

**GOODS AND SERVICES AGREEMENT**

**THIS AGREEMENT**, made this 9th day of April, 2012 by and between the Essex County Sheriff's Department, P.O. Box 807, 20 Manning Avenue, Middleton, Massachusetts 01949 (hereinafter "the Sheriff's Department") and Securus Technologies, Inc., 14651 Dallas Parkway, 8<sup>th</sup> Floor, Dallas Texas 75254. (hereinafter "the Contractor").

**WHEREAS**, the Sheriff's Department desires to purchase Inmate Calling Systems and Related Services.

**WHEREAS**, the Contractor desires to sell Inmate Calling Systems and Related Services to the Sheriff's Department.

**NOW, THEREFORE**, in consideration of mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree as follows:

**SECTION I. SHERIFF'S DEPARTMENT GRANT TO the Contractor**

The Sheriff's Department hereby grants to the Contractor, as an independent contractor, the exclusive right to provide Inmate Calling Systems and Related Services to the Essex County Sheriff's Department.

**SECTION II. CONTRACTOR'S RESPONSIBILITIES**

- ✓ A. The Contractor will provide Inmate Calling Systems and Related Services in compliance with the provisions of the Agreement, and in compliance with the provisions of an Invitation to Response opened August 8, 2011 by The Bristol County Sheriff's Office and the Contractor's submitted Bid for Inmate Calling Systems and Related Services, and the Contractor's Letter of Intent

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copies of which are attached hereto as Exhibits A, B and C respectively, and which are hereby incorporated by reference as if fully set forth herein.

- B. The Contractor shall hire all employees necessary for the performance of this Agreement. All persons employed by the Contractor will be the employees of the Contractor, and not the Sheriff's Department. All persons employed by the Sheriff's Department will be the employees of the Sheriff's Department, and not the Contractor. The Contractor, in performing work required by the Agreement, shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin or age, or in violation of federal, state or local law.
- C. The Contractor agrees that the Contractor's employees and agents shall comply with and observe all applicable rules and regulations concerning conduct at the Facility, which the Sheriff's Department imposes upon Sheriff's Department employees and agents.
- D. The Contractor shall be responsible for the payment of all state and federal sales taxes, and any other taxes imposed by any other governmental entity so authorized arising from the furnishing of the Inmate Calling System and Related Services pursuant to the terms of this Agreement. The Contractor hereby agrees to indemnify, defend and hold harmless the Essex County Sheriff and Essex County Sheriff's Department and their respective agents, servants, employees and representatives of and from any and all losses, claims, actions, liabilities and expenses arising from the Contractor's failure to pay any taxes for which the Contractor is responsible pursuant to this paragraph.
- E. The Contractor has obtained all liability and other insurance required to provide goods and services pursuant to this Agreement, including worker's compensation, automobile, comprehensive general liability and product

liability insurance. A true and accurate copy of said Certificate(s) of Insurance evidencing such insurance coverage are attached hereto as Exhibits D.

### **SECTION III. SHERIFF'S DEPARTMENT RESPONSIBILITIES**

- A. The Sheriff's Department shall provide the Contractor and its employees with access to and use of those portions of the Facility necessary for the Contractor to perform its obligations under this Agreement. The Sheriff's Department will provide such heat, light, electricity and phone service reasonably required for the Contractor's performance hereunder.

### **SECTION IV. FINANCIAL ARRANGEMENTS**

The financial arrangements of the Agreement are set forth in the Contractor's General Bid Form attached to its Bid for Inmate Calling System and Related Services, attached hereto as Exhibit B.

### **SECTION V. INDEMNIFICATION: INSURANCE**

- A. The Contractor agrees to pay for and discharge completely, by payment or otherwise, any and all billing vouchers, invoices, or other evidence of indebtedness which may arise out of any monetary obligation or other expense incurred by the Contractor for labor, services, materials, supplies, equipment, or any other resource utilized by the Contractor to provide for the Sheriff's Department during the term of this Agreement.
- B. The Contractor agrees to indemnify, defend and hold the County and the Sheriff's Department harmless from and against all losses, claims, actions, liability, damage or expenses of whatever nature arising, wholly or in part, from any act, omission or negligence of the Contractor or the Contractor's

vendors, subcontractors, suppliers, licensees, agents, servants, representatives, or employees, resulting from any accident, injury, death, damage, or other loss whatsoever caused to any person or entity, or to the property of any person or entity occurring during the term of the Agreement. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses (including but not limited to attorney's fees), liabilities and damages incurred in or in connection with any such claim, action, or proceeding brought thereon, and the defense thereof.

The contractor agrees to maintain in full force during the term of this Agreement a broad form policy of comprehensive general public liability and property damage insurance (without any so-called employee exclusion or the like) and under which the insurer agrees to indemnify, defend, and hold said Sheriff's Department, and its officials, agents, servants, representatives, and employees harmless from and against all cost, expense (including but not limited to attorney's fees) liability or damages arising out of or based upon any and all claims, accidents, injuries, and damages described in the immediately preceding sub-paragraph of this Paragraph B. The minimum limits of liability per occurrence of such insurance shall be a combined single limit of \$1,000,000 for injury (or death) to one or more persons and \$1,000,000 damages to property.

The contractor shall also carry professional liability insurance coverage, including riders or endorsements for products liability coverage, with minimum limits of liability of \$1,000,000 per occurrence and \$3,000,000 in aggregate annually for personal injury, death, property damage, or other loss occurring during the term of the Agreement.

The contractor hereby acknowledges that the insurance coverage provisions in the two immediately preceding sub-paragraphs of this Paragraph B were

not intended to, and shall not be construed so as to amend, alter, or modify the Contractor's duty to fully indemnify, defend, and hold the County and Sheriff's Department harmless as detailed in the first sub-paragraph of this Paragraph B. In the event that the Contractor's insurers disclaim or otherwise deny the Contractor's insurance coverage arising out of any claim, action, or other proceeding arising during the term of this Agreement, The Contractor shall nevertheless be obligated to fully indemnify, defend, and hold the County and Sheriff's Department harmless, as provided herein.

- C. The Contractor agrees to use and occupy the Sheriff's Department premises at its own risk, and that the County and Sheriff's Department shall have no responsibility or liability for any loss or damage to the Contractor's property during the term of the Agreement.
  
- D. The Contractor's obligation to indemnify, defend and hold the Sheriff's Department harmless pursuant to this Agreement shall depend upon the Sheriff's Department promptly notifying the Contractor in writing and cooperating with the Contractor in the defense of any such claims or losses against either the Contractor or the Sheriff's Department. If within (90) days after first receiving notice of such claim or lawsuit, the Sheriff's Department forwards to the Contractor the Summons, Complaint and any other documents that relate to said claim or lawsuit, such notice shall be presumed to be prompt for purposes of this paragraph. In the event the Sheriff's Department fails to notify the Contractor of such claims or lawsuits within ninety (90) day period, the Contractor may be relieved of its obligation to indemnify, defend and hold the Sheriff's Department harmless if the Sheriff's Department's delay in providing notice substantially prejudices the Contractor in the defense of any claim or lawsuit.

## **SECTION VI.COMMENCEMENT AND RENEWAL**

This Agreement shall become effective upon the date of execution.

#### **SECTION VII. RELATIONSHIP WITH THE SHERIFF'S DEPARTMENT**

- A. The contractor has been retained solely for the purpose of and to the extent set forth in this Agreement. The contractor's relationship to the Sheriff's Department during the term of the Agreement shall be that of an independent contractor and provider of Inmate Calling Systems and Related Services. Under no circumstances shall an employee or independent contractor of the Contractor be deemed an employee or sub-contractor of the Sheriff's Department. The contractor shall have no capacity to involve the Sheriff's Department in any agreement or incur any liability on its behalf except as expressly provided in the Agreement. The Sheriff's Department shall not be obligated under the terms or provisions of any contract, sub-contract, or other commitment entered into or incurred by. The Sheriff's Department shall not be liable for any loss or personal property, personal injury to, death of, or any other loss of the Contractor, its agents, servants, representatives, or employees as a result of any act of an inmate, or any act of the Sheriff's Department, its agents, servants, representatives or employees, or any defect in any real or personal property owned by the Sheriff's Department.

#### **SECTION VIII. REMEDIES**

- A. The Contractor shall not be liable for any damages sustained by the Sheriff's Department due to the Contractor's failure to furnish services under the terms of this Agreement if the Contractor's performance hereunder has been rendered impossible due to the occurrence of an unexpected, unavoidable event beyond the Contractor's control, such as an act of God, a state of war, sabotage, labor disputes and strikes, embargoes, expropriation or confiscation of Facilities used by the Contractor, or order, provided that the

Contractor has notified the Sheriff in writing of such cause immediately upon cessation of services.

- B. This agreement may be terminated at any time at the convenience of the Sheriff's Department and at the option of the Sheriff by delivering or mailing to the Contractor's business address a written notice of termination setting forth the date, not less than thirty (30) days after the date of such delivery or mailing, when such termination shall become effective.

In addition, the Sheriff may immediately terminate or suspend this Agreement by providing written or facsimile notice to the Contractor stating the grounds of his action if he determines that immediate action is necessary to protect federal, state, and/or county funds or property or to protect persons from injury. Such termination or suspension shall be effective upon receipt of the notice by the Contractor.

In the event of the termination of this Agreement, the Sheriff's Department shall be paid by the Contractor for all commissions earned as a result of inmate telephone calls made up to and including the date upon which services under this Agreement are terminated, plus any damages, liquidated damages, credits, losses or other sums of money which the Contractor may owe to the Sheriff's Department.

- C. In the event the Sheriff's Department or the Contractor breach any term, condition, or provision of this Agreement, either party may avail itself of any and all remedies described in this Agreement or to which the parties may be entitled at law or in equity.
- D. The Contractor shall return to the Sheriff, at the expiration or termination of this Agreement, the facilities and all equipment furnished by the Sheriff in the condition in which they were received, except for ordinary wear and tear and damage by unavoidable occurrences

which is not the fault of the Contractor.

#### **SECTION IX. PROHIBITION AGAINST ASSIGNMENT**

The parties shall not assign or in any way transfer any interest in this Agreement or any part thereof, without the written consent of the other party. The Contractor shall not delegate its responsibility to provide Inmate Calling Systems and Related Services to the Sheriff's Department as described herein, without the prior written consent of the Sheriff.

#### **SECTION X. COMPLIANCE WITH LAWS AND PUBLIC POLICY**

- A. This Agreement shall be governed exclusively by the terms, conditions and provisions contained herein and by the laws of the Commonwealth of Massachusetts, as they may exist from time to time. Any clause which does not conform to such laws of the Commonwealth shall be void, and such laws shall be operative in lieu of such clause. If any term or provision of the Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
  
- B. The Contractor agrees to comply with the provisions of Massachusetts General Law c. 268A (the Conflict of Interest Law so called). The Contractor shall not act in collusion with any public official, agent, or employee, or with any other party to violate or to defeat the purpose of said law, nor shall the Contractor agree to give or receive any job-related gifts regarding this Agreement or any other matter in which the Sheriff's Department has a direct or substantial interest.



## **SECTION XI. WAIVER**

Failure on the part of the Sheriff's Department to complain of any action or non-action on the part of the Contractor, no matter how long the same may continue, shall never be deemed to be a waiver by Sheriff's Department of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Sheriff's Department shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of the Sheriff's Department to or of any action by the Contractor requiring the Sheriff's Department's consent or approval shall not be deemed to waive or render unnecessary the Sheriff's Department's consent or approval to or of any subsequent similar act by the Contractor. Any consent required of the Sheriff's Department may be withheld in its sole discretion unless the provision requiring such consent specifically states that the Sheriff's Department shall not withhold such consent unreasonably.

## **SECTION XII. OTHER AGREEMENT**

The Contractor hereby warrants and represents that neither this Agreement nor the provision of Inmate Calling Systems and Related Services hereunder violates the provisions of any agreement previously executed by the Contractor or any affiliate of the Contractor.

## **SECTION XIII. NOTICES**

Whenever by the terms of this Agreement notice, demand, or other communication shall or may be given either to the Sheriff's Department or to the Contractor, the same shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or shall be delivered by private express carrier.

If intended for the Sheriff's Department, addressed to it at the Essex County Sheriff's Department, P. O. Box 807, 20 Manning Avenue, Middleton, Massachusetts 01949, or to such other address or addresses as may from time to time hereafter be designated by the Sheriff by like notice.

If intended for the Contractor, by notice addressed to it at Securus Technologies, Inc., 14651 Dallas Parkway, 8th Floor, Dallas Texas 75254, or to such other address or addresses as may from time to time hereafter be designated by the Contractor by like notice.

All such notices shall be effective when deposited in the United States mail or delivered to a private express carrier within the Continental United States, provided that the same are received or refused in the ordinary course at the address to which the same were sent. Any such notice, demand, or other communication from an attorney acting or purporting to act on behalf of a party shall be deemed to be notice from such party provided that such attorney is authorized to act on behalf of such party.

#### **SECTION XIV. PARAGRAPH HEADINGS**

The paragraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

#### **SECTION XV. MISCELLANEOUS**

The Sheriff's Department and the Contractor hereby represent and warrant to each other that each has consulted an attorney concerning the provisions of the Agreement, that each was satisfied that, based on its consultations with said attorney, each was informed about the contents of the Agreement, that neither party is relying upon any warranties, representations or advice from, or promises or inducements of any

nature by the other party or any of its representatives not specifically contained in this Agreement, that neither party is under any legal disability or impairment and that each has freely chosen to execute this Agreement.

**SECTION XVI. POLITICAL ACTIVITY PROHIBITED**

None of the services to be provided by the Contractor shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

**SECTION XVII. AMENDMENT**

No amendment to this Agreement shall be effective unless it is in writing, signed by authorized representatives of all parties.

**SECTION XVIII. ENTIRE CONTRACT**

This Agreement, including any attachments or documents incorporated by reference, contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior Agreements, representations, negotiations, and undertakings not set forth or incorporated herein.

**SECTION XIX. MULTIPLE COPIES**

This Agreement is executed in several counterparts, each of which shall be deemed to be an original copy of this Agreement and shall have the force and effect as such.

**WITNESS** the execution hereof under seal in three (3) original copies, each of which shall be deemed an original for all purposes as of the day and year first written above.

ESSEX COUNTY SHERIFF'S DEPARTMENT, EVERCOM SYSTEMS INC.

By: *Frank G. Cousins, Jr.*  
Frank G. Cousins, Jr.  
Sheriff of Essex County

By: *Robert Pickens*  
Signature  
Robert Pickens, Chief Operating Officer  
(Print Name \_\_\_\_\_)

*Richard J. ... Co. Atty.*  
Attorney for Sheriff's  
Department—As To Form

*Handwritten note:*  
5/8/2012



**FRANK G. COUSINS, JR.**  
SHERIFF

*Essex County Correctional Facility  
&  
Sheriff's Headquarters*

POST OFFICE BOX 807  
20 MANNING AVENUE  
MIDDLETON, MA 01849-2807



TELEPHONE  
(978) 750-1900  
K3370

FAX  
(978) 750-1999  
WWW.ECCF.COM

December 16, 2014

Ms. Trish Auger  
Major Account Manager  
Securus Technologies, Inc.  
43 Jewett Street  
Pepperell, MA 01463

Ms Auger,

Per our discussions please implement Investigator Pro and AIS (Automated Information Services). The Essex County Sheriff's Department understands that the original commission of 48% will be reduced to 41% to cover the cost of using these products.

If you have any questions please email or call me.

Sincerely,

James P. Lander  
Assistant Superintendent  
Essex County Correctional Facility  
& Sheriff's Headquarters  
20 Manning Ave., P.O. Box 807  
Middlton, MA 01949-2807  
jlander@eccf.com  
Phone: 978-750-1900 #3276  
Fax: 978-750-1999

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FRANK G. COUSINS, JR.  
SHERIFF

# Essex County Correctional Facility & Sheriff's Headquarters

POST OFFICE BOX 807  
20 MANNING AVENUE  
MIDDLETON, MA 01848-2807



TELEPHONE  
(878) 750-1800  
X2370

FAX  
(878) 750-1898  
WWW.ECCF.COM

May 26, 2016

Mrs. Trisha Auger  
Territory Manager  
Securs Tech  
43 Jewett Street  
Pepperell, MA 01463

Dear Mrs. Auger:

Please be advised that the Essex County Sheriff's Department agrees to extend the RFP OPTION and accept a 5 cent per minute non-commissionable increase. The Essex County Sheriff's Department also would accept the \$820,000.00 commission payout in two installments with the first installment due no later than July 15, 2016 and the second installment due no later than January 15, 2017.

Sincerely,

James F Lander  
Assistant Superintendent



FRANK G. COUSINS, JR.  
SHERIFF

# Essex County Correctional Facility & Sheriff's Headquarters

POST OFFICE BOX 807  
20 MANNING AVENUE  
MIDDLETON, MA 01948-2807



TELEPHONE  
(978) 750-1900  
X3370

FAX  
(978) 750-1999  
WWW.ECCF.COM

## SECOND AMENDMENT OF AGREEMENT FOR COINLESS INMATE AND PUBLIC TELEPHONE SYSTEM

Entered into this 13<sup>th</sup> day of January, 2016 by and between Securus Technologies Inc., 14651 Dallas Parkway, 6<sup>th</sup> Floor, Dallas, TX 75254 (hereinafter "CONTRACTOR") and the Essex County Sheriff's Department, Commonwealth of Massachusetts, acting by and through the Sheriff (hereinafter "ECSD").

### WITNESSETH

WHEREAS, the ECSD and CONTRACTOR entered into an Agreement for Coinless Inmate and Public Telephone System ("Agreement") dated August 8, 2011; and

WHEREAS, the Agreement for Coinless Inmate and Public Telephone System made the ECSD Request for Proposal ("RFP") a part thereof; and

WHEREAS, the ECSD and CONTRACTOR executed an Amendment of Agreement for Coinless Inmate and Public Telephone System ("Amendment") on January 13, 2016 to make changes in the Agreement related to the four (4) one (1) year renewals and the monthly commissions and other payments; and

WHEREAS, changes are required in the Amendment related to the payment of the consideration provided therein;

WHEREAS, the ECSD and CONTRACTOR wish to amend the Amendment to the Agreement to incorporate the following changes:

NOW THEREFORE, for good and valuable consideration, the receipt whereof is hereby acknowledged, the parties agree as follows:

1. The sum of Eight Hundred Twenty Thousand dollars (\$820,000) shall be paid to ECSD by CONTRACTOR within thirty (30) days of the time of the execution of the Amendment.
2. In all other respects, the terms, covenants and conditions of the parties aforesaid Agreement dated August 8, 2011 and Amendment dated January 13, 2016 shall remain in full force and effect.

IN WITNESS WHEREOF, the ECSD and CONTRACTOR have caused this Second Amendment to Agreement to be properly executed by the respective authorized offices on the date first above written.

ESSEX COUNTY SHERIFF'S DEPARTMENT

CONTRACTOR

By: [Signature]  
Sheriff of Essex County

By: [Signature]

Print Name: Robert Tucker

Approved as to form:  
[Signature]  
Counsel for Essex County Sheriff's Dept.

Title: President

Date: 6-3-16