the date that Facility begins or switches over to using, and notifies Telmate of its acceptance of, Telmate Equipment ("Initial Term"). If the normal business operation of the Facility is interrupted for any reason (e.g., due to act of God, an inmate riot, or strike) the expiration of the Term of this Agreement shall be extended for a period of time equal to the period of such interruption or stoppage of business operations.

3. **Renewal.** After the Initial Term, this Agreement shall renew for two additional terms of five (5) years time period each thereafter (each a "Renewal Term"), upon the terms and conditions herein set forth, upon written notice sent by Customer to Telmate prior to the end of the then current Term (the Initial Term together with all Renewal Term(s) collectively comprise the "Term").

4. **Initial Investment.** The parties recognize that Telmate has invested or shall invest significant up-front resources, infrastructure and Equipment in establishing and maintaining the electronic communications at Facility. Such business model relies on a service term of a length in order for Telmate to recoup such investment and costs without otherwise requiring up-front or any payment from Customer. As such costs would be difficult if not impossible to determine, the parties agree that Customer will not prevent or disable any functionality of the Equipment.

5. **Commissions.** In consideration for the right to install, maintain, and operate the Equipment within the Facility, Telmate agrees to pay Customer a monthly commission of Sixty percent (60%) of the Gross Revenue generated as a result of collect phone calls and a monthly commission of Sixty percent (60%) of the Gross Revenue generated as a result of pre-paid phone calls made through use of Telmate's Equipment. Telmate shall pay such commissions on all calls including Local, Intralata, Interlata, Interstate, and International calls. Commissions will be based on Revenues from all completed calls. Telmate further agrees to pay Customer a monthly commission of Twenty percent (20%) of the Gross Revenue generated after service, maintenance, connections and equipment expenses, as a result of remote video visitation services provided to the Facility and its residents. Gross Revenue excludes Taxes, Government Imposed Fees or Charges, and any applicable Billing or Security Fees. Such commissions shall be paid by Telmate to Customer by check on a monthly basis. Such payment shall be made no later than 45 days following the month in which the revenues were generated from Telemate's Equipment. Said commissions checks will be made payable to Customer and mailed to Customer's address set forth above. All such commission payments shall be final and binding unless written objection thereto is received by Telmate from Customer within thirty (30) days of payment by Telmate to Customer.

6. **Amount and Location of Equipment.** The exact location(s) of the Equipment at Customer's Facility shall be as per the mutual written agreement of the parties hereto.

7. **Rates.** The parties to this Agreement shall mutually agree on the initial rates charged for any and all collect calls and any and all prepaid calls made with the use of the Equipment. The rates shall be set out in the **Schedule A** attached to this Agreement incorporated herein by reference. Rates for any new features or Equipment not yet established above shall be set by Telmate with input and assistance by Customer.

8. **Exclusivity.** During the Term of this Agreement, Customer grants to Telmate the exclusive right and license to install, maintain, and operate communication Equipment governing all inmate calls and electronic communications, including but not limited to local, long distance and international, including but not limited to collect calls, debit calls, within any facility owned or operated by Customer. During the Term of this Agreement Customer shall not provide to any third party access to Telmate's Equipment.

9. **Maintenance of Equipment.** During the Term of this Agreement, Telmate will repair and maintain its Equipment in good operating condition and shall exclusively maintain its Equipment in such condition by furnishing all necessary parts and labor reasonably necessary for the successful operation of the equipment. Telmate has the exclusive access to open, adjust, remove, disconnect, repair, replace, or alter the Equipment. Customer shall permit employees or contractors of Telmate reasonable access in order to provide such service, repair, and maintenance on Equipment. Telmate's Equipment shall remain the property solely of Telmate. Upon termination of this Agreement, Telmate shall have the right to enter upon the premises to remove the Equipment. Customer shall notify Telmate of any misuse, destruction, damage, or vandalism to the Equipment as soon as practicable. Customer shall exercise reasonable care to prevent damage or destruction of Telmate's Equipment.

10. **Surveillance.** Telmate and Customer realize and agree that the Equipment may allow Customer to monitor, eavesdrop, and/or otherwise record inmate's use of the Equipment. Customer understands and agrees that Telmate has made no warranties, express or implied, as to the legality of such monitoring and/or eavesdropping, and will indemnify and hold harmless Telmate from and against any claims, damages, loss or injury associated with Customer or Customer's agent's monitoring, eavesdropping or otherwise recording such use.

11. **Default and/or Termination of Agreement.** If Customer or Telmate defaults in its performance of any obligations hereunder, the non-defaulting party may notify the defaulting party in writing of such default with specific attention to detail. The defaulting party must cure such default within sixty (60) days from receipt of notice of default, otherwise the non-defaulting party shall have the right to terminate this Agreement and pursue all legal and equitable remedies available to the non-defaulting party. If any governmental tax, fee, regulation, or tariff, or any other law prevents Telmate from providing the services agreed to hereunder or makes the continuation of this Agreement economically impracticable then Telmate may, at its own discretion, terminate this Agreement without liability. On any termination of this Agreement, Customer shall allow Telmate reasonable access to facility in order to remove equipment, including electrical and Ethernet wiring and conduits. Telmate agrees to remove their equipment within 30 days after such termination.

12. **Liability Indemnification.** Telmate promises and agrees to defend, protect, indemnify and save harmless the County, its officers, agents and employees, from and against any and all claims, demands and liability for damages for personal injury or property damage to the extent caused by any negligent act or omission of Telmate or Telmate's employees, volunteers, agents or contractors, or by reason of any dangerous or defective condition caused or permitted by Telmate's or Telmate's employees', volunteers', agents' or contractors' negligence.

The County promises and agrees to defend, indemnify and save harmless Telmate, its officers, employees, and volunteers from all claims, demands and liability for damages for personal injury or property damage suffered by reason of any act or omission of the County or the County's officers, agents, or employees, or by reason of any dangerous or defective condition caused or permitted by the County or the County's officers or employees, except to the extent such action, omission or condition is caused by or is the result of any negligent action, omission or request of Telmate or Telmate's officers, employees or volunteers.

The indemnification obligations of this Section 12 are conditioned on the indemnified party (a) providing prompt notice of the claim to the indemnifying party, (b) turning over control of the defense and/or settlement thereof, and (c) reasonably cooperating in such defense and/or settlement as may be requested and paid for by the indemnifying party.

It is further specifically and expressly understood that the indemnification provided herein constitutes the each party's waiver of immunity under the Industrial Insurance Act, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

13. **Confidentiality.** Customer acknowledges that in the course of discussions leading up

to this Agreement, and in performing the work and installing the Equipment pursuant to this Agreement, Telmate may make information available to Customer or Customer may otherwise learn of trade secret or confidential information of Telmate (collectively, "Confidential Information"). Confidential Information includes all Telmate or its vendors' information not generally known or used by others and which gives, or may give, Customer or a third party an advantage over its competitors or which could cause Telmate or its vendors injury, embarrassment, or loss of reputation or goodwill if disclosed. Such information includes, but is not necessarily limited to, the Equipment provided by Telmate, data of Telmate which identifies or concerns past, current or potential customers or employees, information about business practices, financial results, research, development, systems and plans, and/or certain information and material identified by Telmate as "Confidential". Confidential Information may be written, oral, recorded, or on tapes, disks or other electronic media. Because of the sensitive nature of the information that Customer and its personnel may become aware of as a result of this Agreement, the intent of the parties is that these provisions be interpreted as broadly as possible to protect Telmate's Confidential Information.

Customer specifically acknowledges and agrees that the Equipment and proprietary Software platform furnished by Telmate is Confidential Information, is owned by Telmate, is considered a proprietary trade secret and is a matter of strict confidentiality. Customer also acknowledges that the unauthorized use or disclosure of any Confidential Information, including but not limited to the Equipment and proprietary Software platform, will cause irreparable harm to Telmate. Accordingly, Customer agrees that Telmate shall be entitled to equitable relief, including injunction and specific performance without the necessity of posting a bond except as may be required by applicable statute (Washington Revised Code section 7.40.080), in addition to all other remedies available at law or in equity for any threatened or actual breach of this Agreement. Notwithstanding any other provision of this Agreement, Customer agrees that, in the event Telmate terminates this Agreement due to a breach by Customer of any or all of these Confidential Information provisions, then Customer shall: (a) be responsible for all Telmate attorney fees resulting from the enforcement of these provisions; (b) pay to Telmate the amount of revenue that Telmate would have received under this Agreement but for the termination (as such amount is determined by Telmate in its sole discretion); (c) pay to Telmate all revenues generated by Customer as a result of Customer's use of the Confidential Information; and (d) pay all other damages, whether direct or indirect, as such damages are determined by a court of competent jurisdiction.

Nothing in this Agreement shall prohibit or be construed to prohibit Customer from complying with applicable state or federal laws relating to disclosure of public documents, provided that Customer provides Telmate with any and all notice permitted thereunder and the opportunity to oppose or narrow such disclosure as may be permitted, and cooperates with such efforts to the full extent permitted by law.

14. Authority. Customer and Telmate warrant and represent to each other they have the authority to enter into this binding Agreement and to bind themselves to such Agreement.

15. Assignment. Customer may not sell, lease, assign, or otherwise transfer any of the rights or obligations hereunder to a third party without the prior written agreement of Telmate. Telmate may sell, lease, assign, or otherwise transfer any of its rights or obligations hereunder to any third party on sixty (60) days written notice to Customer.

16. **Notices.** All notices provided for in this Agreement shall be in writing and shall be sent Certified Mail, Return Receipt Requested, or by other reputable overnight carrier, to the parties at the addresses set out above or any other address as specified by a party by prior written notice to the other party. Said notice shall be deemed received upon receipt thereof by addressee.

17. **Entire Agreement.** This Agreement, including Customer's RFP Number 639 issued on 10/25/12 ("RFP") and Telmate Proposal dated November 16, 2012 in response to the RFP ("Proposal"), sets forth the entire understanding of Telmate and Customer and supersedes all prior agreements, arrangements, and communications, whether oral or written with respect to the subject matter herein. This Agreement may be modified or amended only in writing signed by both Parties. In the event of a conflict among this document, the RFP and the Proposal, this document shall control; in the event of a conflict between the RFP and the Proposal, the Proposal shall control.

18. **Miscellaneous.** This Agreement shall be construed under and governed by the laws of the State of Washington. 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. If any provision of this Agreement is held to be invalid or unenforceable, the validity or enforceability of other provisions shall remain unaffected. This Agreement shall be binding upon and inure to the benefit of Customer, and Telmate, and Telmate's successors and assigns. This Agreement cannot be modified other than by written instruments signed by Customer and Telmate.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**Board of County Commissioners
Clark County Washington**



Steve Stuart, Chair 4/16/13

Tom Mielke, Commissioner

David Madore, Commissioner

Approved as to form
Sign [Signature]
Print B. V. Macic
Title Deputy Civil Prosecutor


TELMATE



Name: RICHARD TORGERSRUD.

Title: CEO

Date: 3/25/13

Clark County Sheriff

Garry E. Lucas

Date 4/16/13

Attest:
Rebecca J. Fitor
Clerk of the Board

4/16/13
Date Executed

Telmate 
APPROVED AS TO LEGAL FORM
3/20/13 R.L.V.