

# LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

## OFFENDER TELEPHONES

STATE OF LOUISIANA

File No. R 27926 Y  
SOLICITATION NO. 2242788

### CONTRACT

Be it known, that effective upon approval by the Director of State Purchasing, as evidenced by the Director's signature on this document, the Louisiana Department of Public Safety and Corrections (hereinafter sometimes referred to as "State, or DPS&C") and Securus, 14651 Dallas Parkway, Dallas, TX 75254 (hereinafter sometimes referred to as "Contractor") do hereby enter into contract under the following terms and conditions.

### SCOPE OF SERVICE

Contractor hereby agrees to furnish the services as described in the Request for Proposal for Offender Telephones, Addendums, Contractor's proposal, Attachments and Appendices of this contract.

The Contractor will provide products and services including, but not limited to, a turn-key single integrated telephone system statewide, new telephone equipment, telephone monitoring equipment/services. The systems shall include telephones, local, Inter- and Intra-LATA service, international service, call control, monitoring and recording equipment. The system will provide methods for collect, pre-paid, debit calls, etc. The system shall provide features such as a Personal Identification Number (PIN) controlled environment; allowing and disallowing calls to specific telephone numbers; recording, monitoring, and playback capabilities; verification of calls against the Line Information Database (LIDB) system; detection of three-way calls and tools that aid investigators.

The Contractor will furnish, install and maintain the Offender Telephone System (OTS) for use in all present and future correctional facilities. The OTS will enable offenders at all DPS&C correctional facilities to make auto-collect local, debit, long-distance and international calls and/or pre-paid local, long-distance and international calls from the DPS&C correctional facilities. The DPS&C has special security requirements and has a prime objective of controlling offender telephone usage and limiting the use of the telephone system for fraudulent activity. The telephone calls are monitored for public safety, security and to prevent fraudulent activity.

The system shall be logically partitioned so the information for juvenile offenders and the information for adult offenders remain separated. Access to juvenile offender information shall be limited to staff from the Office of Juvenile Justice, (OJJ). Access to adult offender information shall be limited to staff designated by the DPS&C.

### CONTRACT MODIFICATIONS

No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

Changes to the contract include any change in a) compensation; b) beginning/ending date of the contract; c) scope of work; and/or d) contractor change through the assignment of contract

process. Any such changes, once approved, will result in the issuance of an amendment to the contract.

## **FUND USE**

Contractor agrees not to use contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

## **HEADINGS**

Descriptive headings in this contract are for convenience only and shall not affect the construction or meaning of contractual language.

## **PAYMENT TERMS**

**The DPS&C will be paid a 70 percent Rate of Compensation based on rates proposed in Securus' Financial Proposal, Section G, Item 1 as shown on Exhibit 1 of this contract.**

The Contractor shall guarantee the Department a minimum compensation of \$250,000 per month for DOC Adult facilities, excluding State Police Barracks and Juvenile facilities, once the system is operational in all adult facilities.

Commission payment will be submitted to the DPS&C no later than the last day of the month following the previous month's usage. This information will be transmitted via three (3) separate accounts:

1. DPS&C: includes all adult offenders located in the facilities as shown on Appendix 1 of this contract with the exception of State Police Barracks.
2. Department of Public Safety adult offenders housed at the State Police Barracks
3. Juvenile offenders housed within the Office of Juvenile Justice facilities

The collect call rates, including traditional collect and pre-paid collect, charged by the Contractor to the end user/responsible party for offender telephones cannot exceed the Correctional Facility CAP for operator services for collect calls per minute rates and per call surcharges for the applicable class of service as indicated in the "Rate Schedule cap" columns on Attachment "A" of the RFP and of Securus' Financial Proposal as shown in Exhibit 1 of this contract.

These rates shall remain firm during the term of the contract, and any renewals, unless:

The Louisiana Public Service Commission (LPSC) or the Federal Communications Commission (FCC) issues regulations that mandate lower rates (individually or collectively, Regulations"). If this occurs, and such Regulations are applicable to this Contract, the Contractor shall be required to decrease the affected rates in accordance with the time period required by such Regulations. If the Regulations mandate Contractor to lower rates in this Contract, the State agrees to negotiate in good faith to reduce the commissions paid by Contractor to the State hereunder.

The debit and pre-paid call rates charged by the Contractor to the end user/responsible party for prison pay phone and operator services shall be at least ten percent lower than the applicable

collect call rates. If lower rates are mandated for collect calls then the rates for United States debit and pre-paid calls shall be adjusted downward accordingly so that they remain the same percentage below the applicable collect call rates. Otherwise, the debit call rates as offered by the Proposer in its proposal response shall remain firm during the term of the contract, and any renewals. The rates shall be made available on the Department's web site for viewing by the public.

The debit call and pre-paid collect call rates charged by the Contractor to the end user/responsible party for prison pay phone and operator services shall be charged at the current prevailing costs for international calls to the specific country being called. The rate schedule for international calls has been submitted with Contractor's proposal. All international calls shall be debit, or pre-paid collect, no traditional collect.

#### **ADDITIONAL COSTS**

**There shall be no additional costs to users of the system other than usage charges per minute and per call surcharges included in the rate schedule, Attachment "A" of the RFP and of Securus' Financial Proposal as shown in Exhibit 1 of this contract.**

On a weekly basis, the DPS&C will transfer to the Contractor the total funds from the previous week's debit purchases.

#### **DELIVERABLES**

Contractor will deliver the services as per Attachment A, Contract Deliverables of this contract.

#### **TAXES**

Contractor agrees that all applicable taxes are included in the schedule pricing. State agencies are exempt from all state and local sales and use taxes. For offender debit calls, collect and prepaid calls, all applicable taxes and regulatory charges will be added to the schedule pricing. Contractor's federal tax identification number is 752722144.

#### **TERMINATION OF THIS CONTRACT FOR CAUSE**

The State may terminate this contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the contract, or failure to fulfill its performance obligations pursuant to this contract, provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the contract shall terminate on the date specified in such notice.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this contract, provided that the Contractor shall give the State written notice specifying the State's failure and a reasonable opportunity for the State to cure the defect.

#### **TERMINATION OF THIS CONTRACT FOR CONVENIENCE**

The State may terminate the contract at any time by giving 120 days written notice to the Contractor of such termination or negotiating with the Contractor an effective date.

The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

## **OWNERSHIP**

All records, reports, documents, or other material related to this contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of State, and shall, upon request, be returned by Contractor to State, at Contractor's expense, at termination or expiration of this contract.

## **USE OF AGENCY'S FACILITIES**

Any property of the State furnished to the Contractor shall, unless otherwise provided herein, or approved by the State and/or Agency, be used only for the performance of this contract.

The Contractor shall be responsible for any loss or damage to property of the State and/or State Agency which results from willful misconduct or lack of good faith on the part of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the State and/or State Agency in like condition, except for normal wear and tear, to that in which it was furnished to the Contractor. Upon the happening of loss, or destruction of, or damage to property of the State, the Contractor shall notify the State thereof and shall take all reasonable steps to protect that property from further damage.

The Contractor shall surrender to the State and/or State Agency all property of the State and/or State Agency prior to settlement upon completion, termination, or cancellation of this contract. All reference to the Contractor under this section shall include any of its employees, agents, or subcontractors.

## **WAIVER**

Waiver of any breach of any term or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by the written consent of both parties.

## **WARRANTIES**

Contractor warrants that all services shall be performed in a workmanlike manner, and according to its current description (including any completion criteria) contained in the scope of work.

*No Surreptitious Code Warranty.* Contractor warrants that Contractor will make all commercially reasonable efforts not to include any Unauthorized Code in the software provided hereunder. "Unauthorized Code" means any virus, Trojan horse, worm or other software routine or component designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data, or to perform any other such actions. Excluded from this prohibition are identified and State-authorized features designed for purposes of maintenance or technical support.

**Extent of Warranty: THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**

## INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors in the performance of this contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) State's unauthorized modification or alteration of a Product, Material, or Service; ii) State's use of the Product, Material, or Service in combination with other products, materials, or services not furnished by Contractor; iii) State's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the state's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for services rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the

possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

## **INSURANCE**

Contractor will be required to provide the State of Louisiana with Certificates of adequate insurance indicating coverage required, in accordance with Section 1.30 Insurance Requirements, Attachment C, pages 71-73 of the Request for Proposal.

## **LICENSES AND PERMITS**

Contractor shall secure and maintain all licenses and permits, and pay inspection fees required to do the work required to complete this contract, if applicable.

## **SEVERABILITY**

If any term or condition of this contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this contract are declared severable.

## **SUBCONTRACTORS**

The Contractor may enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State and/or State Agency for any breach in the performance of the Contractor's duties. The Contractor will be the single point of contact for all subcontractor work.

## **SUBSTITUTION OF PERSONNEL**

If, during the term of this contract, the Contractor or subcontractor cannot provide the personnel as proposed and requests a substitution, that substitution shall meet or exceed the requirements stated herein. A detailed resume of qualifications and justification is to be submitted to the State for approval prior to any personnel substitution. It shall be acknowledged by the Contractor that every reasonable attempt shall be made to assign the personnel listed in the Contractor's proposal.

## **ASSIGNMENT**

Contractor shall not assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

## **CODE OF ETHICS**

The contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this contract. The contractor agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this contract.

## **CONFIDENTIALITY**

The following provision will apply unless the state agency statement of work specifically indicates that all information exchanged will be non-confidential:

All financial, statistical, personal, technical and other data and information relating to the State's operations which are designated confidential by the State and made available to the Contractor in order to carry out this contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of the paragraph to keep confidential any data or information, which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the contract, or is rightfully obtained from third parties.

## **CONTRACT CONTROVERSIES**

Any claim or controversy arising out of the contract shall be resolved by the provisions of Louisiana Revised Statute 39:1673.

## **RIGHT TO AUDIT**

The State Legislative auditor, federal auditors and internal auditors of the Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the contract for a period of five years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

## **SECURITY**

Any Contractor or Contractor personnel visiting or working in an institution is required to receive security clearance prior to entering the institution grounds. Contractor must furnish the full name, driver's license number, social security number, date of birth, race and sex of each employee who will be entering the compound. This information must be furnished in writing to the site visit coordinator prior to commencing work. A criminal background check will be conducted on each employee, and upon arrival, ID cards will be issued to each employee. No Contractor personnel will be allowed to work on the institution grounds until the above clearance approval process is completed. The successful Contractor is also required to provide a written inventory of tools, vehicles, and/or trailers prior to entering the institution grounds.

## **PRISON RAPE ELIMINATION ACT**

In accordance with DPS&C Department Regulation No. C-01-002 "SEXUAL ASSAULT AND SEXUAL MISCONDUCT," the Contractor agrees to report allegations of sexual misconduct, respond to investigation inquiries and participate in training as directed by the Department of Public Safety and Corrections. The Sexual Assault and Sexual Misconduct with inmates Acknowledgement Form and the Louisiana Criminal Code: LA.R.S. 14:134 Malfeasance in Office Form will be signed by the vendor and kept on file at the facility. Should the regulation be modified or amended, the Contractor will be notified and shall comply with the regulations as modified or amended.

## **TERM OF CONTRACT**

This Contract is effective upon OSP approval and will end no later than a period of five (5) years, unless otherwise terminated in accordance with the Termination provision of this contract. At the option of the DPS&C and acceptance by the Contractor, the contract may be extended for one (1) additional three (3) year period and one (1) one additional two (2) year period.

## **COMMENCEMENT OF WORK**

No work shall be performed by Contractor and the State shall not be bound until such time as a Contract is fully executed between the State and the Contractor and all required approvals are obtained.

## **FISCAL FUNDING**

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

## **COMPLIANCE WITH CIVIL RIGHTS LAWS**

The Contractor agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Contractor agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.



## **ANTI-KICKBACK CLAUSE**

The Contractor hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each Contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

## **CLEAN AIR ACT**

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities.

## **ENERGY POLICY AND CONSERVATION ACT**

The Contractor hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

## **CLEAN WATER ACT**

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

## **ANTI-LOBBYING AND DEBARMENT ACT**

The Contractor will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

## **GOVERNING LAW**

This Contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this Contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

## **COMPLETE CONTRACT**

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

**ORDER OF PRECEDENCE**

The Request for Proposals (RFP), dated October 27, 2010, and the Contractor's Proposal dated March 17, 2011, are attached hereto and, incorporated into this Contract as though fully set forth herein. In the event of an inconsistency between this Contract, the RFP and/or the Contractor's Proposal, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence first to this Contract, then to the RFP and finally, the Contractor's Proposal.

THIS DONE AND SIGNED AT Dallas, Texas on this 7th day of March 2011 and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:  
D.J. Reinhold  
Kate S. Sengyel

CONTRACTOR SIGNATURE:  
By: ASA Lutz  
Title: COO



THIS DONE AND SIGNED AT Baton Rouge, Louisiana on this \_\_\_\_ day of \_\_\_\_, 20\_\_, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:  
Lisa Maitello  
Tom Hart

STATE AGENCY SIGNATURE:  
By: Thomas C. Burkman, III  
Title: Undersecretary  
Phone No.: 225-342-6739

Approved by: [Signature]  
Director of State Purchasing  
Date: 3/9/2012