

This Facility Inmate Services Agreement (this "Agreement") is by and between Grays Harbor County Sheriff's Department ("Customer") located at 100 West Broadway, Montesano, Washington 98563 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").

"Commencement Date" means (check one blank):

- ☐ Date the Equipment is installed and ready in first Facility
☒ Last date this Agreement is signed by a party
☐ Specific date: _____

"Commissions" means collectively:

- "Collect Call Commission Percentage": 40%
 "Prepaid Card Discount": 30%
 "Debit Account Commission Percentage": N/A

"Initial Term" means the period beginning on the Commencement Date and ending on the date that is five years thereafter.

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 of one year (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 for the minutes designated on the prepaid cards at the Rates, less the Prepaid Card Discount. If Evercom has not received Customer's payment for the prepaid calling cards within 90 days after Customer's receipt of the cards, then Evercom reserves the right to deduct the cost of the cards from the Commissions until paid in full.

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, if any) billed by Evercom relating to either Collect Calls or Debit Account Calls.

e. **Rates.** Evercom shall charge telephone rates (the "Rates") that set forth on Exhibit C. The Rates may be amended from time to time by the mutual written agreement of the parties; provided, however, that if applicable law or regulation necessitates a change in the Rates, then Evercom shall have the right to adjust the Rates to the extent necessary to comply with such law or regulation.

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.

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 Washington.

b. [INTENTIONALLY DELETED.]

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 Evercom's standard Master Proprietary Software Agreement.

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.

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:

Name:

Title*:

Date:

*Signatory must be a SVP or officer of Evercom Systems, Inc.

Grays Harbor County Sheriff's Department

By:

Name:

Title:

Date:

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 Evercom's standard Master Proprietary Software Agreement:

Call Manager..... NO CHARGE

Covert Investigator..... NO CHARGE

2. Equipment. In connection with providing the Services, Evercom shall be obligated to provide only the following hardware and software:

N/A

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

Grays Harbor County Sheriff's Department

Initials: D.M.

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. **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).
10. **Reasonable Accommodation.** If Evercom fails to meet the service commitments in this Exhibit A 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 10 sets forth Customer's sole remedy and Evercom's sole liability for Evercom's failure to meet a service commitment.

Grays Harbor County Sheriff's Department

Initials: 

Signing Bonus Addendum to Facility Inmate Services Agreement

This Signing Bonus Addendum to Facility Inmate Services Agreement (this "Addendum") is made as of the Commencement Date (the "Addendum Effective Date") and is attached to, and made a part of, that certain Facility Inmate Services Agreement dated as of the Commencement Date (as amended and assigned, the "Agreement") between Grays Harbor County Sheriff's Department ("Customer") and Evercom Systems, Inc. ("Evercom"). The terms and conditions of the Agreement are incorporated in this Addendum by reference. Any capitalized term used herein, but not defined, shall have the meaning set forth in the Agreement.

In consideration of the mutual covenants, representations, promises, obligations and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

- 1. Signing Bonus.** Within 30 days after the installation of the Equipment (if the Agreement is a new agreement) or within 30 days after the Addendum Effective Date (if the Agreement is a renewal of an existing agreement), Evercom shall pay to Customer a signing bonus in an amount equal to \$20,000. If the Agreement is terminated for any reason prior to the end of the Initial Term, then Customer shall refund to Evercom an amount equal to the signing bonus times a fraction, the numerator of which is the number of months between the date of termination and the end of the Initial Term, and the denominator of which is the number of months in the Initial Term plus interest on the prorated amount in the amount of the lower of (a) 15% per annum and (b) the maximum rate allowed by law. Customer shall pay any such refund within ten days after any such termination, or at Evercom's election, Evercom may deduct the refund from any Commissions owed to Customer.
- 2. Ratification and Entirety.** Except as provided in this Addendum, all the terms and conditions of the Agreement are hereby ratified and shall remain in full force and effect. This Addendum and the Agreement, together with all supplements, exhibits and schedules thereto, shall embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations and understandings, whether written or oral, relating to the Agreement or this Addendum, and may not be contradicted or varied by evidence of the prior, contemporaneous, or subsequent oral agreements between the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed as of the Addendum Effective Date by their duly authorized representatives.

CUSTOMER:

Grays Harbor County Sheriff's Department

By: Name: Dennis MorrisetteTitle: County Commissioner**EVERCOM:**

Evercom Systems, Inc.

By: Name: JOHN J. VIOLATitle: EVERCOM*Signatory must be a SVP or officer of Evercom Systems, Inc.