

**RFP NUMBER 2019-064-6828**

**BETWEEN**

**DALLAS COUNTY, TEXAS**

**AND**

**SECURUS TECHNOLOGIES LLC**

This Master Agreement (“Agreement”) is made and entered into by and between the Dallas County, Texas, (“County”) a political subdivision of the State of Texas acting by and through the Dallas County Commissioners Court and Securus Technologies LLC (“Contractor”) with a place of business at 4000 International Parkway, Carrollton, Texas 75007. Both County and Contractor are sometimes referred to as “Party”, or collectively as “Parties.”

**WITNESSETH:**

**WHEREAS**, County issued RFP No. 2019-064-6828 RFP for Inmate Phone, Video Visitation Service and Multi-Function Kiosk Provider for Dallas County (“RFP”);

**WHEREAS**, Contractor responded to RFP; and

**WHEREAS**, Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

**WHEREAS**, Contractor represents that it has the experience and holds all necessary permits, licenses and certificates to practice and perform the services and desires to perform the services covered in this Agreement; and

**WHEREAS**, County desires to retain a qualified and experienced Contractor to provide an inmate phone/video visitation and inmate multi-function Kiosk services “Project”; and

**WHEREAS**, County has selected Contractor as the highest ranked firm for County RFP No. 2019-064-6828 and agrees to pay Contractor for the services provided as detailed in this Agreement and the RFP;

**NOW THEREFORE**, in consideration of the terms, conditions, covenants, and performance of the scope of work and services contained herein, as attached and made a part hereof, County and Contractor mutually agree as follows;

**1. INCORPORATED DOCUMENTS**

The following documents are incorporated by reference as if fully reproduced herein:

- Cost and Other Fees Price Schedule, attached as Exhibit A;
- Contractor’s Title VI Assurances and Compliance, attached as Exhibit B;
- County’s RFP No. 2019-064-6828, attached as Exhibit C;
- Contractor’s response to the RFP (“Response”), attached as Exhibit D;
- Contractor’s BAFO to the RFP (“BAFO”), attached as Exhibit E; and
- FBI CJIS Security Addendum, attached as Exhibit F.

## **2. ORDER OF PRECEDENCE**

In the event of any conflict or inconsistency between or among the provisions of this Agreement between the County and Contractor or any incorporated or referenced document or any exhibit, attachment, or associated document, such conflict or inconsistency shall be resolved in the following order of precedence: (1) this Agreement; (2) Exhibit A; (3) Exhibit B; (4) Exhibit C; (5) Exhibit D; (6) Exhibit E; and then (7) Exhibit F.

## **3. CONTRACT TERM**

The initial term ("Term") of this Agreement shall be for five (5) years, commencing upon the date of execution by Dallas County Commissioners Court ("Effective Date"), unless terminated earlier under any provision hereof. Upon the written notification of County, the Agreement may be extended for up to three (3) additional three month terms, in order to provide Contractor additional time, if deemed necessary by County, to complete the scope of services provided below. Upon expiration of the Term of this Agreement, Contractor agrees to hold over the terms and conditions of this Agreement for such a period of time as may be reasonably necessary, but not to exceed 120 days, to renew this Agreement or allow the County to re-solicit this Agreement through a competitive solicitation process.

## **4. DESCRIPTION OF PROJECT**

County and Contractor agree the Project is to provide a Hosted Video Visitation Solution meeting the technical requirements in the RFP.

## **5. SCOPE OF SERVICES AND WORK**

The scope of services includes the services and facilities requested in the RFP, which envisions a Hosted Video Visitation Solution, including, but not limited to provision of the following (as outlined in the RFP):

- 1) A comprehensive Inmate Phone Service that will allow for collect and prepaid (to include debit) calls for intralata, interlata, intrastate, interstate and international calls and local telephone exchange service;
- 2) A technology system, which includes, but is not limited to system infrastructure, network, database, servers, new call processors, digital and analog communications circuits telecommunications capabilities, monitoring, and other required system functionality as specified in Section 2 of the RFP to support the inmate and pay phone telephone service;
- 3) Installation of new/refurbished to like new telephone instruments (equipment) at all identified facilities including the required number of instruments and any required station cabling as determined necessary;
- 4) Creation of a centralized database which shall contain all data elements necessary for provision of monitoring services, reporting and historical call transaction information;
- 5) Hosted video visitation services;
- 6) Free community tablets including self-betterment programs and the offering of premium content;
- 7) Any value-added service features not specifically outlined within the RFP;

- 8) Contractor personnel will perform oversight, administration, operational assistance and maintenance and repair to the IPS system and equipment. It is anticipated that at a minimum, the system administrator and 3 technician will be assigned on-site, full-time;
- 9) Ongoing maintenance, repair, and/or replacement and/or upgrades of all equipment, systems and software as determined necessary to ensure service delivery;
- 10) All required training and instructional materials required for use of the telephone services as applicable to inmates, families, and/or County staff;
- 11) Texas Commission on Jail Standards minimum standards and mandates must be applied; and
- 12) All related support services not otherwise indicated within the RFP

## **6. BACKGROUND CHECKS**

6.1 Contractor acknowledges and agrees to perform background checks and e-verify on all employees assigned and providing services to County under this Agreement prior to commencing services or work. Contractor shall conduct these checks as required by the RFP. "Background check" means, including but not limited to, the research and verification of an individual's employment history, criminal history, identity, driving record history, current and past residences, and any discrepancies contained therein. The cost of this background check will be the sole responsibility of the Contractor. The County reserves the right to approve/refuse any prospective employees including subcontractors of the Contractor as a result of the background check. The following items will be included in a background check, at a minimum:

- 6.1.1 E-Verify all employees, personnel and subcontractors providing services under this contract;
- 6.1.2 Employment history (last ten (10) years);
- 6.1.3 Social Security number verification;
- 6.1.4 Assumed names and aliases search;
- 6.1.5 State criminal records search for an unlimited period of time including court records search, Motor Vehicle Driving Records search, Department of Public Safety search, Department of Corrections search, Administrative Office of Court search, a County criminal records search for all counties of residence, and a Justice of the Peace criminal records search for all precincts of residence;
- 6.1.6 Federal criminal records search for an unlimited period of time, including National Sex Offender Public Registry Search and National Criminal Records Database Search;
- 6.1.7 Current and prior address check; and
- 6.1.8 Employee photo picture.

6.2 The background check must be performed and completed at least seven (7) days prior to each employee or personnel providing services to County. A copy of the e-verify documentation and background check will be provided to County and County will be advised, if: 1) the background check identifies any criminal history, including but not limited to, any warrants, misdemeanor or felony convictions/indictments/arrest/pending charges, deferred adjudication or community supervision, dismissals, or outstanding traffic tickets (three months

or older); or 2) the background check identifies any discrepancy or inconsistency in the information provided, including with the Social Security number or name provided. Copies of all background check results shall be made available to the County.

6.3 Contractor shall furnish the County with a completed verification certificate, Dallas County Background Check Verification Certificate ("Certificate"), signed by the Contractor containing the employee/personnel's full legal name, full address, date the background check was performed, and date of hire by the Contractor. The Certificate should be sent to the Dallas County Facilities Management Contract Manager or designated representative via E-mail or in a sealed envelope marked Confidential." The certificate must state that a background check has been performed on the employee/personnel and that the findings are satisfactory. If not satisfactory, the Certificate must state any potential problems (e.g., information discrepancies or inconsistencies, gaps in background, criminal felony or misdemeanor convictions/indictments/ arrests/pending charges, outstanding warrants or traffic tickets, wrong or invalid Social Security number, deferred adjudication, community supervision, etc.) discovered during the background check. Upon receipt of a Certificate identifying problems with the background check: 1) the County department requesting the personnel will assess the identified issues, pursuant to County policies and other laws and regulations; and 2) Dallas County Facilities Management Contract Manager will advise the Contractor whether the County department will permit the personnel/employee to perform the service.

#### 6.4 County's Rights to Further Screen Personnel

In evaluating Contractor's employees and personnel providing services under this contract, certain County departments or divisions may require additional background checks, including but not limited to, criminal record checks and fingerprinting. These additional background check requirements do not waive any responsibility or obligation of the Contractor under this Section 6.

6.4.1 Section 344.310 of the Texas Administrative Code requires criminal history searches to be conducted on all personnel who may have direct unsupervised contact with youth in juvenile justice facilities and programs prior to being granted access to juveniles, or facilities. Contractor (including Contractor's employees) or individuals who are not licensed by the Texas Department of State Health Services or other state agency must have a fingerprint-based criminal history search conducted from databases maintained by the State of Texas and the Federal Bureau of Investigations for each individual providing services under the Contractor's contract within two (2) years prior to the date of the most recent contract. Contractor (including Contractor's employees providing services under this contract without a state professional license) are required to submit fingerprint-based criminal history searches through the Texas Department of Public Safety's Fingerprint Applicant Services of Texas (FAST) system. Contractor is responsible for all cost associated with FAST fingerprint based check and criminal record check.

6.4.2 For positions with access (or potential access) to Criminal Justice Information (CJI) in accordance with the Federal Bureau of Investigation CJIS Security Policy 5.3, as amended, and the Texas Department of Public Safety's CJIS Policy; or (ii) as deemed necessary, at its sole discretion.

6.4.3 The Contractor shall inform all employees and personnel providing services of this contract of the additional background check screening requirements. The additional background check (including fingerprinting) will be the responsibility of Contractor.

#### 6.4.4 Waiver

Contractor shall have the personnel including subcontractors execute any necessary consents, releases, and waivers:

- a. To allow County or a third party agency to collect and check the employee/personnel's background and qualifications, as permitted by applicable law, under Section 6.4; and

- b. To release to County (and its employees) the employee/personnel's background history and/or criminal history.

## 6.5 Re-Verification

Contractor must have the background of any employee, personnel including subcontractors providing work or services to the County re-verified:

6.5.1 Twelve months from the date the employee or personnel first started providing services to County, if the employee or personnel provided continuous services to the County; or

6.5.2 If there is a gap, of thirty (30) days or more, in the employee or personnel providing services to County. Upon such re-verification, Contractor shall provide County with another Certificate pursuant to the requirements in Section 6.3.

## 6.6 Warranties

Contractor represents and warrants;

6.6.1 All employees have undergone the Contractor's background check and a County Background Check Verification Certificate has been provided to Dallas County Facilities Management Contract Manager;

6.6.2 Contractor has a background check process/service which includes, at a minimum, the searches/information identified in Section 6.1;

6.6.3 It will not assign or permit any individual to perform services or work for the County unless (i) the individual has passed the background check; or (ii) it has notified the County of potential problems and such problems have been resolved; and

6.6.4 It will ensure that personnel are in compliance with the background check requirements in this Section 6 throughout the term of the Agreement, and any extensions thereto, including the duty to notify in Section 6.5.

## 7. COMPENSATION

The cost/pricing will be in accordance with Exhibits A, C, and D and will go into effect within 10 days of Contract execution, provided the County makes available free community tablets including self-betterment programs and the offering of premium content. This Contract shall be revenue neutral in that all services will be provided to inmates at the costs provided for in Exhibit A and no additional compensation shall transfer between County and Contractor during the term of this Agreement.

## 8. BILLING AND PAYMENT

8.1 Contractor shall pay all of its own out-of-pocket expenses.

8.2 Contractor will not be paid or reimbursed for funds used or spent for any unauthorized or unallowable use under this Agreement or any state and/or federal regulations.

## 9. ASSURANCES

9.1 Contractor agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

9.2 Contractor assures that neither it nor its employees, volunteers, agents or officers shall receive personal benefits, commission, consideration, or gains in performance of the work or services outlined in this Agreement. Furthermore, Contractor agrees to disclose prior to commencement of a particular assignment any material or financial interests that it or a third party may have in the work or services required under this Agreement.

9.3 Contractor assures that funds received pursuant to this Agreement will not be used for lobbying the Texas legislature or any governmental agency in connection with a particular contract.

9.4 Contractor shall pay all subcontractors and consultant in a timely manner. County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors. At termination or expiration of this Agreement, Contractor shall deliver to County an affidavit of all bills paid. Final payment shall be contingent upon receipt of such affidavits as resolution of all accounting for which County is or may be liable under this Agreement.

9.5 Under Section 231.006, Texas Family Code, Contractor certifies to County that the owner(s) of at least a 25% interest in the organization is not delinquent in any child support obligation that renders him/her ineligible to receive payment under the terms of this Agreement. Contractor hereby acknowledges that this Agreement may be terminated and payment may be withheld if this Certification is inaccurate.

9.6 Contractor certifies that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency.

9.7 **Best Efforts to Minimize Costs to County:** Contractor shall use its best efforts to complete each assigned task in as economical a manner as possible and to minimize any charges incurred in connection therewith to the maximum extent possible, consistent with Contractor's other obligations under this Agreement.

9.8 Failure to comply with any of these assurances will put Contractor in default and material breach of this Agreement and may result, at the sole discretion of County, in the disallowance of funds and the withholding of future awards, in addition to any other remedies permitted by law.

9.9 **Governmental Consent:** Contractor warrants that no consent, approval, or withholding of objection is required from any governmental authority with respect to the entering into or the performance of this Agreement.

9.10 **Corporate Good Standing:** Contractor represents and warrants that it: (i) is a corporation duly incorporated, validly existing and in good standing; (ii) has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (iii) is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it except when the failure to be so licensed, authorized or qualified would not have a material adverse effect on Contractor's ability to fulfill its obligations hereunder.

## 10. CONTRACTOR'S PROFESSIONAL WARRANTIES

10.1 **No Actions, Suits, or Proceedings:** Contractor warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a material adverse effect on Contractor's ability to fulfill its obligations under this Agreement. Agreement further warrants that it will notify County immediately if Contractor becomes aware of any action, suit, or proceeding, pending or threatened, which will have a material adverse effect on

Contractor's ability to fulfill the obligations under this Agreement.

10.2 Warranty of Contractor's Capability: Contractor warrants that it is financially capable of fulfilling all requirements of this Agreement and that Contractor is a validly organized entity that has the authority to enter into this Contract. Contractor warrants that it is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this Agreement.

10.3 Professional Quality: Contractor warrants to County that all materials, work, and services will be of professional quality conforming to generally accepted practices, and that all work and services provided under this Agreement will be performed in a manner consistent with that degree of care, qualification and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. If there are no applicable or recognized professional standards in the applicable area or areas of expertise required to perform such work or services, then Contractor will perform all services in a good and professional manner that meets County's goals and objectives as stated herein as well as otherwise adds value to or improves the performance of County's expectations, objectives, and purposes as stated in this Agreement. Any work that is determined by County to be less than professional quality will be corrected without charge. This warranty extends for ninety (90) business days past termination or expiration of this Agreement. This warranty is limited to rework of the unsatisfactory service or product without change to the original specifications and without regard to the amount of the effort expended on the original service or work product.

10.4 Collusion: Contractor expressly warrants and certifies that neither the Contractor nor its employees or associates has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competition in conjunction with the competitive bidding process for this Agreement or this Agreement itself.

10.5 Sectarian Activity: Contractor expressly warrants and certifies that no funds under this Agreement are used either directly or indirectly, in the support of any religious or anti-religious activity, worship, or instruction.

## 11. REPORTING

11.1 Reporting. Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames pursuant to this Agreement. Commission and Call Detail Report/Supporting Documentation for Monthly Activities will be submitted by the Contractor in electronic format on a monthly basis no more than 30 days following the end of the previous month. Penalties for delinquent reporting may include withholding of payments until such time all reports are received, cancellation or termination of this Agreement with no obligation to pay for undocumented work or services, or both.

11.2 Access to Records. Contractor agrees that County, or any of its duly authorized representatives, has the right of timely and reasonable access to any books, documents, papers, reports, or other records of Contractor that are pertinent to the fulfillment of the requirements of this Agreement, in order to make audit, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to Contractor's personnel for the purpose of reviewing, interviewing, evaluating, and monitoring related to such documents. All such items shall be furnished to the requesting party in Dallas County, Texas within a reasonable time.

11.3 Ownership. All information, findings, reports, data, and supporting documents shall at all time remain the sole and exclusive property of the Contractor. The County retains ownership of all recorded communications and inmate call/inmate video visitation data.

11.4 Adequacy of Records. If the Contractor's books, records, and other documents relevant to this Agreement are not sufficient to support and document that allowable work or services were provided to County, Contractor shall reimburse County for the services not so adequately supported and documented. If any audit reveals any

material deviation from this Agreement and specification requirements, any misrepresentation, or any overcharge to the County, the County will be entitled to recover damages, as well as the cost of the audit.

11.5 Audit. The Dallas County Auditor, its assigns, a Federal agency, a State agency, or any other governmental entity approved by County shall have the right to audit all data or documents related to this Agreement. Such data shall be furnished in Dallas County, Texas at a mutually convenient time within a reasonable time. Should County determine it reasonably necessary, Contractor shall make all of its records, books, and documents reasonably related to this Agreement available to authorized County personnel, at reasonable times and within reasonable periods, for inspection or auditing purposes or to substantiate the provisions of services under this Agreement.

11.6 Availability and Retention of Records. All financial books, records, statistical and management books and records pertaining to the work or services delivered and all financial books, records, statistical and management books and records shall be available for examination and audit by County, Federal, State or the County's duly authorized representatives for a period of not less than four (4) years after final payment of the Contractor's fee expenses under the Agreement or until all pending County, State, and Federal audits are completed, whichever is later. All records related to this Agreement must be kept in a single location, either at Contractor's principle place of business or its place of business where the work or services are performed.

## **12. CONFIDENTIALITY AND OPEN RECORDS ACT**

12.1 Contractor shall not disclose privileged or confidential communications or information acquired in the course of the performance of the work or services under this Agreement, unless authorized by law. Contractor agrees to adhere to all confidentiality requirements, as applicable, for the work and services performed for County under this Agreement.

12.2 Public Information Act. The Parties acknowledge and agree that County is subject, as a matter of law, to TEX. GOV'T CODE ANN. § 552 (Vernon 1994), also known as the "Texas Public Information Act" (hereinafter "Public Information Act"). Notwithstanding any other provision, the Parties agree that in the event that any provision of this Agreement, or other documents related to this Agreement, including, but not limited to, any exhibit, attachment, amendment, addendum, or other incorporated document, is in conflict with the Public Information Act, such provision shall be of no force or effect. Furthermore, it is expressly acknowledged and agreed that the County, County Commissioners Court, County Judge, Elected County Officials, County Department Heads and County Employees (hereinafter "County Requestors") may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished to or in the possession or knowledge of County. It is further acknowledged and agreed that the County Requestors have the right and obligation by law to rely on the advice, decisions, and opinions of the Texas Attorney General. Contractor hereby releases the County Requestors from any and all liability or obligation of any type, kind or nature regarding any disclosure of any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished by Contractor or in the possession or knowledge of the County that is determined by County or in reliance on any advice, decision or opinion of the Texas Attorney General to be available to the public or any persons.

12.3 To the extent permitted by the Public Information Act, the Parties agree to keep confidential (and store in a secure area with limited access) and will not copy, publish, sell, exchange, disclose, or provide to others or use any information, documents or data, provided to or disclosed to the other party, or any information related to this Agreement, other than performing each party's obligations under this Agreement. However, this the Parties expressly agree that this Agreement and all its incorporated attachments and exhibits shall be public information.

12.4 Confidential or Proprietary Marking. Any information or documents Contractor uses in the performance of the work or services provided under this Agreement that Contractor considers confidential or proprietary or



that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the non-release of the documents or information under the Texas Public Information Act or otherwise required by law.

### **13. INDEMNIFICATION**

CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND COUNTY, DALLAS COUNTY COMMISSIONERS COURT, ELECTED OFFICIALS, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (HEREINAFTER REFERRED TO AS COUNTY, INDEMNITIES OR OWNER, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS CONTRACT OR CONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

IT IS MUTUALLY UNDERSTOOD AND AGREED THAT THE ASSUMPTION OF LIABILITIES AND INDEMNIFICATION PROVIDED FOR IN THIS AGREEMENT SHALL INDEFINITELY SURVIVE ANY EXPIRATION, COMPLETION OR TERMINATION OF THIS AGREEMENT. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

APPROVAL AND ACCEPTANCE OF CONTRACTOR'S SERVICES BY COUNTY SHALL NOT CONSTITUTE NOR BE DEEMED A RELEASE OF THE RESPONSIBILITY AND LIABILITY OF CONTRACTOR FOR THE ACCURACY AND COMPETENCY OF THEIR SERVICES; NOR SHALL SUCH APPROVAL AND ACCEPTANCE BE DEEMED TO BE AN ASSUMPTION OF SUCH RESPONSIBILITY BY THE COUNTY FOR ANY DEFECT, ERROR OR OMISSION IN THE SERVICES PERFORMED BY CONTRACTOR IN THIS REGARD. CONTRACTOR SHALL DEFEND, HOLD HARMLESS AND INDEMNIFY THE COUNTY FOR DAMAGES RESULTING FROM SUCH DEFECTS, ERRORS OR OMISSIONS.

NO INDEMNIFICATION BY COUNTY: CONTRACTOR ACKNOWLEDGES AND AGREES THAT DALLAS COUNTY DOES NOT HAVE THE ABILITY UNDER ARTICLE XI, SECTION 7 OF THE TEXAS CONSTITUTION TO INDEMNIFY CONTRACTOR OR ANY OTHER THIRD PARTY FOR DAMAGES ARISING UNDER THE CONTRACT.

### **14. INSURANCE**

14.1 Without limiting any of the other obligations or liabilities, Contractor at its own expense shall purchase and maintain the minimum insurance and limits and shall likewise ensure that all of its consultants, subcontractors and their sub-subcontractors (collectively known as "Contractor") purchase and maintain such insurance, as will protect them from claims set forth below which may arise out of or result from the Contractor's operations under this Agreement, whether such operations are carried out by the Contractor, by any consultant, subcontractor, or

by anyone directly or indirectly employed by Contractor or any subcontractor, or by anyone for whose acts any of them may be liable. Contractor is solely responsible for payment of all deductibles and retentions associated with the claims filed. Contractor agrees that the insurance requirements specified herein do not reduce the liability Contractor has assumed in any indemnification or hold harmless section of this Agreement.

14.2 As a condition precedent to commencement of any work or services, within ten (10) calendar days after the Effective Date of the Agreement, Contractor shall furnish, to the Dallas County Purchasing Agent (at the same address given below under this Insurance heading) the following minimum insurance coverage that show County as the certificate holder and covers the period of the Term of this Agreement and any renewals:

14.2.1 Workers' Compensation Insurance: That meets the statutory requirements of the Texas Workers' Compensation Act, or if self-insured, then Contractor must provide to County evidence of a certificate issued by the Workers' Compensation Commission approving such self-insurance. If Contractor has no employee (as defined by the Texas Workers' Compensation Act), Contractor shall provide County with a sworn Affidavit stating that there is no employee in lieu of a Certificate of Insurance. In the event that any work is sublet, Contractor shall require the subcontractors to similarly provide Workers' Compensation Insurance for all of the subcontractors' employees unless such employees are afforded protection by Contractor. Contractor shall bear the burden of all workers compensation coverage for all of its subcontractors and the subcontractors' employees who do not have workers' compensation coverage. Contractor also represents that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with an appropriate insurance carrier, or in the case of self-insurance, with the Texas Workers' Compensation Commission. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

<u>Types of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation – Coverage A	Statutory
Employer's Liability - Coverage B	Policy Limit of not less than \$500,000 per accident for bodily injury or disease 500,000/500,000/500,000

14.2.2 Commercial General Liability Insurance: Contractor shall maintain Commercial General Liability or Broad Form Comprehensive General Liability (including a Broad Form CGL endorsement) Insurance coverage for the following: (a) Premises Operations; (b) Independent Contractors or Contractors; (c) Products and Completed Operations; (d) Personal injury; (e) Contractual Liability; (f) Broad form property damage, to include fire legal liability. Such insurance shall carry in an amount not less than One Million and 00/100 (\$1,000,000.00) for bodily injury (including death), property damage, and blanket contractual coverage per occurrence with a general aggregate of Two Million and 00/100 (\$2,000,000.00) and products and completed operations aggregate of Two Million and 00/100 (\$2,000,000.00). This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the County.

14.2.3 Automobile Liability Insurance: Contractor shall maintain Automobile Liability Insurance with a limit of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) each person and One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) each accident for bodily injury and Five Hundred Thousand and 00/100 Dollars (\$500,000.00) each occurrence for property damage for a combined single limit for bodily injury and property damage liability of not less than Two Million and 00/100 Dollars (\$2,000,000.00). The policy shall include coverage for bodily injury and broad form property damage, with respect to the Contractor's owned, hired and non-owned vehicles assigned or used in performance of the Agreement.

This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the County.

14.2.4 Professional Liability or Errors and Omissions Insurance: Contractor shall maintain professional liability or errors and omission insurance coverage at minimum limits as indicated below, for itself, and its employees and agents to include coverage for acts, errors and/or omissions related to the rendering or failure to render such professional services. When the policy is renewed or replaced, the policy retroactive date must coincide with, or precede commencement of services by Contractor under this Agreement. A claims-made policy that is replaced or not renewed must have an extended reporting period of at least five (5) years. Policy Limits: not less than One Million and No/100 Dollars (\$1,000,000) per occurrence or claim. "Tail" coverage: If any of the required liability insurance is on a "claims made" basis, "tail" coverage will be required at the completion of the contract for a duration of five years. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for five years following Agreement completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of the Agreement. If continuous "claims made" coverage is used, Contractor shall be required to keep coverage in effect for a duration of not less than five years from the end of the Agreement.

14.2.5 Excess/Umbrella Liability coverage in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence must be maintained by Contractor.

14.3 Contractor agrees that, with respect to the above referenced insurance, all insurance contracts/policies will contain the following required provisions:

14.3.1 Except Workers Compensation, name Dallas County and its elected and appointed boards, officers, officials, agents, representatives, directors, employees and volunteers as additional insured(s) (as the interest of each insured may appear) as to all applicable coverage.

14.3.2 Thirty (30) days' notice to the County for cancellation, non-renewal or material change.

14.3.3 Provide for endorsement that the "other insurance" clause shall not apply to Dallas County where County is the additional insured on the policy

14.3.4 Contractor agrees to waive subrogation against Dallas County, its officers and employees for injuries, including death, property damage or any other loss.

14.3.5 Approval and acceptance of Contractor's services by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor for the accuracy and competency of Contractor's Services; nor shall such approval and acceptance be deemed to be an assumption of such responsibility by the County for any defect, error or omission in the services performed by Contractor in this regard.

14.3.6 Contractor shall provide that all provisions of this Agreement concerning liability, duty and standard of care, shall be underwritten by contractual liability coverage sufficient to include obligation within applicable policies.

14.3.7 Contractor agrees that the insurance requirements specified herein do not reduce the liability vendor/contractor has assumed in any indemnification/hold harmless section of the contract.

Vendors and/or their freight contractors must be prepared to show coverage verification prior to entering upon Dallas County premises.

Failure to comply with lawful requirements or adequate liability requirements may result in delay of payments, subject to the orders of the Commissioners Court, not to exceed a period of up to two years from the termination of this Agreement, or cancellation of this Agreement or both (Court Order 2003-1792, September 30, 2003).

14.4 **Insurance Certificates:** The certificates of insurance shall list County as the certificate holder. Any and all copies of Certificates of Insurance shall reference any applicable (Request for Proposal number, Commissioners Court Order Number, or contract number for which the insurance is being supplied. All insurance policies or duly executed certificates for the same required to be carried by Contractor under this Agreement, together with satisfactory evidence of the payment of the premium thereof, shall be delivered to the: **Dallas County Purchasing Agent located at 900 Jackson Street, 6<sup>th</sup> Floor, Suite 680, Dallas, Texas 75202** within ten (10) calendar days of execution or renewal of this Agreement and upon renewals or material changes of such policies, but not less than fifteen (15) calendar days prior to the expiration of the term of such coverage, or such non-delivery shall constitute a default of this Agreement subject to immediate termination at County's sole discretion.

14.5 All insurance required to be carried by Contractor or subcontractors under this Agreement shall be acceptable to the County in form and content, in its sole discretion. All policies shall be issued by an insurance company acceptable and satisfactory to County and authorized to do business in the State of Texas. Acceptance of or the verification of insurance by County shall not relieve or decrease the liability of Contractor.

14.6 Minimum insurance is a condition precedent to any work or services performed under this Agreement and for the entire Term of this Agreement, including any renewal or extension. In addition to any and all other remedies County may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, or such insurance lapses, is reduced below minimum requirements or is prematurely terminated for any reason, County shall have the right to:

14.6.1 Order Contractor to stop work hereunder, which shall not constitute a Suspension of Work and Services;

14.6.2 Withhold any payment(s) that become due to Contractor until Contractor demonstrates compliance with the requirements and assurance and proof acceptable to County that there is no liability to County for failure to provide such required insurance;

14.6.3 At its sole discretion, declare a material breach of this Agreement, which, at County's discretion, may result in:

14.6.3.1 Termination of this Agreement

14.6.3.2 Demand on any bond, as applicable;

14.6.3.3 The right of the County to complete this Agreement by contracting with the "next low proposal." Contractor will be fully liable for the difference between the original Agreement price and the actual price paid, which amount is payable to County by Contractor on demand; or

14.6.3.4 Obtain such insurance and deduct from the payments to Contractor the expense of obtaining such insurance and the cost of insurance premiums. However, neither Contractor nor any third party shall have any recourse against the County for payment of any premiums or assessment for any deductibles, or payment of any amount that would have been payable by any such insurance, as all such liability, cost, expense, premiums and deductibles are the sole responsibility and risk of Contractor; and

14.6.3.5 Obtain such insurance and deduct from the payments to Contractor the expense of

obtaining such insurance and the cost of insurance premiums. However, neither Contractor nor any third party shall have any recourse against County for payment of any premiums or assessment for any deductibles, or payment of any amount that would have been payable by any such insurance, as all such liability, cost, expense, premiums and deductibles are the sole responsibility and risk of the Contractor; and

14.6.3.6 Any combination of the above

14.6.4 Any combination of the above in Section 14.6.

14.7 Contractor shall promptly advise County in writing of any claim or demand, against County or Contractor, known to Contractor related to or arising out of Contractor's activities under this Agreement.

14.8 Approval, disapproval or failure to act by the County regarding any insurance supplied by Contractor shall not relieve Contractor of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Contractor from liability.

14.9 Acceptance of the work or services, or failure to act by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, associates, agents or subcontractors for the accuracy and competency of their work or services; nor shall such acceptance be deemed an assumption of responsibility or liability by County for any defect in the work or services performed by Contractor, its employees, subcontractors, and agents.

14.10 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work or services covered under this Agreement.

14.11 Survival: The provisions of this Section shall survive completion, suspension, termination or expiration of this Agreement, or any determination that this Agreement or any portion hereof is void, voidable, invalid or unenforceable.

14.12 Insurance Lapse: Pursuant to Section 94.73 of the Dallas County Code, in the event Contractor fails to maintain insurance as required by this Agreement, Contractor shall immediately cure such lapse in insurance coverage at Contractor's sole expense, and pay County in full for all costs and expenses incurred by County under this Agreement as a result of such failure to maintain insurance by Contractor, including costs and reasonable attorney's fees relating to County's attempt to cure such lapse in insurance coverage. Such costs and attorney's fees, not to exceed One Thousand Five Hundred Dollars and 00/100 dollars (\$1,500.00), shall be automatically deducted from monies or payments owed to Contractor by County. Moreover, the County shall retain five percent (5%) of the value of the Agreement that shall be placed into an account from monies or payments owed to Contractor by County to cover County's potential exposure to liability during the period of such lapse. The retainage shall be held by County until six (6) months after the Term of the Agreement has ended or has otherwise been terminated, cancelled, or expired and shall be released if no claims are received or lawsuits filed against County for any matter that should have been covered by the required insurance.

14.11.1 **CONTRACTOR FURTHER AGREES TO INDEMNIFY COUNTY FOR ANY PENALTIES, FINES, JURY AWARDS, COURT COSTS, LITIGATION EXPENSES, AND ATTORNEYS' FEES INCURRED BY COUNTY DUE TO CONTRACTOR'S FAILURE TO MAINTAIN THE REQUIRED INSURANCE AT ALL TIMES DURING THE TERM OF THE AGREEMENT.** Contractor after proper notice, at its own expense with legal counsel of County's choice, will defend and hold County harmless in any claim or action against County that occurred as a direct or indirect result of Contractor's failure to maintain insurance at all times during the Term of the Agreement. Without waiving any rights under Sovereign Immunity, the County shall cooperate with and may monitor Contractor in the defense of any claim, action, or proceeding and will, if appropriate, make employees

available as Contractor may reasonably request with regard to such defense, subject to the reimbursement by Contractor of all costs and expenses occasioned by the County's cooperation in such defense. Contractor agrees not to settle any such claim without the County's consent, which consent will not be unreasonably withheld or delayed.

## 15. TERMINATION

The Parties may terminate this Agreement for the following:

15.1 **Termination for Insolvency:** County shall have the option to terminate this Agreement in its entirety if Contractor: (i) becomes insolvent or is unable to meet its debts as they mature; (ii) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors; (iii) files an answer or other pleading admitting, or fails to deny or contest, the material allegations of an involuntary petition filed against it pursuant to any applicable statute relating to bankruptcy or reorganization; (iv) is adjudicated bankrupt or shall make an assignment for the benefit of its creditors generally; (v) applies for, consents to or acquiesces in the appointment of any receiver or trustee for all or a substantial part of its property any such receiver or trustee appointed is not discharged within thirty (30) days after date of such appointment.

15.3 **Termination for Default or Non-Performance:** County shall have the option to terminate this Agreement, for cause: (i) for a material breach or non-performance of this Agreement by Contractor that is not cured by Contractor within Thirty (30) days of the date on which County provides written notice of breach; (ii) for a material breach of this Agreement by Contractor that is not reasonably subject to cure within Thirty (30) days after its occurrence; or (iii) if it is determined by County, that there exists a plurality of non-material breaches by Contractor that have a material adverse impact on the work or services provided under this Agreement. In the event that County terminates this Agreement in whole or in part as provided herein, the County may procure, upon such terms and in such manner as County may deem appropriate, goods and services similar to those so terminated. Contractor shall be liable to County for any and all excess costs incurred by County, as determined by County, for such similar goods and services. If a failure described in this Section 15.3 is not cured to the County's satisfaction within Thirty (30) days from the time of receipt of such notice as described in this Section 15.3, the County shall have the right to terminate immediately without the requirement of further notice. If, after notice of termination under the provisions of this clause, it is determined for any reason that the Contractor was not in default under this provisions of this clause, the County has the option to make its notice of termination pursuant to the Termination for Convenience clause in Section 15.1 above and the rights and obligations of the Parties would be in accordance with that provision.

15.3.1 In the event this Agreement is prematurely terminated due to breach, non-performance or withdrawal by the Contractor, County reserves the right to seek monetary restitution (to include but not limited to; withholding of monies owed) from the Contractor to cover costs for interim services or to cover the difference of a higher cost (difference between termination Contractor's rate and new company's rate) beginning from the date of Contractor's termination through the Agreement expiration date. In the event civil suit is filed to enforce this provision, County will seek its attorney's fees and cost of suit from the Contractor. In addition and as authorized by Commissioners Court, vendors terminated for non-performance will be disbarred from award consideration on future County solicitation for a minimum period of thirteen (13) months.

15.3.2 **Notice and Right to Cure.** If the Contractor breaches the Agreement, and the County in its sole discretion determines that the breach is curable, then the County will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the County determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.



**from liability that the County has by operation of law. Nothing in this Agreement is intended to benefit any third party beneficiary.**

## **19. AMENDMENTS**

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the Parties hereto and approved by Dallas County Commissioners Court.

## **20. GOVERNING LAW AND VENUE**

The validity and interpretation of this Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable and enforceable in Dallas County, Texas where the principal office of County is located and the federal and state courts physically located in Dallas County shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the Parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

## **21. COMPLIANCE WITH LAWS**

In providing work and services required by this Agreement, Contractor must observe and comply with all applicable federal, State, and local statutes, ordinances, rules, regulations, licenses, legal certifications, or inspections required for the work or services, facilities, equipment, or materials, and all applicable federal, state, and local statutes, ordinances, rules, and regulations.

## **22. CHANGE IN THE LAW**

Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or state law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

## **23. PERMITS AND LICENSES**

Contractor shall secure and pay for all fees for all necessary statutory and regulatory authorizations, permits, approvals, certifications, licenses, and insurance required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations that are required in order to perform the work or services stated in Agreement. Contractor shall maintain these licenses and permits in effect for the Term of this Agreement and any renewals. Contractor will notify County immediately of loss or suspension of any such licenses and permits. Failure to maintain a required license or permit may result in immediate termination of this Agreement.

## **24. WAIVER**

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

## **25. DEFAULT, CUMULATIVE RIGHTS, AND MITIGATION**

It is not a waiver of default if the non-defaulting Party fails to immediately declare a default or delays in taking



any action.

The rights and remedies provided by this Agreement are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy at law or in equity. These rights and remedies are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. Parties have a duty to mitigate damages.

## **26. INDEPENDENT CONTRACTOR**

Contractor, including its agents or employees, agree Contractor is an independent contractor and not an agent, servant, joint enterpriser, joint venture or employee of the County, and is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work and services covered under this Agreement.

## **27. SUBCONTRACTING**

Contractor may not enter into agreements with subcontractors or consultants for delivery of the designated work and services outlined in this Agreement without prior written consent of the County, which consent shall not be unreasonably withheld. The costs of all subcontracted services are included in the fees paid herein. Subcontracts or Consulting agreements, if any, entered into by the Contractor will be in writing and subject to all requirements herein. Contractor agrees that Contractor is solely responsible to County for the performance of this Agreement. Contractor shall pay all subcontractors and consultants in a timely manner. County shall have the right to prohibit Contractor from using any subcontractor or consultant.

## **28. ASSIGNMENT**

Contractor assures that it will not transfer or assign its interest in this Agreement without prior written consent of County. Contractor understands that in the event that all or substantially all of Contractor's assets are acquired by another entity, Contractor is still obligated to fulfill the terms and conditions of this Agreement. County approval to transfer or assign Contractor's interest in this Agreement to an entity that acquires all or substantially all of Contractor's assets is subject to formal approval by the Dallas County Commissioners Court.

## **29. THIRD PARTIES**

The obligations of each Party to this Agreement shall inure solely to the benefit of the other Party, and no other person or entity shall be a third party beneficiary of this Agreement or have any right to enforce any obligation created or established under this Agreement.

## **30. CONFLICT OF INTEREST**

No County official or employee shall have any financial interest, direct or indirect, in any contract with the County or be financially interested, directly or indirectly, in the sale to the County of any land, materials, supplies or services, except on behalf of the County as an official or employee. Any violation of this Section, with knowledge, expresses or implied, of the person or corporation contracting with the County shall render this Agreement involved voidable by the Commissioners Court of Dallas County. It is the responsibility of Contractor during all phases of this Agreement to notify the County in writing of any potential conflict of interest. Contractor covenants that neither it nor any member of its corporation presently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that in the performance of this Agreement no person having such interest shall be employed or appointed by Contractor.

### 31. ANTI-KICKBACK

Contractor hereby certifies that it will comply with all applicable "Anti-Kickback" Laws (including (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3), and shall insert appropriate provisions in all subcontracts covering work under this Agreement.

### 32. PROHIBITION ON POLITICAL ACTIVITY

None of the funds provided under this Agreement shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent the Parties' compliance with the Texas Public Information Act. No funds provided under this Agreement may be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government, the State of Texas, or the government of the United States. None of the funds provided under this Agreement shall be paid to any official or employee who violates any of the provisions of this Section.

### 33. FORCE MAJEURE

Neither Party hereto shall be held responsible for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence"). Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

### 34. FAIR LABOR STANDARDS

**CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE PROVISIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT AND SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM ANY AND ALL LIABILITY, INCLUDING, BUT NOT LIMITED TO, WAGES, OVERTIME PAY, LIQUIDATED DAMAGES, PENALTIES, COURT COSTS, AND ATTORNEYS' FEES ARISING UNDER ANY WAGE AND HOUR LAW, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL FAIR LABOR STANDARDS ACT, FOR WORK PERFORMED BY CONTRACTOR'S EMPLOYEES FOR WHICH THE COUNTY MAY BE FOUND JOINTLY OR SOLELY LIABLE.**

### 35. TITLE VI ASSURANCES AND COMPLIANCE

Contractor agrees to comply with its Title VI assurances, which is attached as Exhibit B to this Agreement.

### 36. TAXES

The County, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Texas Tax Code § 151.309, and shall therefore not be liable or responsible to Contractor for the payment of such taxes under this Agreement. The fees paid to Contractor pursuant to this Agreement are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable Effective Date of this Agreement and based upon or measured by Contractor's cost in acquiring or providing products or services and related materials and supplies furnished or used by Contractor in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor. Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration pay to persons employed by Contractor for work performed under the terms of this Agreement **AND AGREES TO INDEMNIFY AND SAVE HARMLESS**

**THE COUNTY FROM ANY SUCH CONTRIBUTION OR TAXES OR LIABILITY.**

**37. AUTHORITY TO TRANSACT BUSINESS IN THE STATE OF TEXAS**

Contractor agrees, represents, and warrants it currently has the legal authority to transact business in the State of Texas as a domestic corporation. Contractor shall maintain the legal authority to transact business in the State of Texas for the Term of this Agreement. Contractor shall provide proof of Contractor's current registration status from the Texas Secretary of State and the Comptroller for the State of Texas.

**38. FISCAL FUNDING/NON-APPROPRIATION CLAUSE**

Notwithstanding any provisions contained herein, the obligations of the County under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein for the Term of the Agreement and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding or non-appropriation for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, non-appropriation or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to Contractor at the earliest possible time pursuant to 15 above.

**39. FEDERAL FUNDED PROJECT**

If this Agreement is funded in part by either the State of Texas or the federal government, Contractor agrees to timely comply, without additional cost or expense to County, unless otherwise specified herein, with any applicable statute, rule, regulation, grant, contract provision or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the work or services rendered under the terms of this Agreement.

**40. PREVENTION OF FRAUD AND ABUSE**

Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or program abuse involving Contractor's employees or agents shall be reported immediately to the County by Contractor. Moreover, Contractor warrants to be not listed on a local, county, state or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Contractor and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Agreement does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Contractor shall, upon notice by County, refund expenditures of the Contractor that are contrary to this Agreement and deemed inappropriate by the County.

#### **41. OWNERSHIP OF DOCUMENTS**

County understands and acknowledges that Contractor is required by Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. Section 222, to maintain the confidentiality of "Customer Proprietary Network Information", or "CPNI", which protects from disclosure consumers' sensitive personal information (including phone numbers called by a consumer; the frequency, duration, and timing of such calls; and any services purchased by the consumer). County understands and acknowledges that such Confidential Information may be exempt from public disclosure and will not disclose such Confidential Information to any third party without Contractor's prior written consent. However, Contractor understands that County must comply with the requirements of the Texas Public Information Act and, accordingly, County will forward any requests for CPNI to the Texas Attorney General's Office with a request to except such information from public disclosure; as part of that process, Contractor will have an opportunity to request that the Texas Attorney General's Office agree to an exception from public disclosure of CPNI. The above notwithstanding, the County retains ownership of all recorded communications and inmate call/inmate video visitation data. Further, the County may access call detail records ("CDRs") at any time during the term of the Agreement and for a reasonable period of time thereafter, subject to any legal restrictions, and will retain ownership of any CDRs obtained."

#### **42. TRANSITION SERVICES REQUIRED OF CONTRACTOR**

Upon notice of termination or expiration of this Agreement, the County shall immediately have the right to audit any and all records of Contractor relating to this Agreement. Moreover, upon the termination or expiration date of this Agreement, Contractor agrees to transition the services provided herein in a cooperative manner.

#### **43. USE OF AGREEMENT BY OTHER POLITICAL JURISDICTIONS**

In accordance with Article 791.025 of the Texas Government Code, governmental agencies (local, state) may request to utilize the County's contract by executing an interlocal agreement with County to do so. Contractor agrees this Agreement may be extended, with the authorization of the Contractor, to others. If any other jurisdiction or political jurisdictions is authorized, their ordering of services or goods shall be at the prices, terms and conditions as this Agreement. The Contractor must deal directly with that jurisdiction or political subdivision concerning the placement of orders, services, issuance of purchase orders, contractual disputes, invoicing and payment. The County acts only as the "Contracting Agent" for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on this Agreement. Each participating jurisdiction and political subdivision has the option of executing a separate contract with the Contractor. Contracts entered into with them may contain general terms and conditions unique to those jurisdictions and political subdivisions covering minority participation, non-discrimination, etc. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that jurisdiction.

**THE COUNTY IS INDEMNIFIED AGAINST ANY AND ALL CLAIMS THAT MAY ARISE FROM INTERLOCAL AGREEMENTS ENTERED INTO BY THE CONTRACTOR AND BY ANOTHER JURISDICTION AS A RESULT OF ANY AWARD EXTENDED TO THAT JURISDICTION OR POLITICAL SUBDIVISION BY CONTRACTOR.**

#### **44. NO BOYCOTT OF ISRAEL**

Pursuant to Section 2270.002 of the Texas Government Code, Contractor verifies that it:

- a) Does not boycott Israel; and
- b) Will not boycott Israel during the term of this Agreement.

#### **45. FBI CJIS SECURITY ADDENDUM**

County shall require every Contractor agent, employee, contractor, subcontractor, or team member who will have access or potentially have access to Criminal Justice Information (CJI) pursuant to this Agreement to execute the CJIS Security Addendum in accordance with the Federal Bureau of Investigation CJIS Policy Version 5.8, as amended. The CJIS Security Addendum is attached as Exhibit F to this Agreement. The CJIS Security Addendum shall be executed by all Contractor agents, employees, contractors, or subcontractors performing services, supervision, work, labor, or other related activities pursuant to this Agreement before obtaining access or potential access to systems processing, storing or transmitting CJI. Furthermore, County in its sole discretion shall make a determination based upon Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) peace officer criminal history screening rules (Title 37, Texas Administrative Code, Chapter 217) to determine eligibility for systems access for all Contractor agents, employees, contractors, or subcontractors related to this Agreement. This shall include criminal background checks and fingerprint identification.

The execution of the Addendum notwithstanding, County agrees and acknowledges that Contractor does not access any CHRI Data maintained by County. Should the relationship between County and Contractor change in a way that requires or allows Contractor to access CHRI Data maintained by County, the parties will execute an amendment to the Agreement that removes this and the foregoing sentence.

#### **46. COUNTERPARTS, NUMBER/GENDER AND HEADINGS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

#### **47. VERBAL AGREEMENT**

No verbal agreement or conversation with any officer, agent or employee of County either before, during or after the execution of this Agreement, shall affect or modify any of the terms of obligations herein contained, nor shall such verbal agreement or conversation entitle Contractor to any additional payment whatsoever under the terms of this Agreement. All changes to this shall be in writing and the form of a change order in supplemental amendment to the agreement, approved by the Dallas County Commissioners Court.

#### **48. ENTIRE AGREEMENT**

This Agreement supersedes all prior agreements, written or oral, between Contractor and County and will constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions and Exhibits will be binding upon the Parties and may not be waived, modified, amended, or altered except by a writing signed by both Contractor and County with formal approval by the Dallas County Commissioners Court.

#### **49. BINDING EFFECT**

This Agreement and the respective rights and obligations of the Parties hereto shall inure to the benefit and be binding upon the successors and assigns of the Parties hereto, as well as the Parties themselves.

#### **50. SIGNATORY WARRANTY**

The person or persons signing and executing this Agreement on behalf of Contractor, or representing themselves as signing and executing this Agreement on behalf of Contractor, do hereby warrant and guarantee that he, she,

or they have been duly authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all terms, conditions and provisions herein set forth.

### **51. ACCEPTANCES**

By their signatures below, the duly authorized representatives of County and Contractor accept the terms of this Agreement in full.

**(Signatures begin on next page)**

EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2020.

DALLAS COUNTY

Securus Technologies LLC

By: \_\_\_\_\_  
Clay Lewis Jenkins  
Dallas County Judge

By: David Abel  
David Abel  
President and Chief Executive Officer

Recommended:

By: \_\_\_\_\_  
Marian Brown  
Dallas County Sheriff



APPROVED AS TO FORM\*:

JOHN CREUZOT  
DISTRICT ATTORNEY

By: \_\_\_\_\_  
Chong Choe  
Assistant District Attorney

\* BY LAW, THE DALLAS COUNTY DISTRICT ATTORNEY'S OFFICE MAY ONLY ADVISE OR APPROVE CONTRACTS OR LEGAL DOCUMENTS ON BEHALF OF ITS CLIENTS. IT MAY NOT ADVISE OR APPROVE A CONTRACT OR LEGAL DOCUMENT ON BEHALF OF OTHER PARTIES. OUR REVIEW OF THIS DOCUMENT WAS CONDUCTED SOLELY FROM THE LEGAL PERSPECTIVE OF OUR CLIENT. OUR APPROVAL OF THIS DOCUMENT WAS OFFERED SOLELY FOR THE BENEFIT OF OUR CLIENT. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL, AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE ATTORNEY(S).

**EXHIBIT A**  
**Cost and Other Fees Price Schedule**



## **BAFO OFFER**

Dallas County Request for Proposal Inmate Phone Services

### Attachment No.5 Price Proposal

OPTION 1 - No Funding Fees

**RATES AND COMMISSIONS**

Please complete the following chart for the charges you propose for each rate and call type. Note: If more than one rate and commission structure is offered, please complete a chart for each optional package using the format below. (include voicemail inbound and outbound)

**Collect Phone Calls**

Call Type	1 <sup>st</sup> Min Rate	Add'l Min Rate	15 Min. Charge
Local	0.0119	0.0119	0.178
IntraLATA	0.0119	0.0119	0.178
InterLATA	0.0119	0.0119	0.178
Interstate	0.0119	0.0119	0.178
International	0.08	0.08	1.20

**PREPAID CALLS**

Call Type	1 <sup>st</sup> Min Rate	Add'l Min Rate	15 Min. Charge
Local	0.0119	0.0119	0.178
IntraLATA	0.0119	0.0119	0.178
InterLATA	0.0119	0.0119	0.178
Interstate	0.0119	0.0119	0.178
International	0.08	0.08	1.20

**DEBIT CALLS**

Call Type	1 <sup>st</sup> Min Rate	Add'l Min Rate	15 Min. Charge
Local	0.0119	0.0119	0.178
IntraLATA	0.0119	0.0119	0.178
InterLATA	0.0119	0.0119	0.178
Interstate	0.0119	0.0119	0.178
International	0.08	0.08	1.20

Please note that ALL Securus offers include:

1. Unlimited FREE calls in Booking/Intake area
2. Unlimited FREE calls to numbers designated by the County as being necessary for inmate well-being, such as public defenders and bail bondsmen.
3. 20,000 FREE prepaid calling cards every year for distribution by county staff to indigent inmates or as directed by the Jail/County.

**Video Visitation Calls**

Call Type	1 <sup>st</sup> Min Rate	Add'l Min Rate	15 Min. Charge
Local	0.13	0.13	1.95*
IntraLATA	0.13	0.13	1.95
InterLATA	0.13	0.13	1.95
Interstate	0.13	0.13	1.95
International	0.13	0.13	1.95

\*We recommend video visits for preset periods of time for improved inmate experience.

**TDD/TTY/VRS (Video Relay Service-American Sign Language)**

Call Type	1 <sup>st</sup> Min Rate	Add'l Min Rate	15 Min. Charge
Local	0	0	0
IntraLATA	0	0	0
InterLATA	0	0	0
Interstate	0	0	0
International	0	0	0

**Other Technology (i.e. tablets and email)**

Call Type	Inmate Rental for Device	Cost to Inmate per application	Per use cost (access/retrieval)
Tablet <small>Free Community Tablets for all inmates</small>	\$5.00/month for personal tablet	Free Apps on All Tablets Premium Content**	0
Email	0	1 Stamp	0
Other technology not specified above			
Digital Mail	0	0	0
Inbound Voicemail	0	50 per message	0

**BAFO OFFER  
COST OF STAMP  
REDUCED  
TO .24.**

\* A stamp currently costs \$0.25.

Please note that sales tax, universal service fund fees, telecommunications Relay Services (TRS) fees may also apply, based on local, state and federal taxing authority. But no part of these funds go to Securus.

Securus charges a returned check fee of \$25.

**\*\*Premium Tablet Content**

Games ..... 1.99 -12.99  
 Movies/TV..... 99 - 9.99  
 Music..... 1.06 - 1.99

**\*\*\*Free Tablet Content**

eBooks  
 Educational content  
 JobView  
 Law Library  
 FM Receiver  
 Mental Health and Addiction resources  
 Forms and Grievances

## EXHIBIT B

### TITLE VI ASSURANCES/COMPLIANCE

#### A. Assurances

During the performance of this Agreement, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**B. Nondiscrimination Authorities**

During the performance of this Agreement, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

**Pertinent Nondiscrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq*).

### C. Representations/Warranties

The Contractor also makes the following representations and warranties to Dallas County:

1. It has taken the steps necessary to effectuate Title VI requirements.
2. Disadvantaged business enterprises are afforded equal opportunity to submit bids/proposals as sub-contractors or sub-consultants and will not be discriminated against on the grounds of race, color, sex, age, disability, religion, veteran status, or national origin in consideration of a selection or award.
3. Neither contractor or any subcontractors or sub-recipients that will participate in activities to be funded as a result of this contract/bid/solicitation, are listed on the

debarred list due to violations of Title VI or VII of the Civil Rights Act of 1964, nor are any proposed parties to this contract, or any subcontract resulting therefrom, aware of any pending action which might result in such debarment or disqualification.

**D. Title VI Complaints**

Any person, contractor, or subcontractor who believes that they have been subjected to an unlawful discriminatory practice under Title VI will be notified of their right to file a formal complaint within one hundred eighty (180) days following the alleged discriminatory action or the date the person(s) became aware of the alleged act(s) of discrimination. Any such complaint must be filed in writing or in person with the Dallas County Title VI Coordinator:

Dallas County Human Resources  
c/o: Dallas County Director of Human Resources and Title VI Coordinator  
1201 Elm Street, 23<sup>rd</sup> Floor, Suite 2300  
Dallas, TX 75270  
(214) 653-7638 (phone)  
(214) 653-7608 (fax)

A copy of Dallas County Title VI Non-Discrimination Plan and Documents, and complaint forms, may be obtained at [http://www.dallascounty.org/department/HR/title\\_vi.html](http://www.dallascounty.org/department/HR/title_vi.html) or at the address above.

A complainant may also contact the Federal Coordination and Compliance Office, Civil Rights Division at the Title VI Hotline: 888-TITLE-06 (888-848-5306) or send a letter to:  
U.S. Department of Justice Civil Rights  
Division Federal Coordination and Compliance Section,  
NWB 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530.

More information on Title VI is available from the Justice Department online at [www.justice.gov](http://www.justice.gov).

Contractor shall comply with all reasonable requests made in the course of an investigation of Title VI and these assurances by Dallas County, the Texas Department of Transportation, the US Department of Transportation, the US Department of Justice, or any other federal or state agency. Failure to comply with such reasonable requests will be deemed a breach of this contract/bid/solicitation.

**E. Enforcement**

The contractor affirmatively acknowledges that it will be subject to Title VI, and implementing regulations, and any enforcement measures therein. In addition to any enforcement action by Dallas County, the contractor acknowledges that the United States and the State of Texas has a right to seek judicial enforcement with regard to any matter arising under Title VI, including

the assurances herein.

Contractor's Full Name: Securus Technologies LLC

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01/22/2020

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Signature, Authorized Representative of Contractor

Date

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President and Chief Executive Officer

Title

**EXHIBIT C**

**RFP No. 2019-064-6828**



**EXHIBIT D**

**Securus Technologies LLC's Response to the RFP**

**EXHIBIT E**

**Securus Technologies LLC's BAFO to the RFP**

## **EXHIBIT F**

### **FBI CJIS Security Addendum**

#### **FEDERAL BUREAU OF INVESTIGATION CRIMINAL JUSTICE INFORMATION SERVICES SECURITY ADDENDUM**

##### **Legal Authority for and Purpose and Genesis of the Security Addendum**

Traditionally, law enforcement and other criminal justice agencies have been responsible for the confidentiality of their information. Accordingly, until mid-1999, the Code of Federal Regulations Title 28, Part 20, subpart C, and the National Crime Information Center (NCIC) policy paper approved December 6, 1982, required that the management and exchange of criminal justice information be performed by a criminal justice agency or, in certain circumstances, by a noncriminal justice agency under the management control of a criminal justice agency.

In light of the increasing desire of governmental agencies to contract with private entities to perform administration of criminal justice functions, the FBI sought and obtained approval from the United States Department of Justice (DOJ) to permit such privatization of traditional law enforcement functions under certain controlled circumstances. In the Federal Register of May 10, 1999, the FBI published a Notice of Proposed Rulemaking, announcing as follows:

1. Access to CHRI [Criminal History Record Information] and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization). Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest such disclosure be viewed as unauthorized. In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security

addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management Control Agreements between criminal justice agencies and noncriminal justice governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to properly perform services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

Consistent with such intent, Title 28 of the Code of Federal Regulations (C.F.R.) was amended to read:

§ 20.33 Dissemination of criminal history record information.

- a) Criminal history record information contained in the Interstate Identification Index (III) System and the Fingerprint Identification Records System (FIRS) may be made available:
  - 1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies.
  - 2) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and
  - 3) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power

and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

This Security Addendum, appended to and incorporated by reference in a government-private sector contract entered into for such purpose, is intended to insure that the benefits of privatization are not attained with any accompanying degradation in the security of the national system of criminal records accessed by the contracting private party. This Security Addendum addresses both concerns for personal integrity and electronic security which have been addressed in previously executed user agreements and management control agreements.

A government agency may privatize functions traditionally performed by criminal justice agencies (or noncriminal justice agencies acting under a management control agreement), subject to the terms of this Security Addendum. If privatized, access by a private contractor's personnel to NCIC data and other CJIS information is restricted to only that necessary to perform the privatized tasks consistent with the government agency's function and the focus of the contract. If privatized the contractor may not access, modify, use or disseminate such data in any manner not expressly authorized by the government agency in consultation with the FBI.

**FEDERAL BUREAU OF INVESTIGATION  
CRIMINAL JUSTICE INFORMATION SERVICES  
SECURITY ADDENDUM**

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CJIS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information."

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

**1.00 Definitions**

**1.01 Contracting Government Agency (CGA)** - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.

**1.02 Contractor** - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

**2.00 Responsibilities of the Contracting Government Agency.**

**2.01** The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CJIS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).

**3.00 Responsibilities of the Contractor.**

**3.01** The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

**4.00 Security Violations.**

4.01 The CGA must report security violations to the CJIS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

4.02 Security violations can justify termination of the appended agreement.

4.03 Upon notification, the FBI reserves the right to:

- a. Investigate or decline to investigate any report of unauthorized use;
- b. Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CGA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5.00 Audit

5.01 The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6.00 Scope and Authority

6.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.

6.02 The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.

6.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CJIS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

6.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

6.05 All notices and correspondence shall be forwarded by First Class mail to:

Information Security Officer  
Criminal Justice Information Services Division, FBI  
1000 Custer Hollow Road  
Clarksburg, West Virginia 26306

**FEDERAL BUREAU OF INVESTIGATION  
CRIMINAL JUSTICE INFORMATION SERVICES  
SECURITY ADDENDUM**

**CERTIFICATION**

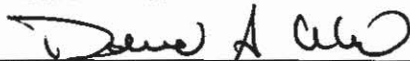
I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

\_\_\_\_\_  
Printed Name/Signature of Contractor Employee

\_\_\_\_\_  
Date

Dave A. Abel



01/22/2020

\_\_\_\_\_  
Printed Name/Signature of Contractor Representative

\_\_\_\_\_  
Date

Securus Technologies LLC  
President and Chief Executive Officer

\_\_\_\_\_  
Organization and Title of Contractor Representative



**Texas Signatory Page**

The undersigned parties agree that the *Security Addendum* is now a part of the contract between the entities. The parties agree to abide by all requirements of the *Security Addendum* and the *CJIS Security Policy*, and it shall remain in force for the term of the contract. Any violation of this addendum constitutes a breach of the contract.

To the extent there is a conflict between a confidentiality clause in the underlying contract and the *Security Addendum* and/or the *CJIS Security Policy*, the *Security Addendum* and the *CJIS Security Policy* shall govern any information covered by the *Security Addendum* and/or the *CJIS Security Policy*.

(To be signed and dated by the vendor(s) and law enforcement agency representative(s) who signed the original contract, or at least who have authority to bind each entity – to include subcontractor services; third party service provider if applicable)

\_\_\_\_\_  
Printed Name of Agency Representative

\_\_\_\_\_  
Signature of Agency Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Agency Name and ORI

\_\_\_\_\_  
Date

Dave A. Abel

\_\_\_\_\_  
Printed Name of Vendor (Contractor) Representative

  
\_\_\_\_\_  
Signature of Vendor (Contractor) Representative

\_\_\_\_\_  
President and Chief Executive Officer  
Title

\_\_\_\_\_  
Securus Technologies LLC  
Vendor Organization Name

\_\_\_\_\_  
01/22/2020  
Date

\_\_\_\_\_  
Printed Name of Vendor (Sub-Contractor) Representative

\_\_\_\_\_  
Signature of Vendor (Sub-Contractor) Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Vendor Organization Name

\_\_\_\_\_  
Date