

## INMATE PAY TELEPHONE AGREEMENT

This Inmate Pay Telephone Agreement (the "Agreement") is made as of the 1<sup>st</sup> day of November, 2003, by and between State of North Dakota Information Technology Department ("Customer") located at 600 E. Boulevard Ave., Dept. 112, Bismarck, ND, 58505-0100 and Evercom Systems, Inc. ("Evercom") located at 8201 Tristar Drive, Irving, Texas 75063.

1. **Utilization of Facility.** The Customer, for and in consideration of the payment of the Collect and Pre-paid Commissions (as hereinafter defined) and the services to be provided by Evercom, grants Evercom the exclusive right and license to install and maintain an Inmate Telecommunications Systems governing all inmate calls, including local and long distance traffic for collect calling and debit calling, and inter-related hardware and software, (collectively "Evercom Equipment") within all pre-existing and future jail and/or detention facilities (collectively, the "Facility"), and hereby releases the Facility for that purpose, upon the terms and conditions set forth in this Agreement. The Customer covenants and agrees to make the Facility available to Evercom for complete installation and operation of the Equipment.

2. **Compensation.** In consideration of the right to install and operate the Equipment within the Facility:

- a. Evercom agrees to pay Customer 40% of the gross revenue (as defined herein) earned by Evercom through use of the Equipment to complete collect calls from the Facility (the "Collect Commission"); and
- b. Evercom agrees to pay Customer 25% of the gross revenue (as defined herein) earned by Evercom through use of the Equipment to complete prepaid calls of any type (the "Pre-paid Commissions").
- c. For purposes of this provision, the term "gross revenue" is defined as all charges billed by Evercom relating to either collect calls in (a) above or prepaid calls in (b) above respectively, excluding any taxes. The Collect and Pre-paid Commissions shall be paid to the Customer on a monthly basis in accordance with this Agreement.
- d. All telephone rates (the "Rates") charged by Evercom pursuant to this Agreement shall be as set forth on Exhibit A attached hereto.

3. **Payment and Accounting.** The Collect and Pre-paid Commissions shall be paid no later than sixty (60) days following the month in which revenues were recognized from the Equipment during the Term of this Agreement. All Collect and Pre-paid Commissions payments shall be final and binding upon the Customer unless written objection thereto is received by Evercom within sixty (60) days of the date of the Collect and/or Pre-paid Commission check or credit is issued.

4. **Maintenance and Repair.** During the term of this Agreement, Evercom will repair and maintain the Equipment in good operating condition, including without limitation, furnishing all parts and labor, at its sole cost and expense, all such maintenance shall be conducted in a timely manner, (usually within 24 hours). The Customer shall permit employees or contractors of Evercom reasonable access to the Facility in order to service, repair and maintain the Equipment. The Customer shall notify Evercom of any misuse, destruction, damage or vandalism to the Equipment, as soon as practicable after ascertaining the same. Evercom, by providing equipment or service from third party vendors makes no representation or warranty with respect to such service or equipment and, unless expressly stated herein, makes no commitment to maintain or service such equipment hereafter, all such arrangements should be made by Customer and third party vendor. Equipment upgrades will be performed as outlined in Exhibit B.

5. **Liability Insurance.** Evercom agrees to maintain comprehensive general liability insurance coverage having limits of not less than \$1,000,000.00 in the aggregate. The Customer agrees to provide Evercom with reasonable and timely notice of any claim, demand or cause of action made or brought against the Customer arising out of, or related to, the utilization of the Equipment. 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. The Customer agrees not to compromise or settle any claim or cause of action arising out of or related to the utilization of the Equipment without the prior written consent of Evercom. In no event shall the Customer be liable for any damage or destruction to any item of the Equipment.

6. **Term of Agreement.** The obligations of the parties under this Agreement are effective as of the date hereof, but the



term of this Agreement shall commence upon the date of execution (the "Commencement Date"). This Agreement shall remain in force and effective for (three) years from the Commencement Date (the "Initial Term"). Thereafter, unless written notice of a party's election not to renew the Agreement is delivered to the other party at least 90 days prior to the end of the Initial Term or any renewal term, this Agreement shall automatically renew for up to three one year extensions. If, because of strikes, riots, wars or for any other reason, business operations at the Facility shall be interrupted for periods of time other than as is customary for operations conducted at the Facility, the expiration of the term of this Agreement shall be extended for a period of time equal to the period of such extraordinary interruption or stoppage of business operations.

**7. Event of Default, Termination of Agreement.** In the event either party defaults in the performance of any of its obligations under this Agreement, the non-defaulting party shall give the defaulting party written notice of default setting forth with specificity the nature of the event of default. In the event the defaulting party fails to cure such event of default within thirty days from receipt of the notice of default, the non-defaulting party shall have the right to terminate this Agreement and pursue all other remedies available to the non-defaulting party, either at law or in equity. If the performance of this Agreement or any obligation hereunder, is interfered with by reason of any circumstances beyond the reasonable control of the parties, including without limitation, fire, explosion, riots, civil unrest, power failures, injunctions, or acts of God, then the party affected shall be excused from such performance on a day-to-day basis to the extent of such interference, provided the party so affected shall use reasonable efforts to remove such causes of no-performance. In the event any governmental tariff or regulation prevents Evercom from providing services, or such tariffs or regulations make continuation of this agreement impractical for economic reasons or otherwise, then Evercom, at its sole discretion, may terminate this Agreement without liability. The Customer may terminate this contract effective upon delivery of written notice to Evercom, or on any later date stated in the notice, if any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed. Any termination of this contract for this reason shall be without prejudice to any obligations or liabilities of either party already accrued prior to termination. In the event of a termination of this Agreement for any reason, the Customer agrees to allow Evercom access to the facility in order to remove the Equipment. Evercom agrees to remove the Equipment within thirty days after termination of this Agreement.

**8. Indemnification.** EVERCOM shall defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (State), from any and all claims of any nature, including all costs, expenses and attorneys' fees, that may in any manner result from or arise out of this agreement, except for claims resulting from or arising out of the STATE's sole negligence. The legal defense provided by EVERCOM to the STATE under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary. EVERCOM also agrees to defend, indemnify, and hold the STATE harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

**9. Authority.** Each party to this Agreement warrants and represents that they have the unrestricted right and requisite authority to enter into and execute this Agreement, to bind the respective party, and to authorize the installation and operation of the Equipment.

**10. Notices.** Any notice or demand under the terms of this Agreement or under any statute made by either party shall be in writing and shall be given or made by mail, postage prepaid, addressed to the respective party as listed on signature page of this agreement.

**11. Miscellaneous.**

- A. This Agreement shall be construed under and is enforceable under the laws of the state where Evercom services are performed.
- B. 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.
- C. If any provision of this Agreement is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.
- D. This Agreement shall be binding upon and inure to the benefit of Evercom and the Customer, and their respective successors and assigns.

- E. 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. This Agreement constitutes the entire Agreement of the parties. The rights and obligations of the parties shall be determined solely from the terms of this Agreement and any prior or contemporaneous oral agreements are superseded by and merged into this Agreement.
- F. This Agreement cannot be varied or modified orally and can only be varied or modified by a written instrument signed by all parties.
- G. Evercom, at its sole cost and expense shall secure the state, county or federal governmental authority licenses required for the provision of services contemplated in this Agreement.
- H. During the term of this agreement, the Equipment installed in the facility pursuant to this Agreement shall remain the sole and exclusive property of Evercom.
- I. If Evercom is the first party to execute this Agreement, then the Customer shall have until 5:00 p.m. (Central Time) 90 days from the date set forth under Evercom's signature below, to execute and deliver this Agreement to Evercom. If the Customer has not executed and delivered this Agreement to Evercom within the 90 day period, then the offer made by Evercom to enter into this Agreement shall terminate and be null and void after such time. Evercom may also terminate the offer made by this Agreement prior to the end of the 90 day period by written notice to the Customer, unless the Customer has previously signed and delivered this Agreement to Evercom.

EXECUTED as of the date and year signed below:

Evercom Systems, Inc.

By: 

Name: John J. Viola

Title: Vice President-Sales and Marketing

Date: 11/12/03

Customer: Information Technology Department

By: 

Name: Mike J. Ressler

Title: Director

Date: 11/3/03



FIRST AMENDMENT TO INMATE PAY TELEPHONE AGREEMENT

This FIRST AMENDMENT ("First Amendment") is effective as of the 1st day of June, 2006 ("First Amendment Effective Date") and amends and supplements that certain Inmate Pay Telephone Agreement, dated as of November 1, 2003 ("Agreement") by and between State of North Dakota Information Technology Department ("Customer") and Evercom Systems, Inc. ("EVERCOM").

WHEREAS, Customer and EVERCOM desire to amend the Agreement pursuant to the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- 1. Evercom will install an upgrade to the Equipment at the Facility along with additional applications as more particularly described in Exhibit A to this First Amendment.
2. Section 6 of the Agreement shall be amended in its entirety as follows:
'6. Term of Agreement. The obligations of the parties under this Agreement are effective as of the date hereof, but the term of this Agreement shall commence upon the date of execution (the "Commencement Date"). This Agreement shall remain in force and effective for four (4) years from the Commencement Date (the "Initial Term") Thereafter, unless written notice of a party's election not to renew the Agreement is delivered to the other party at least ninety (90) days prior to the end of the Initial Term or any renewal term, this Agreement shall automatically renew for up to two (2) one year (1-year) extensions. If, because of strikes, riots, wars or for any other reason, business operations at the Facility shall be interrupted for periods of time other than as is customary for operations conducted at the Facility, the expiration of the term of this Agreement shall be extended for a period of time equal to the period of such extraordinary interruption or stoppage of business operations.'
3. Within thirty (30) days after the installation of the upgrade referenced in Section 1 above, Evercom will pay Customer an advance payment of Commission in the amount of \$35,000.00 (the "Prepaid Commission"). Evercom will recoup the Prepaid Commission at a rate of 50% of the monthly Commission earned until the balance is paid in full. If this Agreement is terminated for any reason other than Evercom's default, then Customer will refund any unearned portion of the Prepaid Commission as of the date of the termination within fifteen (15) days after the date of the termination.
4. All terms and conditions of the Agreement not amended by this First Amendment remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the First Amendment Effective Date by their duly authorized representatives.

STATE OF NORTH DAKOTA INFORMATION TECHNOLOGY DEPARTMENT

EVERCOM SYSTEMS, INC.

By: Mike J. Ressler
Name: Mike J. Ressler
Title: Director
Date: 6/2/06

By: John J. Viola
Name: John J. Viola
Title: VP Sales
Date: 6-14-06



DESCRIPTION:

Digital Call Manager. Digital Call Manager ("DCM" or the "System") provides automatic placement of calls by inmates without the need for conventional live operator services. In addition, DCM provides the capability to (a) monitor and record inmate calls, (b) mark certain numbers as private to disable the monitoring and recording function, (c) automatically limit the duration of each call to a certain period designated by Evercom, (d) maintain call detail records in accordance with Evercom's standard practices, (e) automatically shut the System on or off, and (f) allow free calls to the extent required by applicable law. Evercom will be responsible for all billing and collections of inmate calling charges but may contract with third parties to perform such functions. DCM will be provided at the Facilities specified in the chart below.

Facility Name and Address	Type of Call Management Service	Collect Commission Percentage	Revenue Base for Calculation of Commission	Payment Address
Department of Corrections and Rehabilitation – Prison Division 3100 East Railroad Ave. Bismarck, ND 58501	DCM	40%	Gross	State of North Dakota Information Technology Department Department of Corrections and Rehabilitation – Prison Division 600 East Boulevard Ave. Department 112 Bismarck, ND 58505-0100

PREMISES BASED CALL MANAGEMENT SYSTEM SERVICE LEVEL AGREEMENT:

Evercom agrees to repair and maintain the DCM System (inclusive of the SECUREworkstation defined below) 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 levels in Items 1 through 10 below. 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 System by Customer (not inmates at the Facilities), 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 agrees to promptly notify Evercom in writing after discovering any misuse of, or destruction, damage, or vandalism to, the System. If any portion of the System 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. This SERVICE LEVEL AGREEMENT does not apply to any provided *Openworkstation(s)* (see below). For the services contemplated hereunder, Evercom may provide, based upon the facilities requirements, two types of workstations (personal computer/desktop/laptop/terminal):

- (i) The "SECUREworkstation" is designed to satisfy facilities that require a secure direct link and full technical support of the Applications. Utilizing the Windows XP operating system, the SECUREworkstation is subject to full technical and field support services described herein, access to all applicable Applications and restricted user rights for facility personnel. No other third party software may be installed on the SECUREworkstation; and
- (ii) The "*Openworkstation*" is an open non-secured workstation which permits administrative user rights for facility personnel and allows the facilities an ability to add additional third party software. Ownership of the *Openworkstation* is transferred to the facility along with a three-year product support plan with the hardware provider. Evercom has no obligation to provide any technical and field support services for an *Openworkstation*. CUSTOMER IS SOLELY RESPONSIBLE FOR THE MAINTENANCE OF ANY *OPENWORKSTATION(S)*."

1. Outage Report; Technical Support. If either of the following occurs: (a) Customer experiences a System outage or malfunction or (b) the System requires maintenance (each a "System Event"), then Customer will 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 will 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 is generally 120 seconds or less, provided however, that Evercom will endeavor (but will 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 will classify the System Event as one of the following four priority levels:



"Priority 1"	60% or more of the functionality of the System is adversely affected by the System Event
"Priority 2"	30%-59% of the functionality of the System is adversely affected by the System Event
"Priority 3"	5%-29% of the functionality of the System is adversely affected by the System Event
"Priority 4"	Less than 5% of the functionality of the System is adversely affected by the System Event

3. Response Times. After receipt notice of the System Event, Evercom will respond to the System Event within the following time periods with a 95% or greater rate of accuracy:

Priority 1	4 hours
Priority 2	12 hours
Priority 3	24 hours
Priority 4	36 hours

4. Response Process. In all instances, Technical Support will 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 will contact Customer with the technician's estimated time of arrival), as necessary.

5. Performance of Service. All of Evercom's repair and maintenance of the System will 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 System that is agreed upon by Customer and Evercom may be subject to a charge as set forth in the Agreement and will 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 will monitor Evercom's back office and validation systems 24 hours a day, seven days a week.

9. Required IGR. Customer is responsible for providing a dedicated isolated grounded receptacle ("IGR") for use in connection with the primary System. Upon request Evercom will provide Customer with the specifications for the IGR. If Customer are unable to or do 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 is not responsible for any delay caused by Customer's failure to provide the IGR.

10. End-User Billing Services and Customer Care. Evercom's Correctional Billing Services division will 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 will 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 will maintain an automated inquiry system on a toll-free customer service phone line that will be available to end-users 24 hours a day, 7 days a week to provide basic information and handle most routine activities. Evercom will also accept payments from end-users by credit card, check, and cash deposit (such as by money order or Western Union transfer).

**DIGITAL CALL MANAGER VALUE-ADD FEATURES****DESCRIPTION:**

**3-Way Detect.** On DCM, 3-Way Detect provides the capability for Customer to mark, warn, or disconnect 3-way calls.

**Administrative Assistant.** On DCM, Administrative Assistant allows Customer to access a web page interface to view call detail records, data regarding the Commission, and service tickets and to post documents to be shared between Customer and Evercom.

**DCM Debit.** On DCM, DCM Debit will be provided at the Facilities specified in the chart below. Evercom will pay Customer a commission (such amount being a part of the Commission) in the amount of the applicable DCM Debit Commission Percentage (as specified in the chart below) of the applicable revenue base (as specified in the chart below) that Evercom earn through the completion of any calls placed from the Facilities that are paid from designated prepaid debit accounts, the records of which are stored in the System.

Facility Name and Address	Type of Call Management Service	DCM Debit Commission Percentage	Revenue Base for Calculation of Commission	Payment Address
Department of Corrections and Rehabilitation - Prison	DCM	40%	Gross	State of North Dakota

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Division 3100 East Railroad Ave. Bismarck, ND 58501				Information Technology Department  Department of Corrections and Rehabilitation -- Prison Division  600 East Boulevard Ave.  Department 112  Bismarck, ND 58505-0100
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**COMPENSATION:**

The optional features above are provided to Customer at no charge.

**DIGITAL CALL MANAGER PREMIUM FEATURES****DESCRIPTION:**

Visitation Phone Monitoring and Recording ("VPM"). On DCM, VPM employs digital sensor processor technology to allow voice recording and monitoring of the single-line telephones used in the visitation area.

**COMPENSATION:**

The optional features above are provided to Customer at no charge.

**DIGITAL CALL MANAGER END-USER FUNDED FEATURES****DESCRIPTION:**

AdvanceConnect. On DCM, AdvanceConnect allows inmates' friends and families to establish a prepaid account with Evercom to pay for calls they receive from inmates.

CollectConnect. On DCM, CollectConnect allows inmates' friends and families to pay for collect calls immediately after the call with a credit card or similar method.

Courtesy Call. On DCM, Courtesy Call facilitates communication between inmates and their friends and families by notifying a prepaid account holder when the balance in the account approaches the minimum limit.

DebitConnect. On DCM, DebitConnect allows inmates to use funds from their trust fund accounts to pay for calls they make from the Facilities.

Encompass. On DCM, Encompass is a patent-pending enabler that facilitates quick establishment of accounts by friends and families of the inmates.

First-CallConnect. On DCM, First-CallConnect allows an inmate's first phone call from a Facility to be connected for a short duration at no cost to the inmate or the called party. Such promotional calls are not commissionable.

**COMPENSATION:**

The optional features above are provided to Customer at no charge and may be funded from end-user fees.