

## SOLICITATION, OFFER AND AWARD

1. CONTRACT NO. 696-IT-21-23-C087	2. SOLICITATION NO. 696-IT-21-O013	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFO) <input type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED January 12, 2021
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### SOLICITATION

5. Sealed offers will be received by the Department until <b>3:00 pm local time on February 11, 2021</b> , and submitted to:  Texas Department of Criminal Justice Contracts and Procurement Department Information Technology, Construction and Utilities Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340 <b>Attention: 696-IT-21-O013</b>	6. <b>FOR INFORMATION CONTACT:</b>  Jason Andrews CTCD, CTCM Contract Specialist IV  PHONE: (936) 437-7116 FAX: (325) 223-0310 EMAIL: jason.andrews@tdcj.texas.gov
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### OFFER (Must be fully completed by Offeror)

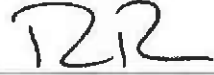
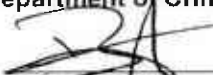
7. DISCOUNT FOR PROMPT PAYMENT →	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
8. ACKNOWLEDGEMENT OF AMENDMENTS: <i>(The Offeror acknowledges receipt of amendments to the SOLICITATION for Offerors and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	A-001	2/3/2021	A-002	2/4/2021
	A-003	2/12/2021	A-004	2/22/2021
9. NAME AND ADDRESS OF OFFEROR: →	Securus Technologies, LLC 4000 International Parkway Carrollton, TX 75007		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print) Dave Abel President and CEO	
11. TELEPHONE NO. (Include area code) 972-440-8388	12. SIGNATURE 		13. OFFER DATE March 5, 2021	

### TO BE COMPLETED AT TIME OF AWARD

Document Type: D

Statutory Cite: Texas Government Code, Section 2157.068

This award consummates the Contract which consists of the following documents: (a) the State's solicitation, solicitation amendments, and such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award; (b) the Contractor's offer, points of clarification, responses to clarification requests and/or best and final offer, and negotiated changes as hereby incorporated and attached to this award; and (c) this award. In the event of a conflict between any terms and conditions of this Contract document with the Contractor's offer, points of clarification, and/or best and final offer, the terms which are more favorable to the Department shall prevail.

<b>Contractor</b>  By:  Name: Russell Roberts Title: Chief Growth Officer Date: 08/12/2021	<b>Texas Department of Criminal Justice</b>  By:  Name: Bryan Collier Title: Executive Director Date: 8/19/21
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**The following items are mutually agreed to by Securus Technologies, LLC and the Department and are hereby incorporated into this Contract to include revisions realized by Amendments A-001 and A-002.**

1. The Solicitation, Offer, and Award form has been revised to add the Contract number and the Contractor and authorized signor's name and title in the Contractor signature block.
2. Section A, Contract Definitions, has been revised to include the awarded vendor's name.
3. Section B.1.2, Pricing Instructions, has been revised to include updated language.
4. Section B.2, Pricing Schedule, incorporated.
5. Section C.3.1, General and Technical Specifications/Requirements, General Requirements, has been revised to include updated language per A-002 and to include language proposed by the Contractor.
6. Section C.3.8, Added Value, has been revised.
7. Section I.24, rights to Data, Documents, and Computer Software (State Ownership), has been revised to include updated language.
8. Section G.2.3, TDCJ Monitor, has been revised.
9. Section G.2.4, Contract's Project Manager, has been revised.
10. Section G.3, Commission Remittance, has been revised to reflect updated language per A-001.
11. Exhibit J.3, Contract Performance Measure, have been revised with additional language.
12. Section K, Representations, Certifications, and Other Statements of Offerors has been revised to include the Contractor's responses to subsections K.1.2, K.2, K.4, K.8, K.9, K.10 and K.11.
13. Sections L and M of this Contract are hereby deleted.

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**SECTION A – CONTRACT DEFINITIONS**

The following terms used in this Contract shall, unless the context indicates otherwise, have the meanings set forth below.

**Authorized Representative** – The person designated in writing to act for and on behalf of a party of this Contract, which designation has been furnished to the other party hereto as described in Section G.2.1.

**Biennium** – Any of the two (2) year periods beginning on September 1 and ending on August 31 of odd numbered years, which are used for budgetary purposes by the State of Texas.

**CJIS** – Criminal Justice Information Services; also, Criminal Justice Information System.

**Contract Specialist** – Department employee as described in Section G.2.2.

**Contract Award Date** – Contract signature date, duly authorized by both parties.

**Contractor** – Securus Technologies, LLC.

**Confidential Information** – Data that must be protected from unauthorized disclosure or public release based on state or federal law or regulation, judicial rulings, or contractual agreements. Such data may include, but is not limited to, social security numbers, taxpayer identification numbers, employer identification numbers, credit card numbers, personal identifying information (PII), sensitive personal information (SPI), and personal medical information.

**Day(s)** – Calendar Days, unless otherwise specified as Working Days.

**Deliverable (DEV)** – A tangible item delivered to customers as an output of a project.

**Department** – The Texas Department of Criminal Justice (TDCJ), an agency of the State of Texas.

**DIR** – Department of Information Resources.

**Division Directives** – All written policies, procedures, standards, guidelines, directives and manuals of the Information Technology Division, which are in effect or as may be amended from time to time which the Information Technology Division has referenced or has made available to the Contractor and with which the Contractor has an affirmative obligation to be and remain familiar.

**Documentation** – The complete set of operating manuals necessary to enable the Department to properly install and use the Licensed Software, including but not limited to all updates, revisions, and corrections to the manual.

**DPS** – Texas Department of Public Safety

**EFT** – Electronic Funds Transfer, also known as direct deposit.

**Event of Default** – Any of the events or circumstances described in Section I.3.

**Fiscal Year** – Any of the one-year periods beginning September 1 and ending August 31, which are used for annual budgetary purposes by the State of Texas.

**HSP** – HUB Subcontracting Plan.

**HUB** – Historically Underutilized Business.

**Inmate** - a person assigned by the Department to reside at the Facility and to receive Services pursuant to this Contract.

**IT** – Information Technology.

**ITD** – Information Technology Division.

**JPEG** – Joint Photographic Experts Group, a commonly used format for compressing image files.

**Key Staff Member** – Contractor's Project Manager, Customer Service Representative (if other than the Project Manager), and Team Leads for each of the major service areas described in the Statement of Work. Other Contractor staff may be designated as Key Staff Members by the Contractor or the Department.

**NCIC** – National Crime Information Center operated under the authority of the Federal Bureau of Investigation.

**NIST** – National Institute of Standards and Technology.

**Non-Appropriation** – The failure by the Legislature of the State of Texas, as part of its budgetary process, to appropriate money to be used for payments due hereunder.

**Payment or Payments** – Amount(s) agreed to be paid by the Department to the Contractor for services under this Contract.

**PD** – Texas Department of Criminal Justice Personnel Directives.

**Performance Outcome Measures** – Standards used by the Contractor and the Department to determine the quality and acceptability of services acquired.

**Person** – Any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, court or other tribunal, or government or any agency or political subdivision thereof.

**Quality** – The degree to which a product or service satisfies stated or implied requirements. *Quality assurance* focuses on process quality in order to prevent mistakes and defects and avoid problems when delivering products or services to customers. *Quality control* focuses on identifying and correcting product defects.

**Resolution Time** – The period between the Contractor's receipt of a service request from the Department and completion of the maintenance services required to return the affected systems to normal operations.

**RFO** – Request for Offer, a solicitation.

**Sensitive Information** – Sensitive data are not protected by law from being disclosed or released under the Texas Public Information Act; however, they still require an elevated level of protection. Some information maintained by the Department is deemed sensitive, as determined by the Department standards and risk management decisions. Examples of "Sensitive Information" include, but are not limited to, the following:

- A. The Department operational information;
- B. The Department personnel records;



- C. The Department information security procedures;
- D. The Department internal communications; and
- E. Comments.

**Services Commencement Date** – Award date, or date agreed upon to begin the services. No services shall be provided prior to this date.

**SID Number** – The unique State Identification Number assigned to an Inmate by the Texas Department of Public Safety.

**SPD** – Statewide Procurement Division.

**Stored Data/Information** – Shall include, but may not be limited to, any and all data, information, records and media, regardless of its source of origination or medium, financial transactions and all other information, confidential or otherwise, however obtained, maintained, recorded, retained, stored or archived through the Inmate Management System (IMS). Stored Information is owned by and is the property of the Department.

**System Maintenance and Support** – Telephone and on-line services, including but not limited to, error corrections, updates, upgrades, fixes, patches, enhancements, extensions, releases, latest features, performance improvements, Documentation and Technical Library CD series, if applicable.

**TBCJ** – Texas Board of Criminal Justice.

**TCIC** – Texas Crime Information Center operated under the authority of the Texas Department of Public Safety.

**TDCJ** – The Texas Department of Criminal Justice, an agency of the State of Texas; also referred to as the Department.

**TDCJ Number** – The Texas Department of Criminal Justice identification number for Inmates.

**TDCJ Policies** – All written policies, procedures, standards, guidelines, directives and manuals of the Department, which are in effect or as may be amended from time to time, which the Department has made available to the Contractor and with which the Contractor has an affirmative obligation to be and remain familiar.

**Term** – The duration of this Contract as specified in Section F.1.

**US** – United States.

**Work Product** – A tangible project artifact or output that is created during a project, often as a component of, or in support of, a deliverable.

**Working Day(s)** – means Monday through Friday, unless a nationally recognized holiday.

**SECTION B – TABLET, SERVICES, AND COST/FEEES****B.1 SERVICES AND PRICES/COSTS****B.1.1 Services Being Acquired**

The Texas Department of Criminal Justice (TDCJ, the Department) is seeking services to install, operate and maintain a tablet solution for Inmates. The tablets should include services such as music, books, movies, and education resources for eligible Inmates confined in facilities operated by the Department throughout the State of Texas. The system will allow approved Inmates to take advantage of all services available. Such a system shall be provided by the Contractor without any cost to the Department.

The term of this contract is from Date of Award through August 31, 2023 with an option to extend for two (2), one (1) year periods (September 1, 2023 through August 31, 2024 and September 1, 2024 through August 31, 2025).

**B.1.2 Pricing Instructions**

The Contractor provided tablet pricing structure owed by Inmates to include cost of initial tablet as well as replacement tablets when applicable.

The Contractor provided line itemed detail of all services to be offered for Inmate use and the associated fee structure owed by the Inmate for each service.

The Contractor provided details pertaining to the collection of the associated costs/fees.

B.2 PRICING SCHEDULE

Subscription Options

*Premium Content	Standard Catalog				Large Catalog				Extra Large Catalog			
	Daily Subscription	Weekly Subscription	Monthly Subscription	Content	Daily Subscription	Weekly Subscription	Monthly Subscription	Content	Daily Subscription	Weekly Subscription	Monthly Subscription	Content
Streaming Music	Not Offered	\$ 1.50	\$ 4.99	8 Million Songs**	Not Offered	\$ 2.50	\$ 7.99	20 Million Songs**	Not Offered	Not Offered	Not Offered	Not Offered
Ebooks	No Charge	No Charge	No Charge	50,000 Ebooks**	No Charge	No Charge	No Charge	50,000 Ebooks**	No Charge	No Charge	No Charge	50,000 Ebooks**
Audiobooks	No Charge	No Charge	No Charge	43 Audiobooks**	No Charge	No Charge	No Charge	43 Audiobooks**	No Charge	No Charge	No Charge	43 Audiobooks**
Games	Not Offered	\$ 0.50	\$ 0.99	50 Quality Games*	Not Offered	\$ 1.00	\$ 1.99	50 Premium Games*	Not Offered	\$ 5.00	\$ 14.99	400 Premium Games*
Movies/TV	Not Offered	\$ 1.50	\$ 4.99	530 Movies and TV Shows*	Not Offered	\$ 2.50	\$ 7.99	700 Movies and TV Shows*	Not Offered	\$ 4.00	\$ 11.99	1,000 Movies and TV Shows*
Radio	No Charge	No Charge	No Charge	Unlimited FM Radio	No Charge	No Charge	No Charge	Unlimited FM Radio	No Charge	No Charge	No Charge	Unlimited FM Radio
Podcasts	No Charge	No Charge	No Charge	650 Podcasts**	No Charge	No Charge	No Charge	650 Podcasts**	No Charge	No Charge	No Charge	650 Podcasts**
Magazines	No Charge	No Charge	No Charge	Unlimited Magazines	No Charge	No Charge	No Charge	Unlimited Magazines	No Charge	No Charge	No Charge	Unlimited Magazines
Unlimited Newspapers	Not Offered	\$ 0.75	\$ 1.99	4P News Feed**	Not Offered	\$ 0.75	\$ 1.99	4P News Feed**	Not Offered	\$ 0.75	\$ 1.99	4P News Feed**
Premium Streaming Radio	Not Offered	\$ 1.50	\$ 4.99	Unlimited Streaming Radio	Not Offered	\$ 1.50	\$ 4.99	Unlimited Streaming Radio	Not Offered	\$ 1.50	\$ 4.99	Unlimited Streaming Radio
Premium Movie Rentals	Free to \$9.99											
New Release Movie Rentals	\$12.99 to \$19.99***											

\*Content rotated quarterly

\*\*Music, Ebooks, Audiobooks, Podcasts, and Newspaper subscription libraries will have additional content added each quarter to improve the quality of the libraries

\*\*\* Pricing based on New Release Movie Rental costs mandated by the studio that produced the movie content

Note: All previous content, pricing and purchasing options included in our original RFP submission remain valid at the option of TDC

Replacement costs for tablets damaged or lost by inmate: \$129.99

An Automated Payment Fee of \$1.00 will apply to Consumer payments (by phone or website) to a Securus Debit Account

**e-Messaging Cost and Commission Amount**

- Inbound e-Message from family or friend to eligible inmate
  - Up to 20,000 character e-Message
  - \$0.22 per e-Message
- Outbound e-Message from eligible inmate to family of friend
  - Up to 20,000-character e-Message
  - \$0.22 per e-Message
- Attachment for a Photo, e-Card or Snap n' Send is \$0.22 each
- Attachment for VideoGram is \$0.66 each
- Annual fixed commission payment to TDCJ (Mirrors past 12 months commission volume for e-Mail only)
  - \$1,285,000 annually or \$107.083 per month

**B.2.1 Tablet Cost**

The Contractor will provide all tablet eligible Inmates free personal tablets for the duration of their incarceration (this includes indigent Inmates) **at no cost**. A personal tablet is assigned to a particular Inmate and will contain the content used and/or rented by that Inmate.

**B.2.2 Tablet Replacement Cost**

The Contractor will work with the TDCJ staff to determine if a tablet was intentionally damaged by an Inmate. If intentional damage is determined, the Inmate will be charged for a replacement tablet in the amount of \$129.99. If a tablet is defective, the Inmate will be issued another personal loaner tablet at no cost.

**B.2.3 Ownership of Deployed Equipment**

The Contractor will retain ownership of the tablets, terminals, and all hardware deployed pursuant to this Contract, provided that the Department will own any wiring installed as part of the project which will be maintained by the Contractor for the duration of the Contract.

**B.3 RESERVED FOR FUTURE USE****B.4 RESERVED FOR FUTURE USE**

## SECTION C - DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

### C.1 BACKGROUND

The TDCJ is responsible for the supervision of an estimated 120,000 incarcerated Inmates. The TDCJ's mission is to provide public safety, promote positive change in Inmate behavior, reintegrate Inmates into society, and assist victims of crime.

Currently, the TDCJ consists of one hundred three (103) facilities located throughout the State, comprised of prison units, transfer facilities, state jails, Substance Abuse Felony Punishment Facilities (SAFPFs), specialized facilities (medical, psychiatric, geriatric, developmental disabilities), pre-release facilities, and intermediate sanction facilities.

### C.2 STATEMENT OF WORK (SOW)

The Department requires a Contractor to install, operate and maintain a tablet solution for Inmates. The tablets should include services such as music, books, movies, and education and programming resources for eligible Inmates confined in facilities operated by the Department throughout the State of Texas. The system will allow eligible Inmates to take advantage of services available. Such a system shall be provided by the Contractor without any cost to the Department.

The Contractor shall deliver a turnkey solution, compatible at all designated facilities listed in Exhibit J.1, Site List, to include all necessary personnel, supervision, infrastructure, hardware, software, equipment, installation, operation, maintenance, support, materials, supplies, training, transportation and services (except as may be furnished by the Department as specifically identified within this SOW) and all things necessary for or incidental to, a fully functional, administered and managed tablet solution without any cost to the Department.

The Contractor shall be responsible for, at a minimum, the major requirements outlined. Specific deliverables associated with each major activity are identified where appropriate. A brief description of each major activity is included to ensure a common understanding of the services to be provided.

The specified requirements and standards will serve as the benchmark for monitoring the Contractor's performance.

### C.3 SCOPE OF WORK TO BE PERFORMED

The Department will look solely to the Contractor for performance. The Contractor is responsible for all resources necessary to provide the services requested. Services shall be provided statewide, the locations of which are listed in Exhibit J.1, Site List. The terms, conditions, and requirements of this Contract pertain to all the Department locations unless otherwise stipulated. The Department reserves the right to add, delete, or change site locations, and to increase/decrease the number of tablets per location or make other business decisions as necessary for the operation of the Department.

**C.3.1 General and Technical Specifications/Requirements**General Requirements

- A. The Contractor shall provide a turn-key tablet solution for all Department-selected facilities at no charge to the Department.
- B. The Contractor shall provide all Department approved Inmate's access to tablets. Details outlining this access shall be listed in the offer (examples include purchase, lease, shared, etc.)
- C. The Contractor shall outline replacement process and associated cost to Inmates should tablets fail.
- D. The Contractor shall provide free access on all tablets to all critical content. Critical content may include but is not limited to communication tools such as mental health and addiction recovery, religious scriptures and sermons, Inmate handbooks and Prison Rape Elimination Act (PREA) information, job search tools (when applicable), and commissary access all at no charge to the Department.
- E. The Contractor will provide up to 3,000 Officer Command and Control tablets or two per housing unit over the life of the contract at no charge to the Department.
- F. The Contractor shall have an automated method of controlling inventory of tablets.
- G. The Contractor shall have an automated method allowing Inmates to obtain premium content such as music, books, games, and movies, (with no staff involvement) by interfacing with each Inmate's commissary account.
- H. The Contractor shall provide a solution for Inmates to report tablet issues, content discrepancies, and other tablet service problems.
- I. The Contractor shall detail what services are provided on tablets at no charge to Inmates. All Inmates should have access to tablets with the Department specific content allowed to be viewed at any time. Per minute charges to access any content on any tablet will not be allowed. The Contractors are allowed to charge for premium content including movies, music, books, and games.

Technical Requirements

- A. The Contractor shall provide Inmate and staff tablets that are Wi-Fi disabled or limited with no Internet access.
- B. The Contractor shall provide tablet warranty and refurbishment to the Department at no cost.
- C. The Contractor shall provide each facility enough charging carts for safe and secure charging of all the tablets.
- D. The Contractor provided charging carts shall be ruggedized for use in the facility.
- E. The Contractor will provide the Securus Debit Account service that will be used by Inmates to purchase telephone calls and tablet premium content and other purchases such as

accessories. The Contractor will be responsible for collecting and remitting all applicable taxes and fees.

- F. The Contractor shall provide a solution for Inmates to receive services when a tablet is not available.
- G. Inmate tablet shall require an Inmate to enter credentials and log in to the tablet before being able to access all applications.
- H. Inmate tablet shall display terms and conditions to users the first time they login or for subsequent changes to the terms and conditions.
- I. Inmate tablet shall provide a configurable option where a tablet that is enabled will time out after a period of inactivity.
- J. Inmate tablet shall have options to display all or a subset of the following items on the lock screen display: Inmate name, ID number, digital clock, day, month, date, housing information, TDCJ name, barcode and unique identifier for the tablet hardware.
- K. The Contractor shall provide the following security measures to harden the firmware on the tablets:
  - 1. Browser, contacts, calendar, native phone and messaging clients have been removed;
  - 2. No option for users to change the settings;
  - 3. Bluetooth and Cellular wireless radio have been disabled;
  - 4. Users cannot install and un-install apps ;
  - 5. Authorized apps are pushed to the tablets through an app state management process via kiosk;
  - 6. No access to third-party app stores.
  - 7. A tablet security incident will be reported to the TDCJ Information Security Office within six (6) hours.
  - 8. A tablet security incident will be resolved within thirty (30) hours as required by Exhibit J.3, Contract Performance Measures.
- L. The Contractor's network traffic must be routed through the Contractor's system with no exception and provide firewall, transparent proxy, Domain Name System and routing services for the tablets.
- M. The Contractor shall furnish a recent independent report from a certified contractor of network and program security that notes no vulnerabilities were found.
- N. The Contractor shall provide secure Internet Protocol (IP) communications by authenticating and encrypting each IP packet of a communication session.

Tablet Hardware Requirements

- A. Inmate tablet hardware should NOT have a camera.
- B. Inmate tablets shall be updated when connected to a central device (kiosk, server).
- C. Inmate tablet hardware shall have at least 32 GB of storage.
- D. Inmate tablet hardware shall utilize a barrel charger port for security.
- E. Inmate tablet hardware shall be high strength, impact-resistant security glass with integrated screen protector.
- F. Inmate tablet hardware shall have a clear polycarbonate shock resistant body.
- G. Headsets shall be clear to minimize contraband.
- H. Headsets shall meet American Disability Act requirements for eligible Inmates.

Tablet Application Requirements

- A. Inmate tablets shall have current and minimum capabilities to provide:
  - 1. Job Search Application-free to Inmates;
  - 2. Law Library Application (compliant with 1977 Supreme Court Ruling Bounds vs. Smith)-free to Inmates;
  - 3. Podcasts;
  - 4. Education-free to Inmates;
  - 5. Mental Health Services-free to Inmates;
  - 6. Documents Viewer Application (Inmate Handbooks, Reentry manuals, etc.)-free to Inmates;
  - 7. Video Applications (PREA, department specific videos, etc.)-free to Inmates;
  - 8. Music;
  - 9. Books;
  - 10. Games;
  - 11. Movies;
  - 12. Reentry Assistance-free to Inmates;
  - 13. Religious Applications-free to Inmates;
  - 14. Spiritual and Self-Help Applications-free to Inmates;



- B. The Contractor shall offer a media store where users can obtain music, games, books, and movies.
- C. The Contractor shall offer a media store where a custom play list can be created for music.
- D. The Contractor shall offer options to users via the media store that allow for obtaining single song, album, game, or video one time purchase with unlimited usage.
- E. The Contractor shall offer a process for the Department to add content to the tablets at no cost to the Department.

#### Staff Control Device Requirements

- A. The Contractor shall provide as many staff devices (Tablets or PCs) as needed at no cost to the Department.
- B. The Contractor shall provide a detailed staff user guide directly on the staff device for easy reference.
- C. The Contractor shall provide staff devices that have total control of Inmate tablets.
- D. The Contractor shall have current and minimum capabilities providing staff devices with real-time:
  - 1. Behavior Modification Application – ability to modify what applications are available on an individual tablet, group of Inmate tablets or all tablets on demand or scheduled for a number of hours/days/weeks/months or until a selected date;
  - 2. Eligibility Status – notification via an automated system or officer input if the Inmate is eligible for a tablet;
  - 3. Services to allow officer tablets to formulate notifications and communications that can be pushed to one Inmate tablet, a group of tablets or all inmate tablets;
  - 4. Scheduled availability of Applications; and
  - 5. Activation / Deactivation of any or all applications by:
    - a. Inmate;
    - b. Groups of Inmates; and
    - c. Facility.
- E. The Contractor should allow staff with appropriate permissions to easily authorize a replacement tablet via the staff device. This would allow an inmate to enter his/her personal credentials (ID and PIN) to login to any community tablet and redeem the authorization to make it his/her personal tablet.
- F. The Contractor shall:
  - 1. Disclose fees;

2. Disclose project plan and timetable for installation; and
3. Disclose all prices charged to Inmates for all services.

### **C.3.2 Contractor Requirements, Responsibilities, and Staffing**

#### **C.3.2.1 Contractor Requirements and Responsibilities**

The Contractor shall have direct oversight, be responsible for and monitor the performance of all Contractor staff performing services under the Contract. The Contractor shall be responsible for all expenses incurred on behalf of Contractor's staff including travel, lodging, transportation, and meals.

#### **C.3.2.2 Staffing**

The Contractor is responsible for all resources necessary to provide the services included in this Contract. The Contractor shall provide an adequate level of staffing for provision of the services outlined herein and will ensure that staff providing services are appropriately trained, qualified and licensed, if required. The Contractor is expected to back-fill with existing staff for sick or vacation days for absences in excess of five (5) Working Days.

The Contractor is required to maintain a minimum of the below listed staffing plan unless a reduction in that plan is mutually agreed to by the Contractor and the Department. In the event a position becomes vacant, the Contractor will fill the vacant position within sixty (60) Days as required by Exhibit J.3, Contract Performance Measures.

Additionally, the Contractor's staff shall coordinate with and maintain a good working relationship with Department staff and other contractors working with the Department. Superior customer service is a priority; the contractor shall respond within two (2) Working Days required by Exhibit J.3, Contract Performance Measures.

The Department will provide security for the Contractor's employees and agents consistent with the security provided for the Department staff at each facility.

All staff assigned to provide services under this Contract will be subject to the background clearance process by the Department. The Contractor employees who have been previously terminated at any time by the Department may not be employed or provide services under the Contract. The Department shall not employ criteria to approve or disapprove the selection of Contract employees that exposes the Contractor or the Department to civil or criminal liability under applicable federal or state civil rights laws, including, but not limited to, those laws establishing or protecting employee rights.

The Contractor's staff on-site will adhere to the standards of conduct prescribed in law, and as prescribed in the Department's most recent personnel policy and procedure guidelines, particularly rules of conduct, employee uniform and clothing requirements (as applicable), security procedures, and any other applicable rules, regulations, policies and procedures of the Department. Specific policies are available at <http://www.tdcj.texas.gov/divisions/hr/hr-policy/index.html>. The Contractor's staff will be subject to and will comply with all security regulations and procedures of the Department and the respective facility. Violation of regulations may result in the employee or individual being denied access to the institution. In this event, the Contractor shall provide alternate personnel to supply services described herein, subject to Department approval.

Throughout the term of the Contract, the Contractor shall at a minimum:

A. Provide Project Manager

The Contractor shall assign an experienced Project Manager dedicated to this project full-time from Contract award through implementation, acceptance and go-live and follow industry best practices for project management as defined in the Project Management Body of Knowledge (PMBOK). The Project Manager will be responsible for coordinating with the Department staff the status of the entire project and be the single point-of-contact during project implementation.

B. Provide Customer Service Manager and Alternate

The Contractor shall assign a full-time Customer Service Manager exclusively to this Contract. An alternate representative will be assigned in the absence of the assigned manager.

The duties of the Customer Service Manager shall include, at a minimum:

1. Overall performance of the Contract and general project management duties;
2. Account management,
3. Develop reports;
4. Resolution of technical issues;
5. Training; and
6. Attendance at on-site meetings.

C. Provide Field Repair/Site Technicians or Administrators

The Contractor shall assign Field Repair/Site Technician or Administration positions dedicated to the Contract. Field Repair/Site Technician positions shall be strategically located in proximity to the Department sites and will be directly responsible for providing preventative maintenance, installation of cable and equipment, technical and administrative support and repairs as necessary, and provide on-site assistance to the Department personnel to ensure customer satisfaction.

D. Provide Service Representatives

The Contractor shall assign full-time Service Representative positions dedicated to the Contract. Service Representatives shall be responsible for making data entry input, changes and administration to the Inmate tablets and shall provide general customer service to the Department staff.

E. Provide Qualified Personnel to Perform the Services Required

The Contractor shall provide the number, job descriptions, and locations of dedicated staff offered to support this Contract. The Contractor shall use only qualified and fully trained employees in the performance of the Contract.

F. Remove and Replace Personnel at the Request of the Department

The Department shall have the right at any time to request the removal of any of the Contractor's employees/subcontractors. The Contractor shall use all reasonable efforts to promptly replace such employee/subcontractor with a team member possessing skills, experience, and training that are equal to or exceed those of the position description.

G. Assure Personnel Follows Laws, Rules, Regulations, Standards, Policies and Procedures

It is the Contractor's responsibility to ensure that all contract employees are familiar with Department regulations. The Contractor standards of conduct, notification of background checks, relevant policies and/or statutes are incorporated as reference.

Prior to project implementation, the TDCJ Monitor shall be provided a list of all contractor employees involved in this Contract who at any time have ever been sentenced to any facility of the Department. Said list should include name, Inmate (SID) number, TDCJ number, and the nature of the offense and the sentence. Prior approval shall be obtained before an ex-Inmate may enter any Department facility.

Any Contractor employee that has any relative, either blood or by marriage within the second degree of kinship, that is (or may become during the project) an Inmate at the facility where the work is to be performed shall notify the Department representative in writing prior to starting work, or immediately upon learning of same.

The Contractor shall make all its employees involved in the project aware that possession of guns, weapons, illegal drugs, tobacco, alcoholic beverages, and/or other items defined as contraband on property owned or leased by the Department is a felony. Violators will be prosecuted. Additional contraband includes Personal Digital Assistants, cell phones, and cameras.

The Contractor shall caution all employees involved in this Contract against becoming familiar with Inmates and/or the Inmates' families. The Contractor employees shall not bring anything to any Inmate nor will they carry anything off Department leased or owned property for any Inmate.

The Department reserves the right to ban any Contractor employee from entering the property of the Department who fails to comply with any regulations.

The Contractor staff with access to confidential/security sensitive data shall be security cleared.

The Contractor shall not assign to this Contract any person with a misdemeanor or felony conviction without prior written approval of the Department. This includes any employee with a criminal history who is employed by the Contractor at the time of award. The Contractor shall comply with PD-75 in determining eligibility for employment. The Contractor shall provide the Department with a current list of all employees including position title and whether or not the employee assigned to this Contract has/had a felony conviction, at the beginning of the Contract year, and upon each occurrence.

The Contractor agrees to provide a completed TDCJ Non-Employee Background Questionnaire (Exhibit J.2) for each of its current and future employees and subcontractors who work under this Contract in locations where the Department's data is stored and

processed, in order that a Texas Crime Information Center/National Crime Information Center (TCIC/NCIC) criminal history check can be performed by the Department.

A background investigation, to include a NCIC and TCIC records check, will be conducted by the Department for each employee (including consultants, independent contractors and their employees and agents who work on a routine basis) prior to being assigned by the Contractor to perform work at a facility.

The Contractor shall receive a written notification from the Department indicating pass status on the criminal history check prior to allowing the employee/subcontractor access to areas where the Department's data is stored or processed. The Contractor also agrees to ensure that no persons working for the Contractor or subcontractors whom have not received TCIC/NCIC criminal history clearance from the Department will be allowed in areas where the Department's data is stored or processed without an authorized Department escort.

Replacement by the Contractor of an employee/subcontractor performing under this Contract shall be at the discretion of the Contractor provided the replacement staff passes a TCIC/NCIC criminal history check by the Department. Failure to secure the written notification from the Department regarding pass/fail status, prior to replacement, may constitute grounds for termination of this Contract.

### **C.3.3 Implementation, Installation, System cabling, Testing and Acceptance**

#### **C.3.3.1 Implementation**

It is understood and acknowledged by the parties that the work cannot be efficiently completed without the use of competent project plans, updated frequently and utilized by the Contractor for the planning, management, and coordination of the work. Therefore, the requirements of this Contract as to scheduling and reporting, as well as time limits for completion of the work, are of the essence. The Contractor shall provide the Implementation Plan within thirty (30) Days of Contract award.

The Department will provide written acceptance of an approved Implementation Plan prior to commencement of any work. The Contractor shall provide a clearly tabbed and detailed Implementation Plan and Schedule to include all sites identified in Exhibit J.1. Synopsis of each deliverable shall include staff requirements, length of time required per deliverable, and timeline.

The Contractor will use calendar days with the effective date of this Contract being day one (1). The Implementation Plan shall include a schedule with a timeline in which all system components shall be completely installed and fully functional by designated facilities as listed in Exhibit J.1, Site List.

The Implementation Plan shall include at a minimum the following deliverables or sections:

- A. Introductory 'kick-off' meeting.
- B. Planning (site plan by location).
- C. System Design.
- D. Security Plan Documentation (access/data).

- E. Project Schedule (Timeline).
- F. Implementation Communication Plan (Weekly status meetings, Status Reports, etc.).
- G. Stakeholder Register.
- H. Issue Log to be maintained throughout the project lifecycle.
- I. Risk Log with mitigation strategy.
- J. Staffing Plan - Number of staff dedicated to the project by job title and job description.
- K. Plan shall include the Contractor's expectations of both the Contractor and the Department staff. A dedicated Project Manager (single-point-of-contact) shall be assigned and included in the staffing plan through implementation and 'go-live.'
- L. Infrastructure procurement and installation.
- M. Equipment specifications, procurement, and installation.
- N. Training.
- O. Test Plan.
- P. Delivery and Acceptance.
- Q. Database Management.
- R. Inmate Enrollment.
- S. Registration of potential called parties.
- T. 'Go-Live':
  - 1. Updating;
  - 2. Reporting;
  - 3. System Management;
  - 4. Documentation (System design, training manuals, etc.);
  - 5. System Maintenance and Support; and
  - 6. Acceptance Plan (Per location and Project closeout).

### C.3.3.2 Installation

The Contractor shall be responsible for the complete engineering and installation of the tablet solution, including all station and other hardware as called for in these specifications.

All mounting units, such as racks, terminal cabinets, distribution closets, and backboards, will be equipped with terminal connections to which all entering cables shall be wired. Terminal connections will be placed as near as possible consistent with accessibility to a point where cables would normally enter.

Any splices in the system wiring shall meet current EIA/TIA (Electronic Institutional Association/ Telephone Institutional Association) specifications.

The Contractor shall comply with all city, county, state, and federal codes, rules, regulations, and/or agencies, regarding the installation of the system including furnishing the necessary labor and materials to meet the above codes. The Contractor shall furnish all licenses and permits, etc. required for the installation of the system. The Contractor will install the system utilizing the generally accepted latest ANSI/NEC/EIA/TIA (American National Standards Institute / National Electrical Code) installation practices.

### C.3.3.3 System Cabling

The Contractor shall be responsible for providing, both inside and outside plant wiring to include all labor and materials required for proper system functioning. All cabling will be placed in conduit. All exterior, exposed conduit will be rigid. Within buildings, EMT with compression fittings, may be used, when placed above twelve (12) feet in height. Conduit below twelve (12) feet in height should be rigid conduit. Conduit will be used in the tunnel, spline, and pipe chase areas. Conduit shall be sized as per NEC fill codes (minimum three fourths (3/4) inches). Conduit brackets and support should be per NEC standards. All buried in-ground cable will be in Schedule 80 PVC conduit. All buried cable and conduit will be at a minimum of twenty-four (24) inches deep with a three (3) inch marker tape installed at twelve (12) inches above the conduit.

Existing conduit may be available for vendor use if determined feasible by the Department. Site visits involving chosen vendor and the Department personnel will be conducted to review current and future conduit requirements.

All new inside wire provided from distribution closets to stations will be, at a minimum, category 3, 4 pair, 24 AWG plenum white inside wire for voice applications and category 5E, 4 pair, 24 AWG, plenum, blue for data applications.

All jacks will be RJ11 for voice applications and RJ45 for data applications.

The Contractor shall be responsible for providing all voice, data, and outside plant cabling required for a proper functioning system. Cabling and infrastructure shall be secured to prevent unauthorized access or abuse.

Outside plant cabling is to be PE-89 24-AWG filled direct burial type cable. These cables are to be terminated with lightning protectors and equipped with sheath bonds and grounds as per ANSI/TIA/EIA specifications.

The Contractor shall provide the metallic conduit in new or existing buildings for cabling. All cables, wires, and equipment will be firmly held in place. Fastenings and supports must be adequate to support their loads with ample safety factors.

The Contractor will coordinate with the Department before beginning or initiating any construction work. The Contractor shall use due diligence and follow standard industry practices when digging, excavating, and/or boring underground. Due diligence includes, but is not limited to, conducting surveys with Department personnel to identify all known utilities and other facilities in the path of construction; using probes and or underground locating equipment to determine the location and depth of underground utilities; taking due precaution to ensure the Department utilities or facilities are not inadvertently damaged; and completing the Site Pre-Dig Safety Meeting Attendance Sheet (Exhibit J.4). The Contractor shall also contact 1-800-DIG-TESS a minimum of forty-eight (48) hours before excavation begins to notify third parties (gas, water, power, etc.) of proposed excavation.

The Contractor will be responsible for replacing, restoring, or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, etc. caused by Contractor's personnel and operations, provided those facilities are made known, or the Contractor should have known, of their existence. Repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality and are subject to final approval of the Department. The Contractor will not be able to 'go-live' on the facility until all repairs are completed and accepted by the Department.

#### **C.3.3.4 Testing and Acceptance**

Final system design shall be approved by the Department prior to system initiation. The Contractor will test the network facilities, switching systems, and all hardware and software components to ensure each and every system feature and service is functioning and operational to the Department specifications and requirements. The Contractor will provide test results to the Department prior to implementation. The Department shall provide final approval in writing prior to 'go-live' operations.

The purpose and net result of the acceptance test is to determine that equipment installed under the Contract meets the technical and functional requirements outlined. A system considered "acceptance test ready" is defined as a system that has completed a full system test with no identified material defects.

The Contractor shall conduct an operational system test of the proposed system and certify, in writing, that the system is ready for acceptance testing and will perform in accordance with the requirements stated in this Contract. The Contractor shall ensure that the system and each module of the system operates according to specifications before turning the system over to the Department. The Department personnel will not debug modifications for the Contractor.

The Department will have ten (10) Working Days to test all aspects of the system to ensure it is functioning as specified. If any aspect of the system fails to function as specified, the Contractor will be given five (5) Working Days to correct the malfunction. The Department will have another ten (10) Working Days to test and accept the system.

If the Contractor fails to correct defects after a second five (5) Day period, the Department reserves the right to require replacement of the system.



Acceptance testing shall not in any way relieve the Contractor of its responsibilities to correct any defect during the life of the Contract.

Prior to final acceptance by the Department, the Contractor shall have satisfactorily completed the training program for system administrators and Inmates as specified in Section C.3.5, Training.

#### **C.3.4 Training**

The Contractor will provide initial and as-needed, on-site training of officers and administrators utilizing the system. The training will be customized to meet the needs of different user levels (monitors, administrators). The Contractor will provide training materials (manuals, DVDs, thumb drives, etc.) that will be left at each site to facilitate training for new personnel as needed. The Department expects these training materials to be refreshed as updated trainings are developed.

Training classes should be tailored to the need of the user. The Department will take reasonable steps to aggregate those who need similar training on a local level in order to optimize class size.

The Contractor shall provide training throughout the term of the Contract within fifteen (15) Days for each of the Department's requests for the training as required by Exhibit J.3, Contract Performance Measures. Bilingual training shall be available when required.

In the case of a system upgrade that involves procedural changes in placing videos and/or administration of the system, the Contractor shall provide additional on-site training for systems administrators and Inmates as needed.

##### **C.3.4.1 System Administrator and Tablet Management Training**

Thorough live, hands-on instruction for all system administrators and the TDCJ staff managing Inmate tablets will be provided by the Contractor, on premise of each site, with emphasis on all features and system design prior to system initiation. Operational manuals, either paper or electronic, shall be provided.

##### **C.3.4.2 Inmate Training**

The Contractor shall conduct Inmate training on how to use the tablets. The Contractor may utilize a video presentation that can be shown to a controlled group of Inmates or those unable to read or comprehend written literature. Printed materials shall be available in both English and Spanish. Bilingual training shall be available when required. All training materials must be preapproved by the Department before distribution.

##### **C.3.4.3 Post-System Initiation Training**

During the first five (5) Days after system initiation, the Contractor shall have available at least one (1) training person for retraining and consultation for both system administrators and Inmates to include equipment and procedures.

This employee shall not be the service technician installing the system and shall have experience in conducting training classes.

### **C.3.5 Maintenance and Support Requirements**

Maintenance and support requirements apply to the entire tablet system design to include but not be limited to infrastructure, equipment, component parts, software, and peripheral equipment. The Contractor shall be responsible for the immediate replacement of all inoperative, damaged, or defective equipment. The Department requires that any system failure shall be restored to full capacity within the resolution time required by Exhibit J.3, Contract Performance Measures.

To assure a satisfactory level of support, the Contractor shall provide dedicated, administrator/technicians for each site identified in the site list to include regional offices and administrative locations. The Contractor shall supply a toll-free dispatch telephone number, web access, and/or email address for placement of service calls twenty-four (24) hours a Day, seven (7) Days a week.

### **C.3.6 Contractor Quality Control Plan**

The Contractor will submit to the Department a Quality Control Plan for monitoring and assessing the success of its services. The plan will include criteria that define acceptable or unacceptable performance based on industry standards. The Contractor will ensure that outcome measures indicate results achieved. The Contractor will submit reports, in a format approved by the Department, which indicate the Contractor's performance.

The Contractor will work with the Department personnel to monitor performance. A quality assurance review of all requirements will be conducted before an assignment is considered complete.

### **C.3.7 Contractor Communication**

The Contractor and the Department will maintain communications to ensure project success. Contractor will be required to attend on-site meetings with the Department staff. Meetings will provide a management level review of the Contractor's operations, assessment of services, discussion and resolution of problems, and coordination of the activities of all parties concerned.

Such meetings may be scheduled regularly or as needed to discuss Contract issues and concerns and exchange information between Department staff and the Contractor, review quality control plans and performance measures. Communications between parties will be achieved via:

- A. On-site meetings, regularly and specially scheduled;
- B. Video Conferences;
- C. E-Mail;
- D. Written status reports provided to the Department by Contractor; and
- E. Monthly Performance Outcome Measures reviews.

Meetings will be held in Austin and Huntsville or at any other designated sites (ref. Exhibit J.1).

### C.3.8 Added Value

The Contractor has offered additional services that are directly related to Inmate tablets and may have value to this Contract. All no charge added value services/features agreed upon by the Contractor and the Department will remain no charge through the end of the Contract period, to include all renewal options.

The Contractor will allocate up to \$1,000,000 during the term of the Contract for, at the Department's discretion, purchases of commercially available tablet units (such as iPads or Android units) and/or on behalf of TDCJ for development of additional applications or feature functionality for the officer tablets.

The added value items include but are not limited to the following:

1. Corrections Grade tablets;
2. Access to Lantern Learning Management System for Inmate Education:
  - Includes Prison Entrepreneurship Program;
  - Includes Dallas Life Foundation Program;
  - Includes Dallas Community College Content;
  - Includes Windham School District Content;
  - Google Applied Skills; and
  - Includes CourseShare (shared content from all States);
3. Officer Command and Control Tablets (as many as required);
4. iPads for TDCJ use (or equivalent tablet - TDCJ Choice);
5. Access to Free E-Book library with thousands of titles;
6. KAMEA - Securus Realtime Wireless Triangulation Location of Tablets and Contraband Devices at all sites (demonstration recommended);
7. Televerde - Opportunity to allow Inmates within the TDCJ system to handle call center duties;
8. Debit and Work Release Card Program - Replaces physical checks upon release;
9. Word Alert - Securus proprietary Artificial Intelligence word search application on all communication through tablets;
10. Physical Kiosks for syncing tablets and for access to content when tablets are not available;
11. Digital Mail Center - Physical mail scanning staffed by Securus and viewing in Securus Mail Application-TDCJ no longer needs to handle physical mail other than legal mail;

12. Adding one hundred thirty-nine (139) Staff to provide complete administration of tablet program;
13. Free movie, music, and game subscriptions for Inmates who graduate from approved education programs defined by TDCJ;
14. Free Keyboard to any Inmate who enrolls in formal education programs;
15. One (1) Free Short Micro e-Message per week per Inmate;
16. Inmate Handbook Application;
17. PREA Application;
18. Religious Materials Application;
19. Mental Health Application;
20. Job Search Application;
21. Communications Center application (Forms and Grievances, Self-Help, Document Acceptance);
22. FM Radio Application;
23. Commissary Ordering Application;
24. Access to Securus eMessaging Platform;
25. Case Maker Law Library Application- Although Securus can enable the law library application for use by the vendor of your choice, Securus is proposing Casemaker law library solution (inclusive of licensing fees) at no cost to TDCJ, saving the agency thousands of dollars a month in their current library expense;
26. Access to 50 free games;
27. Access to 50,000+ free electronic books;
28. \$25 per year media credit for content per authorized Inmate who has a tablet (\$5M over two years and over \$10M over four (4) year contract);

**Standard and On-Going Promotion**

Each authorized Inmate will receive a \$25.00 credit on their Media Account with their new tablet. In the second year, each Inmate will receive another credit of \$25.00 on their Media Account. This represents a value of \$50.00 of free content per Inmate over the two (2) year contract period, and \$100.00 per Inmate if the Department takes the optional years. With over 100,000 Inmates, the free content will total over \$5,000,000 for the first two years of the contract and over \$10,000,000 at four (4) years.

**SECTION D – REQUIRED REPORTS**

**D.1 RESERVED FOR FUTURE USE**

**SECTION E – INSPECTION AND ACCEPTANCE****E.1 INSPECTION OF SERVICES**

- A. The Department and other government regulatory agencies have the right to inspect and test all services and Deliverables called for by this Contract, to the extent practicable at all times and places during the Contract term. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's daily operations. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Contract price, all reasonable assistance for the safe and convenient performance of the Contract.
- B. The Department has the right, subject to limitations provided by law with respect to rights of privacy, from time to time to reasonably prompt access and to examine all records of the Contractor related to the Contract, including without limitation, all financial books and records, maintenance records, employee records including time and attendance records, and any and all records and documents generated by the Contractor and its subcontractors in connection with performance of this Contract.
- C. If, subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department may exercise its rights of recovery of money owed as authorized in Exhibit J.3 of this Contract.
- D. If any of the Services are non-compliant with the Contract requirements, the Contractor shall be notified describing specific areas of non-compliance. The Contractor shall have a twenty (20) Day period to file a written response to all such items of non-compliance. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items shall be taken. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains uncorrected for a period of twenty (20) Days or longer after written notification to the Contractor, then such item may be declared to be an Event of Default.

**E.2 MONITORING CRITERIA**

- A. The Department shall devise its own procedures to monitor the quality of the Contractor's performance under this Contract.
- B. The Contractor shall cooperate fully with the Department in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.
- C. Monitoring may include, but is not limited to, monthly and interim audits conducted by the TDCJ Monitor, unannounced visits at any time, and annual and special audits conducted by Authorized Representatives of the Department. Such monitoring by the Department shall not relieve the Contractor of any of its obligations under this Contract.
- D. The Department shall provide written findings regarding non-compliant conditions, processes, procedures, or operations implemented, or observations that could, if not addressed by the Contractor, become an item of non-compliance.

**E.3 AUTHORITY TO AUDIT**

- A. The Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested.
- B. The Contractor shall ensure that this Clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.
- C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision. See Section H.9, Books and Records, concerning record retention.

**E.4 AUDITS BY OTHER AGENCIES**

- A. Upon receipt of an audit pertaining to the provision of Services under this Contract that are conducted by agencies or organizations other than the Department, the Contractor shall provide copies thereof to the Department within thirty (30) Days. The Contractor shall provide to the Department copies of responses to the audit within seven (7) Days of issuance.
- B. The Contractor is to retain all original audits that are conducted by other agencies for a period of seven (7) years from close of audit. If those records are still in their retention period at the termination of the Contract, all originals must be physically transferred to the Department.

**E.5 FRAUD, WASTE, OR ABUSE**

- A. In accordance with Texas Government Code, Chapter 321, the SAO is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of State funds.
- B. If there is a reasonable cause to believe that fraud, waste, or abuse has occurred at this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO's website at [www.sao.texas.gov](http://www.sao.texas.gov). It can also be reported to the TDCJ Office of the Inspector General at 1-866-372-8329, the TDCJ Internal Audit Division at 936-437-7100, or Crime Stoppers at 1-800-832-8477.



**SECTION F – DELIVERIES OR PERFORMANCE****F.1 PERIOD OF PERFORMANCE**

The term of this contract is from Date of Award through August 31, 2023 with an option to extend for two (2), one (1) year periods (September 1, 2023 through August 31, 2024 and September 1, 2024 through August 31, 2025).

**SECTION G – CONTRACT ADMINISTRATION DATA****G.1 RESERVED FOR FUTURE USE****G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT SPECIALIST, TDCJ MONITOR, AND PROJECT MANAGER****G.2.1 Authorized Representative**

- A. In the case of the Contractor, its President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative shall be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.
- B. In the case of the Department, the Executive Director is hereby designated as its Authorized Representative. The Director of the TDCJ-ITD has been designated as the Authorized Representative to act on behalf of the Executive Director on all matters pertaining to the daily operations and compliance of this Contract. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.
- C. At any time, any party may designate any Person as its Authorized Representative by delivering to the other party a written designation signed, if on behalf of the Contractor by its President or any Vice President, or if on behalf of the Department by the Executive Director. Such designations shall remain effective until new written instruments are filed with or such notice is given to the other party that such designations have been revoked.
- D. The Department's Authorized Representative (the Executive Director) is the only Person authorized to make or approve changes in any of the requirements of this Contract, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Executive Director or his/her designated representative. In the event the Contractor makes any change at the direction of any person other than the Executive Director or his/her designated representative, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any increase in cost incurred as a result thereof.

**G.2.2 Contract Specialist**

- A. The Contract Specialist for administration of this Contract is Jason Andrews.
- B. The telephone number for the Contract Specialist is (936) 437-7116.
- C. The fax number for the Contract Specialist is (325) 223-0310.
- D. The email address for the Contract Specialist is [jason.andrews@tdcj.texas.gov](mailto:jason.andrews@tdcj.texas.gov).
- E. The Contract Specialist is responsible for general administration of this Contract, negotiation of any changes, and final issuance of written changes/modifications to this Contract. All requests by the Contractor to modify the Contract shall be made in writing to the Department.

and a copy submitted to the Contract Specialist. The Department, without prior notice to the Contractor, may at its discretion replace/reassign the Contract Specialist. The Contractor will be notified of any such change.

### G.2.3 TDCJ Monitor

- A. The TDCJ Monitor for this Contract is Jessica Whitfield.
- B. The telephone number for the TDCJ Monitor is (936) 437-1266.
- C. The fax number for the TDCJ Monitor is (936) 437-1207.
- D. The email address for the TDCJ Monitor is [jessica.whitfield@tdcj.texas.gov](mailto:jessica.whitfield@tdcj.texas.gov).
- E. The TDCJ Monitor is responsible for review and approval of billings by the Contractor. The TDCJ Monitor will be a full-time employee of the Department, and the Contractor will exercise no control over the monitor.
- F. The TDCJ Monitor is not authorized to make any representations or commitments of any kind on behalf of the Executive Director of the Department or the State of Texas. The TDCJ-Monitor does not have the authority to alter the Contractor's obligations or to change the contract specifications, price, terms, or conditions.
- G. The TDCJ Monitor assignment for this Contract may be changed at any time by the Department without prior notice to the Contractor. The Contractor will be notified of the change.

### G.2.4 Contractor's Project Manager

- A. The Contractor shall provide a Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the Department. The Contractor's Project Manager shall have full authority to act for the Contractor in the performance of the required Services.

Name: Cheryl Beal  
Telephone Number: 972-277-0725  
Cellular Number: 817-680-5672  
Facsimile Number: 972-277-0699  
Email Address: [Cbeal@securustechnologies.com](mailto:Cbeal@securustechnologies.com)

- B. The Contractor shall provide written notice not less than five (5) Days prior to any proposed change to the designated Project Manager.
- C. The Contractor shall provide a Back-up Project Manager to include the following information as the Project Manager:

Name: Dusty Finley  
Telephone Number: 972-277-0725  
Cellular Number: 469-964-5029  
Facsimile Number: 972-277-0699  
Email Address: [Dfinley@securustechnologies.com](mailto:Dfinley@securustechnologies.com)

**G.3 RESERVED FOR FUTURE USE****G.4 ANNUAL FINANCIAL DISCLOSURE REPORTS**

- A. The Contractor shall have an annual audit performed by an independent Certified Public Accountant (CPA) and submit to the Contract Specialist the financial reports prepared according to Generally Accepted Accounting Principles and Auditing Standards (GAAP and GAAS) within one hundred twenty (120) Days after the end of the Contractor's fiscal year.
- B. In the disclosure of its financial affairs, the Contractor agrees to allow the Department or its representative(s) access to all its corporate books, to cooperate in any audits thereof, and to provide the Department's Contract Specialist with 1 and 2 below:
1. Consolidated financial statements, such as are required by GAAP and GAAS, of the Contractor and its affiliates for such year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, all in reasonable detail and certified by independent CPAs of recognized standing to the effect that said financial statements fairly present, except as specifically stated, the consolidated financial position and result of operations of the Contractor and its affiliates as of the end of the year for the year involved, and a statement signed by a senior accounting or financial officer of the Contractor that such officer has no knowledge, except as specifically stated, of the occurrence and continuance of any Event of Default or event which, with the time or the giving of notice, or both, would constitute an Event of Default, as defined in Section I.3.1, or, if such circumstance does exist, specifying the nature and extent thereof and the actions proposed to cure same; and
  2. Copies of any "management letters" (as that term is understood pursuant to GAAP and GAAS) received by the Contractor following any such audits.

**SECTION H – SPECIAL CONTRACT REQUIREMENTS****H.1 INSURANCE REQUIREMENTS**

- A. Prior to the approval of this Contract by the Department, the Contractor shall procure, pay for, and maintain the following insurance written by companies approved by the State of Texas and acceptable to the Department. It is recommended that coverage be with a company or companies having both a Financial Strength Rating of "A" or better and Financial Size Category Class of "VII" or better from A.M. Best Company, Inc.
- B. The insurance shall be evidenced by delivery to the Department of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates, and compliance with all applicable required provisions.
- C. Upon request, the Department shall be entitled to receive, without expense, copies of the policies and all endorsements. Copies and changes to the initial insurance policies, including extensions, renewals, cancellations, and revisions, shall be submitted to the Contract Specialist within thirty (30) Days of the effective date.
- D. Subject to the Contractor's right to maintain reasonable deductibles, the Contractor shall obtain and maintain in full force and effect for the duration of this Contract and any extension hereof, at the Contractor's sole expense, insurance coverage in the following type(s) and amounts.
1. Workers' Compensation with statutory limits; Employers Liability with minimum limits for bodily injury:
    - a. By accident, \$1,000,000 per each occurrence; and
    - b. By disease, \$1,000,000 per employee with a per policy aggregate of \$1,000,000.
  2. Commercial Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$1,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.
  3. Commercial General Liability Insurance, including, but not limited to, Premises/Operations; Personal and Advertising Injury; Products/Completed Operations; independent contractors; and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate, and \$2,000,000 general aggregate.
    - a. Liability coverage shall include coverage for damage to property and injury to persons caused by boiler and other equipment malfunction. The policy shall contain an endorsement to include coverage for the property of third parties.
    - b. The Department shall be named as an additional insured by using endorsement CG2026 or broader.

4. Professional Liability (including Errors and Omissions), including coverage for the rendering of, or failure to render, professional services with minimum limits of \$1,000,000 per occurrence, \$3,000,000 annual aggregate.
5. Commercial Crime Insurance to cover losses from Employee Dishonesty with a minimum limit of \$1,000,000 each occurrence endorsed to cover third party property. The Department must be a joint loss payee.
6. Cyber Security Insurance to cover liability incurred by data security breaches, theft, dissemination, and/or use of personal or confidential information, with a limit of \$10,000,000.

**Note:** If the insurance described in paragraphs 3 or 4 above is written on a claims-made form, coverage shall be continuous, by renewal or extended reporting period, for not less than sixty (60) months following completion of the Contract and acceptance by the Department. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Contract.

#### H.1.1 Additional Insurance Requirements

- A. The Contractor shall maintain insurance coverage for the mutual protection of both the Department and the Contractor against claims that may arise out of or result from the Contractor's actions or operations hereunder, whether such actions or operations are by the Contractor or a subcontractor, or by anyone directly or indirectly employed by or acting on behalf of the Contractor or subcontractor where liability may arise for:
  1. Claims under Worker's Compensation Disability Benefit, and other similar employee benefit acts;
  2. Claims for damages because of bodily injury, occupational sickness or disease, or death of any Contractor employees;
  3. Claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees;
  4. Claims for damages ensured by usual personal liability coverage that are sustained by any person as a result of an act directly or indirectly related to the employment of such person by the Contractor, or by any other person;
  5. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from;
  6. Claims for damages based on violations of civil rights; and
  7. Claims for damages arising from fire and lightning and other casualties.
- B. The insurance required by this section shall be written for not less than any limits of liability specified by the Department or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations hereunder.
- C. Certificates/policies of insurance shall be filed with the Department prior to execution of the Contract. These certificates/policies shall contain a provision that coverage afforded under

the policies shall not be canceled, non-renewed or materially changed except after thirty (30) Days written notice by Certified Mail to: Texas Department of Criminal Justice, Two Financial Plaza, Suite 525, Huntsville, Texas 77340; Attn: **Jason Andrews**. The Contractor shall provide proof of insurance coverage to the TDCJ upon renewal of such.

- D. The Contractor shall name the Department and its officers, employees, and elected representatives as additional insured on applicable coverage, i.e., General Liability and Automobile.
- E. All insurance coverage is to be provided by insurance carriers permitted to conduct business in Texas. It is recommended that coverage be with companies licensed in the State of Texas with a minimum "VII" rating by A.M. Best or equivalent rating by a similar insurance rating service.
- F. Compliance with the foregoing insurance requirements shall not relieve the Contractor from any liability under the indemnification clause at Section I.5. If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than four (4) years following completion of the Contract and acceptance by the Department. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Contract.
- G. If any of the insurance coverage required under this Contract is written on a claims-made basis, the insurance policy must provide an extended reporting period of not less than four (4) years following the completion of all work performed by Contractor specified in this Contract.

## H.2 SUBCONTRACTORS

- A. The Contractor may subcontract for the performance of any of its responsibilities to provide Services pursuant to this Contract.
- B. No subcontract may be entered into unless the Department provides prior written approval, which approval may not be unreasonably withheld.
- C. If a subcontractor is deemed to be needed for an event of an emergency nature, verbal approval may be obtained through an Authorized Department Representative. The Contractor shall submit a written request with supporting documentation for approval, by the Department, as soon as possible.
- D. The Contractor shall furnish to the Department copies of all subcontracts, without regard to the amount of annual payments.
- E. Any arrangement by the Contractor with an affiliate or member company to provide Services for this Contract shall be subject to the subcontractor provisions of this Section.
- F. No contractual relationship shall exist between the Department and any subcontractor, and the Department shall accept no responsibility whatsoever for the conduct, actions, or omissions of any subcontractor selected by the Contractor.
- G. The Contractor shall be responsible for the management of the subcontractors in the performance of their work.

- H. A subcontractor may not work directly with the Department in any manner and shall not be included in Contract negotiations, renewals, audits, or any other discussions except at the request of the Department.
- I. Unless waived in writing by the Department, the subcontract shall contain the following components.
  - 1. An acknowledgement that the subcontract is subject to the Contract between the Department and the Contractor (the "Master Contract").
  - 2. The subcontractor shall agree to comply with the terms of the Master Contract to the extent applicable with respect to goods and Services being provided under the subcontract. It is the intention of the parties of the subcontract that the subcontractor shall "stand in the shoes" of the Contractor with respect to fulfilling the duties and obligations of the Contractor to the Department under the Master Contract.
  - 3. The Department's approval of a subcontract does not relieve the Contractor of its duty to perform under the Master Contract.
  - 4. The Department shall be deemed a "third party beneficiary" to the subcontract.
  - 5. The subcontract shall contain the required Authority to Audit Clause referenced in Section E.4 and the required Non-Discrimination Clause referenced in Section I.12.

#### **H.2.1 Insurance**

The Contractor shall require all subcontractors to obtain, maintain, and keep in force insurance coverage in accordance with accepted industry standards and the Contract during the time they are engaged hereunder.

#### **H.2.2 Reserved for Future Use**

#### **H.3 TRANSITION**

- A. Upon termination of this Contract, the Contractor agrees to work with the Department under the Department's management supervision for a period of sixty (60) Days, prior to the expiration of the Contract, to ensure the orderly transfer and efficient transition from current Contractor management to either the Department management or management by a third party of the program.
- B. During this transition period, the Contractor shall transfer all Inmate records to the Department if requested to do so by the Department. In the event the Contractor requires copies of any records after Contract expiration and program management transition, the Department will furnish copies to the Contractor at the Contractor's expense.

#### **H.4 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS**

- A. The Contractor shall comply with Texas Government Code, Section 2155.4441, relating to service contract use of products produced in the State of Texas.



- B. In performing Services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside of Texas.

#### H.5 CRIMINAL HISTORY INFORMATION COMPLIANCE

The parties hereto acknowledge and agree that in order for the Contractor to perform the Services contemplated herein, the Department may have to provide the Contractor with, or the Contractor may have access to, certain information regarding Inmates and former Inmates known as "criminal history information". Criminal history information means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. The term does not include information as to convictions, fingerprint information, and driving records. In the event the Department provides the Contractor with criminal history information, the Contractor agrees to comply with the confidentiality requirements of all applicable federal and state laws, including Texas Government Code, Section 411.083, and the FBI Criminal Justice Information Services (CJIS) Security Policy. More specifically, the Contractor agrees and acknowledges as follows.

- A. The Department hereby specifically authorizes that the Contractor may have access to criminal justice history to the extent such access is necessary or appropriate to enable the Contractor to perform the Services contemplated herein.
- B. The Contractor agrees to limit the use of such criminal justice information for the purposes set to herein.
- C. Texas Administrative Code, Title 1, Part 10, Chapter 202, Subchapter B (Security and Standards for State Agencies); Department Information Resource Security Program (IRSP), and with the FBI Criminal Justice Information Services (CJIS) Security Policy version 5.8.
- D. The Contractor agrees to maintain the confidentiality and security of the criminal justice history information in compliance with federal and state statutes, rules, and regulations and return or destroy such information when it is no longer needed to perform the Services contemplated herein.
- E. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to the Department. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for the Department's approval the Contractor's corrective action plan to ensure full compliance with the terms hereof. Until such time as the corrective action plan is approved by the Department, the Contractor shall not be authorized to fill any vacant positions unless special authorization is granted in writing by the Department, which authorization shall not be unreasonably withheld.
- F. The Contractor and the Contractor's Agents expressly do not have any actual or implied authority to determine whether any of the Department's Data is public or exempted from disclosure. The Contractor is not authorized to respond to public information requests on behalf of the Department. The Contractor agrees to forward to the Department, by facsimile within one (1) Working Day from receipt all request(s) for information associated with the Contractor's services under this Contract.

## **H.6 OTHER CONFIDENTIAL OR SENSITIVE INFORMATION**

- A. The parties hereto acknowledge and agree that in order for the Contractor to perform the Services contemplated herein, the Department may have to provide the Contractor with, or the Contractor may have access to, certain information, other than criminal history information, that is confidential pursuant to federal or state laws, rules, or regulations, or that is personal information considered to be "sensitive". The Contractor agrees that such confidential or Sensitive Information shall only be used for the purpose of performing Services contemplated herein. Such information shall not be disclosed, copied, or transmitted for any purpose other than for the performance of Services contemplated herein.
- B. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to the Department. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for the Department's approval, the Contractor's corrective action plan to ensure full compliance with the terms hereof. Until such time as the corrective action plan is approved by the Department, the Contractor shall not be authorized to fill any vacant positions unless special authorization is granted in writing by the Department which authorization shall not be unreasonably withheld.

## **H.7 WARRANTY DISCLAIMER**

Other than the warranty for the Contractor's services set forth in the Contract, the Contractor provides no other warranties, whether express or implied, in connection with any services or deliverables under this Contract, and that all other warranties, including, without limitation, the implied warranty of merchantability and fitness for particular purpose are expressly disclaimed by the Contractor.

## **H.8 DATA PROTECTION**

The Department agrees to allow the Contractor and its entities within its enterprise to store and use the Department's contact information, including names, phone numbers, and e-mail addresses, anywhere the Contractor does business. The Contractor will process (and use) such information in connection with this Contract, and the Contractor reserves the right to provide such information to entities within its enterprise, its contractors, business partners, and assignees for uses consistent with their collective business activities, including communication with the Department (for example, for processing orders, for promotions, and or market research).

## **H.9 BOOKS AND RECORDS**

All records and documents pertinent to the Services contracted hereunder shall be kept for a minimum of seven (7) years after the expiration or termination hereof. If any litigation, claim, or audit involving these records begins before the retention period expires, the Contractor must continue to retain said records and documents until all litigation, claims, or audit findings are resolved, meaning that there is a final Court Order from which no further appeal may be made, or a written agreement is entered into between the Department and the Contractor.

**H.10 ORGANIZATIONAL AND NAME CHANGE**

The Contractor shall submit written notification to the Department within thirty (30) Days of any changes in the Contractor's name, address, telephone number, fax number, and/or email address with an effective date of such change. The Contractor shall submit to the Department a copy of any registration "to do business as (DBA)" or "also known as (AKA)" and any legal corporate name change filed with the Secretary of State.

**H.11 FREE EXERCISE OF RELIGION**

The Contractor is prohibited from substantially burdening an employee's or Inmate's free exercise of religion.

**H.12 DELAY OF SERVICES**

The Contractor shall meet its obligations to commence Services within the time frames defined by the Contract. In the event the Contractor fails to meet those time frames as defined by the Contract, absent extensions from the Department, the Department will have the right to obtain the Services from another source and charge the cost thereof to the Contractor for each Day that Services are not performed due to delays caused by the Contractor's nonperformance. The Department will provide written notification to the Contractor by certified mail, return receipt requested, of the charges which will include the date of imposition and the amount that has accrued daily as of the date of the notification.

**H.13 SECURITY**

The Contractor's employees and representatives, vehicles and equipment must be under security surveillance at all times and are subject to inspection at any time while on state property. The Contractor agrees to abide by all Department Policies and unit rules and regulations on state property. These rules, in part, prohibit the introduction of alcohol, narcotics, weapons, gambling paraphernalia, pagers and cellphones to any state property. This includes having these items in personal vehicles of on-site employees. The Contractor's employees may not carry more than \$25.00 in cash into any Department Facility. Tobacco products are strictly prohibited on TDCJ units but are allowed in the personal vehicles of on-site employees or in designated smoking areas. All vehicles must be kept locked when not in use and the Contractor's employees must stay with the vehicle when it is unlocked.

**SECTION I – CONTRACT CLAUSES****I.1 RESERVED FOR FUTURE USE****I.2 ADVERTISING OF AWARD**

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product(s) or Service(s) provided is endorsed or preferred by the Department or is considered by the Department to be superior to other products or services.

**I.3 DEFAULT AND TERMINATION****I.3.1 Default by the Contractor**

Each of the following shall constitute an Event of Default on the part of the Contractor.

- A. A Material Failure to keep, observe, perform, meet, or comply with any covenant, agreement, term, or provision of this Contract to be kept, observed, met, performed, or complied with by the Contractor hereunder, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof.
- B. A Material Failure to comply with any Department Policy which the Contractor has been expressly required to comply with and for which the Contractor has not received a written waiver from the Department, or any court order, federal or state law or regulation, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof.
- C. A Material Failure to comply with any Department Policies for which the Contractor has been expressly required to comply with, and for which the Contractor has not received a prior written waiver from the Department, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof.
- D. Insolvency of the Contractor as evidenced by any of the following occurrences:
  - 1. Its inability to pay its debts;
  - 2. Any general assignment for the benefit of creditors;
  - 3. Any decree or order appointing a receiver or trustee for it or substantially all of its property to be entered and, if entered without its consent, not to be stayed or discharged within sixty (60) Days;
  - 4. Any proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and, if contested by it, not to be dismissed or stayed within sixty (60) Days; or
  - 5. Any judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property which is not released, stayed, bonded, or vacated within sixty (60) Days after issue or levy.

- E. The discovery by the Department that any statement, representation, or warranty in this Contract is false, misleading, or erroneous in any material respect.
- F. A failure by the Contractor to comply with contractual terms and conditions, resulting in a breach of security or health and safety standards. This Event of Default may result in the immediate termination of this Contract.

### **I.3.2 Further Opportunity to Cure**

- A. If an Event of Default of the type specified in Section I.3.1 occurs, and the Contractor reasonably believes that such Event of Default cannot be cured within the twenty (20) Days allowed in Section I.3.1 but can be cured through a diligent, ongoing, and conscientious effort on the part of the Contractor within a reasonable period not to exceed three (3) months, then the Contractor may, within the twenty (20) Day cure period, submit a detailed plan for curing the Event of Default to the Department.
- B. Upon receipt of any such plan for curing an Event of Default, the Department shall promptly review such plan and at its discretion, which must be reasonable in the circumstances, may allow or not allow the Contractor to pursue such plan of cure.
- C. The decision of the Department will be communicated in writing to the Contractor.
- D. The Department agrees that it will not exercise its remedies thereunder with respect to such Event of Default for so long as the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.

### **I.3.3 Remedy of the Department**

When an Event of Default by the Contractor has been determined to exist, the Department's Authorized Representative will notify, in writing, the Contractor of such Event of Default, and subject to the provisions of Section I.3.2, the Department will have the right to pursue any remedy it may have by law or in equity, including, but not limited to:

- A. Reducing its claim to a judgment;
- B. Taking action to cure the Event of Default, in which case the Department may offset against any Payments owed to the Contractor all reasonable costs incurred by the Department in connection with its efforts to cure such Event of Default;
- C. Withholding of funds as authorized in Section G.4.1; or
- D. Exercising a Termination for Default
  1. In the event of Termination for Default, the Department shall offset against Payments owed to the Contractor any reasonable amounts expended by the Department to cure the Event of Default.
  2. The Department will have no further obligations to the Contractor after such termination and the Contractor shall comply with Section H.3 with respect to the transition to new management.

3. The Department may also acquire, in the manner the Department considers appropriate, services similar to those terminated and the Contractor will be liable to the Department for any increase in costs for those services.
4. The Contractor shall not be liable for any increase in costs if the failure to perform the Contract arises from, and without the fault or negligence of the Contractor, as follows:
  - a. Acts of God or of the public enemy;
  - b. Acts of the State in either its sovereign or contractual capacity;
  - c. Fires;
  - d. Floods;
  - e. Epidemics;
  - f. Quarantine restrictions;
  - g. Strikes;
  - h. Freight embargoes; and
  - i. Unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

#### **I.3.4 Reserved for Future Use**

#### **I.3.5 Non-Appropriation Effect and Remedy**

An event of Non-Appropriation shall not cause the Department to be in default hereunder, but upon any such event of Non-Appropriation, this Contract shall automatically terminate as of the last Day of the Biennium for which appropriations have been made.

#### **I.3.6 Termination for Convenience**

The Department may, in its sole discretion, terminate this Contract with or without cause, by providing the Contractor with sixty (60) Days prior written notice of such termination.

#### **I.3.7 Termination by Mutual Agreement**

The parties may terminate this Contract by mutual agreement, the terms of which shall be set forth in writing.

#### **I.3.8 Termination Procedures**

A. Upon Termination for Default, Termination for Convenience, Termination by Mutual Agreement, or Termination for Unavailability of Funds as heretofore mentioned, the following procedures will be adhered to.

1. The Department will immediately notify the Contractor in writing specifying the effective termination date.
  2. After receipt of the Notice of Termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
    - a. Place no further subcontracts or orders in support of this Contract;
    - b. Terminate all subcontracts; and
    - c. Cancel all orders as applicable.
- B. Upon termination, the Department shall be entitled to receive from the Contractor, payment for all revenue owed under this Contract up to and including the date of termination.

The Department has no authority to reimburse a Contractor for capital equipment costs in the event that the Contract is terminated by mutual agreement or for cause before the expiration of the base period. Notwithstanding the foregoing, if the Contract is terminated prior to the end of the base period, the Department shall require any new service provider to compensate the Contractor in an amount that equates to the undepreciated or unamortized portion of any equipment and infrastructure installed by the Contractor which is used by the new service provider. In the event the Contractor transfers ownership of or title to any equipment and infrastructure to the Department, including any equipment and infrastructure which become the property of the Department pursuant to the terms of this Contract, the compensation owed to the Contractor pursuant to the preceding sentence shall be calculated as if the ownership of such equipment and infrastructure had remained with the Contractor and in accordance with an amortization/depreciation schedule to be provided by the Contractor to the Department at time of transfer of ownership of the equipment.

### **I.3.9 Default by the Department**

Failure of the Department to substantially fulfill any material obligation hereunder, unless caused by the default of the Contractor, which is not cured by the Department within twenty (20) Days after receiving written notice thereof shall constitute an Event of Default on the part of the Department.

### **I.3.10 Remedy of the Contractor**

Upon an Event of Default by the Department, the Contractor's sole remedy shall be to follow the Dispute Resolution Process in Section I.3.11 below.

### **I.3.11 Dispute Resolution**

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor, shall be resolved as follows.
1. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used, as further described herein, by the Department and the Contractor to attempt to resolve any claim for breach of Contract made by the Contractor.

2. A Contractor's claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.
  3. To initiate the process, the Contractor shall submit written notice, as required by Texas Government Code, Chapter 2260, Subchapter B, to the Contracts and Procurement Director or designee at Two Financial Plaza, Suite 525, Huntsville, Texas 77340.
  4. Said notice shall specifically state the provisions of Texas Government Code, Chapter 2260, Subchapter B, are being invoked and shall also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under the parties' contract.
  5. Compliance by the Contractor with Texas Government Code, Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Texas Government Code, Chapter 2260, Subchapter C.
  6. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the Department if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
  7. Compliance with the contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.
  8. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to the Contract shall be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Texas Government Code, Chapter 2260, the Department and the Contractor shall comply with the rule published in Texas Administrative Code, Title 37, Part 6, Chapter 155, Subchapter C, Rule 155.31.
- C. At all times during the course of the dispute resolution process, the Contractor shall continue with providing Services as directed in a diligent manner and without delay; shall conform to the Department's directive, decision, or order; and shall be governed by all applicable provisions of this Contract.
- D. Records of the Services performed shall be kept in sufficient detail to enable Payment in accordance with applicable provisions of this Contract, if this should become necessary.
- E. This provision shall not be construed to prohibit the Contractor from seeking any other legal or equitable remedy to which it is entitled.

#### **I.4 NO WAIVER OF RIGHTS**

- A. No failure on the part of any party to exercise, and no delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or in the exercise of any other right.



- B. The remedies provided in this Contract are cumulative and non-exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

## **I.5 INDEMNIFICATION OF THE DEPARTMENT**

### **I.5.1 Acts or Omissions**

The Contractor shall indemnify and hold harmless the State of Texas, the Department, the TBCJ, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any purchase orders issued under the Contract. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

### **I.5.2 Infringements**

The Contractor shall defend, indemnify, and hold harmless the Department and the State of Texas from and against any and all claims, violations, misappropriations, or infringement of any patent, trademark, copyright, trade secret, or other intellectual property rights and/or other intangible property, publicity or privacy rights, and/or in connection with or arising from: (1) the performance or actions of The Contractor pursuant to this Contract; (2) any Deliverable, Work Product, configured Service, or other service provided hereunder; and/or (3) the Department's and/or the Contractor's use of or acquisition of any requested Services or other items provided to the Department by the Contractor or otherwise to which the Department has access as a result of the Contractor's performance under the Contract. The Contractor and the Department agree to furnish timely written notice to each other of any such claim. The Contractor shall be liable to pay all costs of defense, including attorneys' fees. The defense shall be coordinated by the Contractor with the Office of the Texas Attorney General (OAG) when Texas state agencies are named defendants in any lawsuit, and the Contractor may not agree to any settlement without first obtaining the concurrence from OAG. In addition, the Contractor will reimburse the Department and the State of Texas for any claims, damages, costs, expenses, or other amounts, including but not limited to, attorneys' fees and court costs, arising from any such claim. If the Department determines that a conflict exists between its interests and those of the Contractor, or if the Department is required by applicable law to select separate counsel, the Department will be permitted to select separate counsel, and the Contractor will pay all reasonable costs of the Department's counsel.

### **I.5.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- A. The Contractor agrees and acknowledges that during the existence of this Contract, the Contractor shall be entirely responsible for the liability and payment of the Contractor's and the Contractor's employees' taxes of whatever kind, arising out of the performances in this Contract. The Contractor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers Compensation. The Department and/or the State shall not be liable to the Contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment

insurance and/or Workers' Compensation or any benefit available to a State employee or employee of another governmental entity customer.

- B. The Contractor agrees to indemnify and hold harmless the Department, the TBCJ, the State of Texas and/or their employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs, attorneys' fees, and expenses, relating to tax liability, unemployment insurance and/or Workers' Compensation in its performance under this Contract. The Contractor shall be liable to pay all costs of defense, including attorneys' fees. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

#### **1.6 NO WAIVER OF DEFENSES**

- A. Neither the Department nor the Contractor shall waive, release, or otherwise forfeit any possible defense the Department or the Contractor may have regarding claims arising from or made in connection with the performance of the Services by the Contractor without the consent of the other party.
- B. The Department and the Contractor shall reserve all such available defenses and cooperate with each other to make such defenses available for each other's benefit to the maximum extent allowed by law, including any defenses the Department may have regarding litigation, losses and costs resulting from claims or litigation pending at the time the Contract becomes effective, or arising thereafter from occurrences prior to the effective date hereof.

#### **1.7 INDEPENDENT CONTRACTOR**

- A. The Contractor is associated with the Department only for the purposes and to the extent set forth herein, and with respect to the performance of Services hereunder, the Contractor is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder.
- B. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Department whatsoever with respect to the indebtedness, liabilities, and obligations of the Contractor or any other party.
- C. The Contractor shall be solely responsible for (and the Department shall have no obligation with respect to) payment of all Federal Income, FICA, and other taxes owed or claimed to be owed by the Contractor, arising out of the Contractor's association with the Department pursuant hereto, and the Contractor shall indemnify and hold the Department harmless from and against any and all liability from all losses, damages, claims, costs, penalties, liabilities, and expenses howsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

#### **1.8 LAWS OF TEXAS**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

**I.9 ASSIGNMENT**

- A. The Contractor may not assign any interest in this Contract without the prior written consent of the Department which consent the Department may withhold at its sole discretion.
- B. If the Department so elects in its sole discretion, this Contract will terminate upon the occurrence of any of the following:
  - 1. More than fifty percent (50%) of the assets of the Contractor are sold;
  - 2. The Contractor is merged into, acquired by, or consolidated with another corporation or business entity; or is otherwise the subject of reorganization; or
  - 3. Any shareholder or owner of the Contractor who owns at least ten percent (10%) beneficial ownership of the Contractor fails to continue to own at least ten percent (10%).
- C. In the event that any sale, transfer, or assignment, as referenced in paragraphs A and B above, is consented to by the Department, the transferee or its legal representative shall agree in writing with the Department to assume, perform and be bound by the covenants, obligations, and agreements contained herein.

**I.10 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS**

- A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.
- B. The Contractor shall maintain all licenses, permits and franchises necessary for its business where the failure to so maintain might have a material adverse effect on its ability to perform its obligations under this Contract.

**I.11 APPROVAL OF CONTRACT**

- A. This Contract is subject to written approval of the Executive Director of the Department and shall not be binding until so approved.
- B. For Contracts valued over \$1,000,000.00 in the initial Contract Term, the Executive Director's approval shall be given only on the approval of the TBCJ.

**I.12 NON-DISCRIMINATION**

In the performance of this Contract, the Contractor warrants that it shall not discriminate against any employee, subcontractor, participant, or provider on account of race, color, disability or perceived disability, religion, sex, national origin, genetic information, or age, and in accordance with the following:

- A. The Contractor shall not discriminate against employees, subcontractors, participants, or providers who have or are perceived to have a disability because of AIDS/HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this Non-Discrimination Clause in conspicuous places, available to employees and applicants for employment.

- B. In all solicitations or advertisements for employees and/or the purchase of Services, the Contractor shall state that it is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting this requirement.
- C. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions shall be binding upon each subcontractor or vendor.

### **I.13 CONFIDENTIALITY AND OPEN RECORDS**

#### **I.13.1 Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of the Contract shall be kept confidential unless otherwise provided by law and shall not be made available to any individual or organization by the Contractor or the Department without prior approval of the other party.

#### **I.13.2 Open Records**

In accordance with Texas Government Code, Section 2252.907, the Contractor acknowledges that this Contract and information created or maintained in connection with this Contract is public information and subject to disclosure as provided by Texas Government Code, Chapter 552 (Texas Public Information Act). The Texas Public Information Act may require the Contractor to make information related to this Contract available to the public pursuant to a request for public information. The Contractor agrees, upon request, to make information related to this Contract that is not otherwise excepted from release by the Texas Public Information Act available to the public in hard copy, unless the requestor of the information consents to receive the information in another mutually agreeable format. The Contractor acknowledges that the Department shall not provide legal counsel related to the Contractor's compliance with the Texas Public Information Act.

### **I.14 CONTRACT CHANGES**

- A. Changes/modifications to this Contract (except Contract extensions in accordance with Sections I.15 and I.16; administrative changes; such as changing the Contract Specialist designation; correcting typographical errors; or other unilateral changes discussed elsewhere in the Contract) shall be mutually agreed to by the parties and executed in writing with the authorized signatures.
- B. The Department, at its sole discretion, may revise funding during the course of this Contract by issuing a unilateral modification to the Contractor.

### **I.15 OPTION TO EXTEND THE TERM OF THE CONTRACT**

- A. The Department may, at its sole discretion, extend the Contract Term by written notice to the Contractor within ten (10) Days of Contract expiration, provided that the Department shall give the Contractor a preliminary written notice of its intent to extend at least sixty (60) Days before the Contract expires.
- B. The preliminary notice does not commit the Department to an extension.

- C. If the Department exercises this option, the extended Contract shall be considered to include this option provision.

#### **I.16 OPTION TO EXTEND SERVICES**

- A. The Department may require continued performance of any Services within the limits and at the rates specified in this Contract.
- B. The Department reserves the right to extend this Contract for a ninety (90) Day period at the end of each Contract and/or extension period for the purpose of re-advertising the Service, awarding a new contract, and transitioning into a new contract.
- C. This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six (6) months.
- D. The Department may exercise the option by written notice to the Contractor within the period specified in Section I.15.

#### **I.17 SEVERABILITY**

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

#### **I.18 IMMIGRATION**

The Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and all subsequent immigration laws and amendments.

#### **I.19 NO LIABILITY UPON TERMINATION**

If this Contract is terminated for any reason, the Department and the State of Texas shall not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, the Contractor may be entitled to the remedies established in Section I.3.11.

#### **I.20 LIMITATION ON AUTHORITY**

The Contractor shall have no authority to act for or on behalf of the Department or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. The Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or the Department.

#### **I.21 PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS**

The Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or the Contractor's use of or acquisition of any services or other items provided to the State of Texas by The Contractor or otherwise to which the State of Texas has access as a result of the Contractor's performance under this Contract, provided that the State shall notify the Contractor of any such claim within a reasonable time of the State's

receiving notice of any such claim. If the Contractor is notified of any claim subject to this section, the Contractor shall notify the Department of such claim within five (5) Working Days of such notice. No settlement of any such claim shall be made by the Contractor without the Department prior written approval. The Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments, or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. The Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. The Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

## **I.22 INTELLECTUAL PROPERTY INDEMNIFICATION**

- A. The Contractor shall defend indemnify, and hold harmless the State of Texas and/or the Department from and against any and all claims, violations, misappropriations or infringement of any patent, trademark, copyright, trade secret or other intellectual property, publicity or privacy rights, and/or in connection with or arising from:
1. The performance or actions of the Contractor pursuant to this Contract;
  2. Any deliverable, Work Product, configured service or other service provided hereunder; and/or
  3. The Department's and/or the Contractor's use of or acquisition of any requested services or other items provided to the Department by the Contractor or otherwise to which the Department has access as a result of the Contractor's performance under the Contract.
- B. If the Department's use of the software becomes subject to a claim, or is likely to become subject to a claim, in the sole opinion of the Department, the Contractor shall, at its sole expense (1) procure for the Department the right to continue using such software under the terms of this Contract; or (2) replace or modify the software so that it is non-infringing.
- C. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.
- D. The Contractor shall be liable to pay all costs of defense, including attorney fees. The defense shall be coordinated by the Contractor with the Office of Attorney General (OAG) when Texas State Agencies are named as defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the OAG.
- E. In addition, the Contractor will reimburse the Department and the State of Texas for any claims, damages, costs, expenses, or other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim.
- F. If the Department determines that the conflict exists between its interests and those of the Contractor or if the Department is required by applicable law to select separate council, the department will be permitted to select separate council and the Contractor will pay all reasonable costs of the Department's counsel.

### **I.23 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213**

- A. Effective September 1, 2006, State Agencies and Institutions of Higher Education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in Texas Administrative Code, Title 1, Part 10, Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- B. The Contractor shall provide the Department with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under the Rehabilitation Act, Section 508), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). The Contractor's not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must complete and submit the VPAT with their Technical Offer (See Section L.8.2). For additional information regarding the "Buy Accessible Wizard" or to obtain an online copy of the VPAT, go to <http://www.section508.gov/>.

### **I.24 RIGHTS TO DATA, DOCUMENTS, AND COMPUTER SOFTWARE (STATE OWNERSHIP)**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract. The Contractor may, at its own expense, keep copies of all its writings for its personal files. The Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department; provided, however, that the Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

Notwithstanding anything to the contrary in this section, this section shall not apply to (a) Securus' software or other intellectual property associated with its products and services; (b) any items described in this section which are not typically provided to law enforcement agencies as part of the operation of the systems; and (c) any items described in this section that the Contractor is required to retain ownership of pursuant to applicable laws, regulations, or contract and end user terms.

### **I.25 FORCE MAJEURE**

- A. Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform.
- B. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

- C. Each party must inform the other in writing, with proof of receipt, within three (3) Working Days of the existence of such force majeure, or otherwise waive this right as a defense.



**I.26 NOTICES**

Any written notices required under this Contract will be delivered by carrier service to the Contractor's office address specified on Page 1 of this Contract by U.S. mail or by email.

Notices to the Department shall be sent to:

Jason Andrews, Contract Specialist  
Texas Department of Criminal Justice  
Contracts and Procurement Department  
ITCU Branch  
Two Financial Plaza, Suite 525  
Huntsville, Texas 77340  
jason.andrews@tdcj.texas.gov

Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party. This change shall be incorporated with a unilateral modification.

**I.27 SUBSTITUTIONS**

Substitutions are not permitted without written approval of the Department.

**I.28 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM**

A. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the Contract Term; and
2. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

B. The Contractor shall provide, upon request of the Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and the Contractor's subcontractors, as proof that this provision is being followed.

C. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated Contract.

**I.29 ANTITRUST AFFIRMATION**

The Contractor shall confirm, under penalty of perjury of the laws of the State of Texas that (1) in connection with this Contract, neither the Contractor nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Texas Business and Commerce Code Chapter 15; (2) in connection with this Contract, neither the Contractor nor any representative of the Contractor have violated any federal antitrust law; and (3) neither the

Contractor nor any representative of the Contractor have directly or indirectly communicated any of the contents of this Contract to a competitor of the Contractor or any other company, corporation, firm, partnership, or individual engaged in the same line of business as the Contractor.

## SECTION J – LIST OF EXHIBITS

<b>Exhibit No.</b>	<b>Title</b>	<b>Number of Pages</b>
J.1	Site List	3
J.2	TDCJ Non-Employee Background Questionnaire	3
J.3	Contract Performance Measures	2
J.4	Site Pre-Dig Safety Meeting Attendance Sheet	1

<b>SITE LIST</b>	
<b>Unit Name</b>	<b>Estimated Total Number of Offenders</b>
ALFRED HUGHES	2,809
ALLRED	3,510
B MOORE	499
BETO	3,161
BILL CLEMENTS	3,567
BOYD	1,260
BRIDGEPORT	469
BYRD	692
C MOORE	1,035
CAROL YOUNG COMPLEX	359
CHRISTINA MELTON CRAIN UNIT	1,447
CLEMENS	1,112
CLEVELAND	428
COFFIELD	3,928
COLE	779
CONNALLY	1,935
COTULLA	517
DALHART	670
DANIEL	884
DARRINGTON	1,694
DIBOLL PRIV	497
DOLPH BRISCOE	1,138
DOMINGUEZ	1,854
DUNCAN	364
EAST TEXAS TREATMENT FACILITY	1,821
EASTHAM / WAINWRIGHT	2,346
ELLIS	1,969
ESTELLE	2,773
FERGUSON	2,195
FORMBY	809
FORT STOCKTON	428
GARZA WEST	1,779

GIB LEWIS	1,688
GIST	1,770
GLOSSBRENNER	368
GOODMAN	97
GOREE	624
HALBERT	209
HAMILTON	834
HENLEY	177
HIGHTOWER	1,218
HILLTOP	367
HOBBY	1,219
HODGE	846
HOLLIDAY	1,953
HOSPITAL-GALV	277
HUNTSVILLE	1,011
HUTCHINS	1,838
J MIDDLETON	1,549
JAMES LYNAUGH	998
JESTER III	934
JESTER IV / SCOTT	458
JOHNSTON	208
JORDAN	852
KEGANS ISF	328
KYLE	173
LEBLANC	1,012
LINDSEY SJ	853
LOCKHART PRIV P	412
LOCKHART WORK FAC	383
LOPEZ	1,002
LUTHER	1,173
LYCHNER	1,551
MAC STRINGFELLOW	938
MARLIN	457

MCCONNELL	2,666
MICHAEL	2,835
MONTFORD	692
MOUNTAIN VIEW	515
MURRAY	1,001
NEY	493
PACK I	1,044
PLANE JAIL	1,245
POLUNSKY	2,897
POWLEDGE	749
RAMSEY I	1,526
ROACH	1,167
ROBERTSON	2,849
RUDD	376
SAN SABA	475
SANCHEZ	742
SANDERS ESTES	1,031
SANTA MARIA BABY BONDING	5
SAYLE	385
SEGOVIA	976
SKYVIEW	503
SMITH	1,466
STEVENSON	1,082
STILES	2,439
TELFORD	2,643
TERRELL	1,436
THOMAS HAVINS	304
TORRES	1,216
TRAVIS JAIL	817
TULIA / MECHLER	514
VANCE	320
WALLACE	942
WEST TEXAS HOSP	98
WHEELER	393
WILDERNESS 3	19
WILLACY	603
WOODMAN SJ	551
WYNNE	2,558
	118,078

### Texas Department of Criminal Justice Non-Employee Background Questionnaire

This information is needed for TDCJ to conduct a criminal history check to determine whether access to TDCJ units and departments should be approved. All questions shall be answered in full.

**NOTE TO APPLICANT:** With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Texas Government Code §§ 552.021 and 552.023, to receive and review the collected information. Under Texas Government Code § 559.004, you are also entitled to request, in accordance with the TDCJ procedures, that incorrect information the TDCJ has collected about you be corrected.

1. Name: \_\_\_\_\_ 2. Social Security No.: \_\_\_\_\_  
Last First Middle  
(As it appears on your Social Security Card)

3. Mailing Address: \_\_\_\_\_  
Street City State Zip

4. Date of Birth: \_\_\_\_\_ 5. Place of Birth: \_\_\_\_\_  
MM/DD/YYYY City State

6. Driver License No.: \_\_\_\_\_ State: \_\_\_\_\_ Phone No.: \_\_\_\_\_

8. Other names used (maiden, alias, nicknames): \_\_\_\_\_

9. Sex: Male  Female  10. E-mail Address: \_\_\_\_\_

11. Ethnic Origin: White  Black  Hispanic  Asian Pac. Islander  Am. Ind. Alaskan  Other

12. Have you previously been employed by TDCJ or worked in a TDCJ facility on a contract basis? Yes  No   
 If yes, give unit(s), department(s), position(s) held, and dates: \_\_\_\_\_

13. Are you related to any **employee** or **contract employee** of TDCJ? Yes  No  Unknown   
 If yes, list name, relationship, and unit/department of assignment: \_\_\_\_\_

14a. Are you or any immediate member of your family (to include, but not limited to parent, brother, sister, spouse, or child) related to any TDCJ **offender** (incarcerated or on parole)? Yes  No  Unknown   
 If yes, provide the name of the offender(s): \_\_\_\_\_

14b. Are you now or have you ever been involved in a spousal relationship with a TDCJ **offender** (incarcerated or on parole)?  
 This includes marriage, common-law marriage, lived together, or had a child together. Yes  No   
 If yes, provide the name of the offender(s): \_\_\_\_\_

14c. Do you have a current business partnership or gang association with a current TDCJ **offender** (incarcerated or on parole)?  
 Yes  No  If yes, provide the name of the offender(s): \_\_\_\_\_

14d. Are you on a current TDCJ offender's visitation list? Yes  No  If yes, provide the name of the offender(s): \_\_\_\_\_

14e. Have you corresponded in the last year with a current TDCJ offender? Yes  No  If yes, provide the name of the offender(s): \_\_\_\_\_

**NOTE:**

- If you answered yes to **Question 14a, b, c, d, or e** above, you are required to complete and submit a **PERS 282A, Additional Offender Information**. The PERS 282A form is available from the TDCJ website at [www.tdcj.state.tx.us](http://www.tdcj.state.tx.us)
- If you have a personal relationship with an offender, who is not a relative, be sure to read the "Offender Relationships" paragraph on Page 3 of this questionnaire.

(Continued on Page 2)

**IMPORTANT**

Read the definition of conviction in Question 17. When answering questions 15 through 17, **do not include:** 1) any violation of law committed before your 17th birthday, if the final decision was made in juvenile court or under a youth offender law; 2) any conviction whose record was expunged under federal or state law; 3) minor traffic violations, **DWI, DUI, Open Container, and Driving While License Suspended** are not minor traffic violations and shall be listed.

15. Do you have any criminal charges currently pending? Yes  No   
If yes, please explain: \_\_\_\_\_

16. Are you on parole or probation, deferred adjudication, or under a pre-trial diversion agreement? Yes  No   
If yes, please explain: \_\_\_\_\_

17. Have you ever been convicted of a crime (misdemeanor or felony)? Yes  No  If yes, list each one below.  
Attach an additional page if necessary. **Include those that may not appear on your record at this time.**  
**Important:** For purposes of contract employment with TDCJ, convictions include sentenced to confinement, paid fine, time served, placed on probation (includes **deferred adjudication**), and court ordered restitution. See Falsification Policy on Page 3 of this questionnaire.

Date	Felony or Misdemeanor	Offense	Offense Class	City & State	Punishment

**DOCUMENT REQUIREMENTS:** You are required to provide with this questionnaire a **disposition** for each criminal charge you reported in Question 15, 16, and 17 above. A disposition is a statement of the charge, date, and the results of the case. If the charge was dismissed, the disposition shall state the reason for dismissal. Dispositions can normally be obtained from the **clerk of the court** having jurisdiction over the case.

18. Are you now or have you ever been a member of a street gang? Yes  No   
Are you now or have you ever been a member of or affiliated with an organization promoting racial, ethnic, or gender superiority or separation, independence from governmental laws and regulations, or overthrow of the United States Government?  
Yes  No

If you answered yes to either of these questions, provide the following information:

- a. Name of the organization and dates of membership: \_\_\_\_\_
- b. Position or positions you held in the organization: \_\_\_\_\_
- c. Arrests and/or convictions resulting from your activities as a member: \_\_\_\_\_

19. Do you have any tattoos or markings on your body signifying membership or affiliation with a street gang or associated with organizations promoting racial, ethnic, or gender superiority or separation, independence from governmental laws and regulations, or overthrow of the United States Government? Yes  No   
If yes, provide a description and location of those tattoos or markings: \_\_\_\_\_

(Continued on Page 3)



### Falsification Policy

It is important that contract employee applicants provide accurate information in this questionnaire. **Failure to list any criminal conviction or other important information, such as prior employment with TDCJ or offender relationships, is considered falsification of the questionnaire and results in disqualification for contract employment access to TDCJ facilities for one year.**

As a criminal justice TDCJ, it is very important that we know if an applicant has a criminal record. In most cases, a criminal record does not disqualify you for access to TDCJ facilities. However, falsification of the questionnaire always disqualifies you, regardless of how well qualified you are otherwise.

**What convictions shall be listed?** All convictions handled in adult court shall be listed, no matter when or where they occurred. In Texas, if you are 17 years old or older, the case is always handled in adult court. If you are under 17, it still may be handled in adult court. As an exception, you are not required to list convictions for minor traffic violations. Examples of minor traffic violations are speeding, running stop signs, and no seat belts. Examples of crimes which are not minor traffic violations and shall be listed are DWI, DCI, Hit and Run, Assault with a Motor Vehicle, Reckless Driving, Open Container, and Driving While License is Suspended. Convictions that have been **expunged** under state or federal law do not have to be listed. Expunged means a judge signed an order directing all agencies with a record of the arrest and conviction destroy those records (this is not the same as a deferred adjudication explained below).

**What is a conviction?** For TDCJ purposes, a conviction is a judgement or a verdict, a plea of guilty or nolo contendere, and/or a judicial finding of guilt substantiated by the evidence, which results in the payment of fines, forfeiture of collateral or bond, restitution, **deferred adjudication**, probation, community supervision, confinement, suspended sentence, or any other penalty imposed by a court of law or agreed upon by the accused. This includes instances where a pardon or a reprieve has been granted for any reason other than proof of innocence. **If you have a case handled by deferred adjudication, it shall be listed in your application, regardless of whether you think it is still on record.** On the other hand, a pre-trial diversion agreement is not considered a conviction for the purpose of employment with TDCJ and does not need to be included on your application.

**Military Convictions.** Convictions by court martial for criminal offenses shall also be listed.

**Failure to Appear.** If you were convicted of a routine traffic violation or other offense and did not pay the ticket on time or failed to appear to court, you may have been charged with and convicted of Failure to Appear. Failure to Appear is a separate crime and shall be listed.

**Questions.** If you have any questions concerning what shall be listed in this questionnaire, it is recommended you contact the Human Resources Division in Huntsville at (936) 437-3126 **before** you submit this questionnaire.

### Offender Relationships

TDCJ employees and contract employees with access to TDCJ facilities are prohibited from maintaining or developing a personal relationship with an offender who is not related to the employee. Prohibited relationships include those involving cohabitation, sexual misconduct, or actions that jeopardize or have the potential to jeopardize the security of the TDCJ. This means employees and contract employees may not have personal contact or relationships with offenders currently incarcerated or on parole outside of their official duties if this contact or relationship would jeopardize or has the potential to jeopardize the security of the TDCJ. Prohibited contact includes living together, writing letters or notes, telephone contact, visitation, and depositing funds into an offender's Inmate Trust Fund (ITF) account. If an employee or contract employee was once married to an offender or had a child together with an offender, employee contact with the offender may be limited to that which is ordered by the Court. As a condition of contract employment with TDCJ, contract employees with prohibited relationships shall sever those relationships. Sever means to cease any and all cohabitation, intimate encounters, verbal or written communications, visitation, or other prohibited contact. Continuation of a prohibited relationship after contract employment with TDCJ may result in denial of access to TDCJ facilities, if the TDCJ determines the relationship jeopardizes or has the potential to jeopardize the security of the TDCJ.

### Certification

I certify that I have read and understand the above explanation of the TDCJ Policy on Falsification and Offender Relationships. I further certify that my answers on this questionnaire are true, complete and correct to the best of my knowledge and I have not evaded or omitted any part thereof to reflect an untruth. I understand falsification constitutes grounds for refusing or terminating access to TDCJ units and departments.

Signature \_\_\_\_\_

Date \_\_\_\_\_

## CONTRACT PERFORMANCE MEASURES

Number	Identifier	Performance Requirements	Unacceptable	Acceptable	Revenue/Payment Adjustment (see Notes 1 and 2)
1	C.3.1	All tablets will have security measures hardened via the firmware.	A tablet with a security incident >Thirty (30) hours	Resolution will be required within thirty (30) consecutive hours from the time the Contractor becomes aware of the problem or receipt of trouble report.	Assess \$250.00 for each hour that the failure continues beyond thirty (30) hours.
2	C.3.2.2	In the event a position becomes vacant, the Contractor shall fill the vacant position within sixty (60) Days.	>Sixty (60) Days taken to fill a vacant position	Not applicable ≤ Sixty (60) Days	The Contractor will be assessed \$125.00 a Day for each Day the position is vacant beyond an initial sixty (60) Day period, sixty (60) Day cap.
3	C.3.2.2	Superior customer service is a priority to the Department. Contractor will provide timely customer service.	Untimely response to customer requests >Two (2) Days	The Contractor must respond within two (2) Working Days to all customer service requests escalated to the TDCJ Account Manager.	Assess \$100.00 per Day for each Day past two (2) Working Days that a response has not been provided, sixty (60) Day cap.
4	C.3.5	The Contractor shall provide training throughout the term of the Contract within fifteen (15) Days for each of the Department's request(s) for the training.	> Fifteen (15) Days	≤ Fifteen (15) Days	The Contractor will be assessed \$125.00 per Day for each Day past the fifteen (15) Day requirement.
5	C.3.6	Equipment at all locations shall remain operative.	Equipment at a site being inoperative >Twenty-four (24) hours	Resolution will be required within twenty-four (24) consecutive hours from the time the Contractor becomes aware of the problem or receipt of trouble report.	Assess \$125.00 if resolution is not completed within twenty-four (24) consecutive hours; sixty (60) Day cap.

Note 1: No revenue/payment adjustment shall exceed five percent (5%) of the total gross revenue for the month(s) in which the non-compliance occurred.

Note 2: Any time more than one revenue/payment adjustment is being applied, the total adjustment shall not exceed ten percent (10%) of the total Gross Revenue for the month(s) in which the non-compliance occurred.

Note 3: Total accumulated revenue / payment adjustments in a fiscal year shall not exceed seven percent (7%) of the total Annual Gross Revenue in that fiscal year.

Note 4: Assessments will not apply if non-compliance is determined to be a force majeure event as documented in the contractual agreement.

Note 5: A single non-compliant event that implicates multiple contract performance measures will be assessed at only the most costly performance measure.

Note 6: Assessments will be based on system operational hours of 7:00 A.M. to 10:00 PM Central Time.

# ATTENDANCE

## Site Pre-Dig Safety Meeting

Unit: \_\_\_\_\_ Date: \_\_\_\_\_

Locations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Required Topics to be Discussed:**

Location of water, electrical, and natural gas shut-off valves or disconnects.

Location of fire extinguishers.

Emergency procedures.

Contact information for questions/assistance.

Approximate location of known buried water, wastewater, electrical, natural gas, communication and camera lines within the identified construction area.

**Name:** \_\_\_\_\_ **Representing:** \_\_\_\_\_

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## SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

### K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION

#### K.1.1 Definition

A. "Historically Underutilized Business (HUB)" means an entity with its principal place of business in this State that is:

1. A corporation formed for the purpose of making a profit in which fifty-one percent (51%) or more of all classes of the shares of stock or other equitable securities are owned by one or more Economically Disadvantaged Persons who have a proportionate interest and actively participate in the corporation's control, operation and management;
2. A sole proprietorship created for the purpose of making a profit that is completely owned, operated, and controlled by an Economically Disadvantaged Person;
3. A partnership formed for the purpose of making a profit in which fifty-one percent (51%) or more of the assets and interest in the partnership are owned by one or more Economically Disadvantaged Persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;
4. A joint venture in which each entity in the venture is a HUB, as determined under another paragraph of this subdivision; or
5. A supplier contract between a HUB as determined under another paragraph of this subdivision and a prime Offeror under which the HUB is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.

B. "Economically Disadvantaged Person" means a person who is economically disadvantaged because of the person's identification as a member of a certain group, including Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans, and Service-Disabled Veterans, who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

#### K.1.2 HUB Representation

The Offeror represents and certifies as part of its offer that it [ ] is, or [X] is not, a HUB certified by the Texas Statewide Support Services Division.

### K.2 CHILD SUPPORT REPRESENTATION

- A. Under Texas Family Code, Section 231.006, a child support obligor who is more than thirty (30) Days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from State funds under a contract to provide property, materials or services.
- B. Governmental entities and any business entity, including a non-profit corporation, that does not have a majority shareholder who is a natural person capable of being a child support obligor, are not subject to Texas Family Code, Section 231.006.

Check ONE:

Offeror DOES NOT have a sole proprietor, majority stockholder, or substantial owner who is a natural person capable of being a child support obligor, therefore IS NOT subject to Texas Family Code, Section 231.006.

Offeror DOES have a sole proprietor, majority stockholder, or substantial owner who is a natural person capable of being a child support obligor, therefore IS subject to Texas Family Code, Section 231.006.

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Texas Family Code Section 231.006 requires a bid or an application for a contract, grant, or loan paid from State funds to include the name and Social Security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) of the business entity submitting the bid or application. The Social Security number(s) will be kept confidential and only disclosed in accordance with Texas Family Code Section 231.302.

N/A				
Print Name	SSN	Print Name	SSN	
N/A				
Print Name	SSN	Print Name	SSN	

The Offeror certifies that the individual or business entity named in this offer is not ineligible to receive the specified Payments and acknowledges that any resultant Contract may be terminated, and Payment may be withheld if this certification is inaccurate.

**K.3 FRANCHISE TAX REPRESENTATION**

The Offeror represents and certifies, as part of its offer that it is not currently delinquent in the payment of any franchise tax owed the State of Texas.

**K.4 TYPE OF BUSINESS ORGANIZATION**

The Offeror, by checking the applicable box, represents that:

- A. It operates as  a corporation incorporated under the laws of the State of Delaware,  an individual,  a partnership,  a nonprofit organization or  a joint venture; or
- B. If the Offeror is a foreign entity, it operates as  an individual,  a partnership,  a nonprofit organization,  a joint venture, or  a corporation, registered for business in \_\_\_\_\_ (country).

**K.5 PREFERENCE CLAIM**

In accordance with Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 2, Rule 20.306, the Offeror shall check below if claiming a preference. If the appropriate line is not marked, a preference will not be granted unless other documents included in the offer show a right to the preference.

**K.5.1 Source and Specification Preferences**

- Products of persons with mental or physical disabilities.
- Products made of recycled, remanufactured, or environmentally sensitive materials, including recycled steel.
- Energy efficient products.
- Rubberized asphalt paving material.
- Recycled motor oil and lubricants.

**K.5.2 Tie Bid Preferences**

- Goods produced or offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran. \*
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran. \*
- Agricultural products produced or grown in Texas.
- Agricultural products or services offered by Texas bidders. \*
- Services offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran. \*
- Services offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran. \*
- Texas vegetation native to the region.
- USA produced supplies, materials, equipment, or agricultural products.

**K.5.3 Additional Preferences**

- Products produced at facilities located on formerly contaminated property.
- Products and services from economically depressed or blighted areas.
- Vendors that meet or exceed air quality standards.
- Recycled or reused computer equipment of other manufacturers.
- Foods of higher nutritional value (for consumption in a public cafeteria only).
- Commercial production company or advertising agency located in Texas.

\*By signing this offer, the Offeror certifies that if a Texas address is shown as the address of the Contractor, the Contractor qualifies as a Texas resident bidder as defined in Texas Government Code Section 2155.444(c).

**K.6 REPRESENTATIONS OF OFFEROR**

The Offeror represents and warrants to and for the benefit of the Department, with the intent that the Department will rely thereon for the purposes of entering into this Contract, as follows:

**K.6.1 Organization and Qualification**

If the Offeror operates as a corporation incorporated under the laws of any state outside Texas, it is duly qualified to do business as a foreign corporation in good standing in Texas.

**K.6.2 Authorization**

This Contract has been duly authorized, executed and delivered by the Offeror and, assuming due execution and delivery by the Department, constitutes a legal, valid, and binding agreement enforceable against the Offeror in accordance with its terms.

**K.6.3 No Violation of Agreements, Articles of Incorporation, or Bylaws**

The consummation of the transactions contemplated by this Contract and the fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit or other agreement or instrument to which the Offeror is a party or by which its properties are bound, or any order, rule or regulation of any court or any regulatory body, administrative agency or other governmental body applicable to the Offeror or any of its properties, except any such conflict, breach, or default which would not materially and adversely affect the Offeror's ability to perform its obligations under this Contract, and will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under, the Articles of Incorporation (or other corresponding charter document) or Bylaws of the Offeror.

**K.6.4 No Defaults under Agreements**

The Offeror is not in default, nor is there any event in existence which, with notice or the passage of time or both, would constitute a default by the Offeror under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit or other agreement or instrument to which it is a party or by which any of its properties are bound and which default would materially and adversely affect the Offeror's ability to perform its obligations under this Contract.

**K.6.5 Compliance with Laws**

Neither the Offeror nor its officers and directors purporting to act on its behalf have been advised or have reason to believe that the Offeror or such officers and directors have not been conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which the Offeror is conducting business, including all safety laws and laws with respect to discrimination in hiring, promotion or pay of employees or other laws affecting employees generally, except where failure to be in compliance would not materially and adversely affect the Offeror's ability to perform its obligations under this Contract.

**K.6.6 No Litigation**

- A. The Offeror certifies that there is not now pending, or to its knowledge threatened, any action suit or proceeding to which the Offeror, or any of its employees, are a party, before or by any court or governmental agency or body, which may result in any material adverse change in the Offeror's ability to perform its obligations under this Contract, or any such action, suit or proceeding related to environmental or civil rights matters.
- B. The Offeror further certifies that no labor disturbance by the employees of the Offeror exists or is imminent which may be expected to materially and adversely affect the Offeror's ability to perform its obligations under this Contract.
- C. Prior to the Department making an award of this Contract, the Department may require Offerors being considered for the award to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Offeror that in the opinion of the Department is a party, or who has any employees that are a party, to any action, suit or proceeding that may result in any material adverse change in the Offeror's ability to perform its obligations under this Contract.



- D. During the term of this Contract, to include extensions hereof, the Offeror shall notify the Department in writing within five (5) Days of the Offeror having received knowledge of any actions, suits or proceedings filed against the Offeror, or any of its employees, or to which the Offeror, or any of its employees, are a party, before or by any court or governmental agency or body, which:
1. May result in any material adverse change in the Offeror's ability to perform its obligations under this Contract;
  2. Filed in any federal court, state court, or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the Offeror's ability to perform its obligations under this Contract; and
  3. Is brought by or on behalf of a State of Texas Inmate regardless as to any anticipated material adverse change in the Offeror's ability to perform its obligations under this Contract.
- E. The Contractor shall provide in writing, to the Contract Specialist, a quarterly report listing litigation identified in the above requirements.

#### **K.6.7 Taxes**

- A. The Offeror has filed all necessary federal, state, and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon.
- B. The Offeror has no knowledge of any tax deficiency which has been or might be asserted against it and which would materially and adversely affect the Offeror's ability to perform its obligations under this Contract.
- C. The Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of the Contractor or its employees.

#### **K.6.8 Financial Statements**

- A. The Offeror has delivered to the Department a copy of its most recent audited financial report. This report must include, as a minimum the following financial information:
1. Audited balance sheet;
  2. Statement of income; and
  3. Any changes in financial position of the company.
- B. This statement fairly presents the financial position of the Offeror at the date shown and the results of its operations for the period covered and has been prepared in conformity with GAAP applied on a consistent basis, except as discussed in the notes to the financial statement.

**K.6.9 No Adverse Change**

Since the date of the Offeror's most recent balance sheet provided to the Department, there has not been any material adverse change in its business or condition nor has there been any change in the assets or liabilities or financial condition of the Offeror from that reflected in such balance sheet which is material to the Offeror's ability to perform its obligations under this Contract.

**K.6.10 Disclosure**

There is no material fact which materially and adversely affects or in the future will (so far as the Offeror can now reasonably foresee) materially and adversely affect its ability to perform its obligations under this Contract which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to the Department by the Offeror prior to the date hereof.

**K.6.11 No Collusion**

- A. The Offeror represents and certifies its employees, agents and representatives have not and shall not discuss or disclose the terms of their offer and its submission or response thereto with any third party other than persons or entities, which the Offeror engaged to assist it with respect to such response or submission.
- B. Neither the Offeror nor the firm, corporation, partnership or institution represented by the Offeror or anyone acting for such firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business.

**K.6.12 Ethics****K.6.12.1 Conflict of Interest**

Pursuant to Texas Government Code, Section 572.051, any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established. Texas Government Code, Section 572.051, outlines the ethical standards required of State officers and employees who interact with public purchasers in the conduct of State business.

Specifically, a Department employee may not have an interest in, or in any manner be connected with a contract or offer for a purchase of goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of the Department or purchasers of other State Agencies.

**K.6.12.2 Disclosure of Interested Parties**

In accordance with Texas Government Code, Section 2252.908, a governmental entity or State Agency may not enter into a contract valued at \$1,000,000.00 or greater with a business entity unless the business entity, in accordance with Texas Administrative Code, Title 1, Part 2, Chapter 46, Rules 46.1, 46.3 and 46.5, submits a disclosure of interested parties to the governmental entity or State Agency at the time the business entity submits the signed Contract to the governmental entity or State Agency.

The disclosure of interested parties must be submitted on a form, and in a manner, prescribed by the Texas Ethics Commission. The Disclosure of Interested Parties Form (Form 1295) and instructions may be found at: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

### **K.6.12.3 No Gratuities**

The Offeror represents that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

### **K.6.13 No Compensation**

Pursuant to Texas Government Code, Section 2155.004, the Offeror has not received compensation for participation in the preparation of the specifications for this offer. Under Texas Government Code, Section 2155.004, the Offeror certifies that the individual or business entity named in this offer or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated, and Payment withheld if this certification is inaccurate.

### **K.6.14 Contracting with Executive Head of State Agency**

- A. The Offeror represents and certifies that they are in compliance with Texas Government Code, Section 669.003, relating to contracting with the executive head of a State Agency.
- B. If Texas Government Code, Section 669.003 applies, the Offeror shall complete the following information in order for the offer to be evaluated:

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Date of Employment with Offeror: \_\_\_\_\_

### **K.6.15 Limitation on Employment of Former State Officers**

The Offeror represents that they are in compliance with Texas Government Code, Section 572.069, relating to employment of a former state officer or employee. A former State officer or employee of the Department who during the period of State service or employment participated on behalf of the Department on a procurement or contract negotiation involving a business entity may not accept employment from that business entity before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

### **K.6.16 Notification**

If any of the information provided in the above representation's changes during the term of this Contract, the Contractor shall submit an updated representation as soon as is reasonably possible.

**K.6.17 Suspension, Debarment, and Terrorism**

The Department is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

**K.6.18 Prohibition of a State Agency Contracting with Companies that Boycott Israel**

If the Contractor is required to make a certification pursuant to Texas Government Code, Section 2270.002, the Contractor certifies that the Contractor does not boycott Israel and will not boycott Israel during the term of the contract. If the Contractor does not make that certification, the Contractor must notify the Department and state why the certification is not required. The Contractor acknowledges that this Contract may be terminated, and Payment withheld if the certification is inaccurate.

**K.6.19 Prohibition of a State Agency Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations**

The Contractor certifies that they are in compliance with Texas Government Code, Chapter 2252.152 relating to the prohibition of a State Agency contracting with companies that are engaged in business with Iran, Sudan, or foreign terrorist organizations. The Contractor certifies that the individual or business entity named in this offer or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated, and Payment withheld if this certification is inaccurate.

**K.6.20 Violation of Federal Law Relating to Reconstruction Efforts as A Result of Hurricanes Rita, Katrina, or Any Other Disaster after September 24, 2005**

Pursuant to Texas Government Code, Section 2261.053, a State Agency may not accept an offer or award a contract, including a contract for which purchasing authority is delegated to a State Agency, that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the offer or award, has been convicted of violating a federal law or assessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita, Katrina or any other disaster occurring after September 24, 2005. Under Texas Government Code, Section 2261.053, the Contractor certifies that the individual or business entity named in this offer or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated, and Payment withheld if this certification is inaccurate.

**K.6.21 Deceptive Trade Practices; Unfair Business Practices**

The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings. The Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business

practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

#### **K.6.22 Cybersecurity Training**

The Offeror represents and warrants that it will comply with the requirements of Texas Government Code, Section 2054.5192, relating to cybersecurity training and required verification of completion of the training program.

#### **K.6.23 Human Trafficking Prohibition**

Pursuant to Texas Government Code, Section 2155.0061, the Contractor certifies that the individual or business entity named in this Offer or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated, and payment withheld if this certification is inaccurate.

#### **K.6.24 Contracting Information Responsibilities**

In accordance with Texas Government Code, Section 552.372, Contractors agrees to:

- A. Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Department for the duration of the Contract;
- B. Promptly provide to the Department any contracting information related to the Contract that is in the custody or possession of the Contractor on request of the Department; and
- C. Upon termination or expiration of the Contract, either provide at no cost to the Department all contracting information related to the Contract that is in the custody or possession of the Contractor, or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Department.

Except as provided by Texas Government Code, Section 552.374(c), the requirements of Subchapter J, Chapter 552, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

#### **K.6.25 Disaster Recovery Plan**

Upon request of the Department, the Offeror shall provide the descriptions of its business continuity and disaster recovery plans.

### **K.7 REPRESENTATIONS OF THE DEPARTMENT**

The Department represents and warrants to and for the benefit of the Offeror with the intent that the Offeror will rely thereon for the purposes of entering into this Contract as follows:

#### **K.7.1 Authorization**

The Department has the requisite power to enter into this Contract and perform its obligations hereunder and by proper action has duly authorized the execution, delivery, and performance hereof.

**K.7.2 No Violation of Agreements**

The consummation of the transactions contemplated by this Contract and the fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, security agreement, contract or other agreement or instrument to which the Department is a party or by which its properties are bound, or any order, rule or regulation of any court or any regulatory body, administrative agency or other governmental body applicable to the Department or any of its properties, except any such conflict, breach or default which would not materially and adversely affect the Department's ability to perform its obligations under this Contract.

**K.7.3 Disclosure**

There is no material fact which materially and adversely affects or in the future will (so far as the Department can now reasonably foresee) materially and adversely affect its ability to perform its obligations under this Contract or which might require changes in or additions to the Services required under this Contract that would increase the cost to the Offeror of providing such Services, which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to the Offeror by the Department prior to the date hereof.

**K.8 AUTHORIZED NEGOTIATORS**

The Offeror represents that the following persons are authorized to negotiate on its behalf with the Department in connection with this Solicitation: (list names, titles, and telephone numbers of the authorized negotiators).

\_\_\_\_\_  
Joshua Conklin, Vice President, Sales, 972-227-0312 (Office)

\_\_\_\_\_  
Russell Roberts, Chief Growth Officer, 972-277-0656 (O), 214-675-7287 (C)

\_\_\_\_\_

\_\_\_\_\_

**K.9 PAYEE IDENTIFICATION NUMBER**

The Payee Identification Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. The Offeror shall provide its Payee Identification Number in the space provided below. If this number is not known, the Offeror shall provide the Federal Taxpayer Identification Number.

Payee Identification Number: \_\_\_\_\_ or

Federal Taxpayer Identification Number: 75-2722144

**K.10 POINT OF CONTACT**

The Offeror shall provide the name, title, phone number, fax number, address, and email address of a point-of-contact for questions concerning the submitted offer.

Name: Daniel Furrer Title: Account Executive

Phone Number: (786) 246-7761 Fax Number: ( ) N/A

Street Address: 400 International Parkway

City: Carrollton State: TX Zip Code: 75007

Email Address: Daniel.furrer@securustechnologies.com

**K.11 CERTIFICATION**

To be completed by the Offeror: (The Offeror must check or complete all appropriate boxes or blanks in the Representations and Certifications, on the preceding pages). The Representations and Certifications must be executed below by an individual authorized to bind the Offeror.

The Offeror makes the foregoing Representations and Certifications as part of its offer.

Securus Technologies, LLC  
Name of Offeror

696-IT-21-0013  
Solicitation No.

  
Signature of Authorized Individual

02/25/2021  
Date

Dave Abel, President and CEO  
Typed Name of Authorized Individual

Note: The penalty for making false statements shall void the submitted offer or any resulting Contracts, and the Offeror shall be removed from all bid lists.