

UTAH COUNTY SECURITY CENTER

REQUEST FOR PROPOSALS
for
INMATE TABLET SERVICES
RFP # 2021-1

CLOSING DATE
FOR RECEIPT OF PROPOSALS: Tuesday, June, 2021

TIME: 3:00 p.m. (Mountain Time)

PLACE: Office of the Utah County Purchasing Manager
100 East Center Street
Room 3600
Provo, Utah 84606

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SECTION 1 ADMINISTRATIVE OVERVIEW

1.1 PURPOSE

Through this Request for Proposals (RFP), Utah County intends to evaluate qualified vendors to provide tablet services for inmates at the Utah County Jail.

1.2 RFP ORGANIZATION

Pursuant to this RFP a contract will be executed. The contract period will be for a term of approximately 3 years, commencing when executed and terminating December 31, 2024. Utah County shall have an option, pursuant to that contract, to renew the contract for two additional, one-year periods, upon the same terms and conditions.

This RFP is organized into six (6) sections plus Attachments.

Section 1. Administrative Overview-Outlines general information on the objectives of this RFP, background information on the issuing entity, Description of Work, and the organizational structure of the RFP.

Section 2. Procurement Rules and Procedures-Outlines the rules and schedules for this procurement.

Section 3. Instructions for Proposal Preparation-Outlines the precise manner in which proposals must be submitted for consideration. Failure to adhere to these guidelines may result in the rejection of the proposal.

Section 4. Proposal Requirements-Outlines the inclusion requirements for consideration of proposals.

Section 5. Evaluation Procedures-Describes how proposals will be evaluated by the issuing entity.

Section 6. Terms and Conditions-Outlines certain terms and conditions under which the contract must be performed.

1.3 SERVICES SOUGHT

Utah County is seeking proposals from qualified vendors to deliver digital content and electronic services for inmates housed at the Utah County Jail. The proposed system must use a tablet-based platform and vendor-provided labor, material, equipment and network to

deliver digital content. Tablets must be used by the inmates for their self-improvement, to prepare for their release, and to occupy their time with productive activities. Required features include, but are not limited to, the following:

- Entertainment
 - Music
 - Games
 - Movies & TV Episodes
 - Videos
 - News
 - eBooks
- Education and Betterment
 - Increase GED completion rates
 - Mental Health & Addiction Recovery assistance
 - Parenting programs
 - Religious participation opportunities

Depending on jail population, the County anticipates requiring approximately 400 tablets, with the ability to add more depending on demand.

The cost of the Services shall be solely borne by the selected vendor and provide a commission to County based on user rates/fees that balances a significant rate of return to Utah County with rate economy for system users.

The services are requested at the following County facility:

Utah County Security Center
3075 North Main, Spanish Fork, Utah 84660
Spanish Fork, UT 84660

The Security Center includes pods for up to 800 inmates.

The current Average Daily Population is approximately 375 inmates

Any item not specifically mentioned but necessary for the delivery and operation of the proposed system shall be included in this proposal.

SECTION 2 PROCUREMENT RULES AND PROCEDURES

2.1 PROCEDURE

The Procedure for the issuance of this RFP, evaluation of proposals and selection of a provider is as follows:

- a. Interested entities will prepare and submit their proposals according to the Procurement Timetable contained in Subsection 2.3;
- b. Utah County and/or its representatives will evaluate all submitted proposals to determine acceptance or rejection of the proposals.
- c. The selected provider will be required to sign the contract. Utah County Standard Terms and Conditions are provided in Section 6.

2.2 RULES OF PROCUREMENT

For this procurement, all proposals will be submitted in the proposal format outlined in Section 3 (Instructions for Proposal Preparation) of this RFP.

All prospective providers must meet the enclosed criteria as of the date of submission. Respondents will provide all requested information in the Detailed Information Response Forms.

Utah County has established certain requirements with respect to proposals to be submitted by respondents. The use of “shall”, “must”, or “will” in this RFP indicates a requirement or condition from which a material deviation will not be approved by Utah County.

2.3 PROCUREMENT TIMETABLE

Below is the Procurement Timetable that has been established for this RFP.

REQUIRED ACTIVITY	SCHEDULED DATE
RFP Issue Date	May 13, 2021
Closing Date For Receipt of Proposals	Tuesday, June 1, 2021 at 3:00 pm

2.4 QUESTIONS AND CLARIFICATIONS

Questions regarding this RFP should be directed through the SciQuest (JAGGAER) website by the date indicated on the website. Vendors should not contact the Security Center directly. Questions or concerns may also be directed to:

Utah County Purchasing Manager
Robert Baxter
robertb@utahcounty.gov
Telephone Number: (801) 851-8233

After proposals have been submitted, Utah County Personnel and/or their representatives may arrange to meet with a proposed provider to further discuss related issues.

2.5 EVALUATION CRITERIA

All proposals will be evaluated by authorized representatives of Utah County (the Evaluation Committee). The Board of County Commissioners shall award the contract to one of the top three ranked offerors, or may elect to reject all proposals.

A point evaluation system will be used to rank the proposals. Point ranges have been assigned to each category in accordance with the County's view of their relative importance. The evaluation components are listed below with their assigned points:

- | | | |
|----|--|-----|
| a. | Provides a robust and relevant service to inmates | 40% |
| b. | Demonstrated ability to meet the requirements as set forth in this RFP | 30% |
| c. | Overall costs and fees charged | 20% |
| a. | Installation, maintenance and training | 10% |

SECTION 3 INSTRUCTIONS FOR PROPOSAL PREPARATION

3.1 PROPOSAL ORGANIZATION AND NUMBER OF COPIES

Each respondent must submit four (4) copies of its proposal to the Utah County Purchasing Manager on or before the Closing Date for Receipt of Proposals. The proposal must be delivered to:

Robert Baxter
Utah County Purchasing Manager
100 East Center, Room 3600
Provo, Utah 84606

All proposals must reference RFP# 2021-1

The proposal must include (in the following order):

- < Transmittal letter describing background of respondent and the intent to participate in the contract.
- < Detailed description, along with applicable materials detailing:
 - General description of tablet abilities and services provided
 - Technical requirements and features of tablets
 - Security capabilities and features
 - Hardware features
 - Available applications
 - Officer tablet features
 - Digital mail technology
 - Family and friends customer service
 - Inmate account funding
 - Installation, service and maintenance
 - Disaster recovery
 - Training
 - Rates, commissions and fees
- < Vendor Information Form (Attachment A)
- < Signed Signature Sheet (Attachment B)
- < Notarized Certification of Non-Collusion (Attachment C).

3.2 PROPOSAL CONTENT

In order to be considered, a proposal must contain all sections as described in Subsection 3.1. Additionally, all respondents must answer all questions contained in Subsections 4.2 (Attachment A Vendor Information Form), 4.3 (Attachment B Signature Page), as well as the Certification of Non-Collusion (Attachment C). Requested documentation relating to these forms must be attached. Utah County may

also request additional information or materials if needed to clarify information received in the proposals.

The occurrence of any of the following may result in disqualification of a respondent:

- a. Failure to respond within the established timetable.
- b. Failure to completely answer all questions on the proposal.
- c. Use of any other type of form or format other than those indicated in the RFP.
- d. Failure to provide requested documentation at the time of proposal submission.
- e. Illegible responses.
- f. Failure to sign and return the Signature Page.

SECTION 4 PROPOSAL REQUIREMENTS

4.1 LETTER OF TRANSMITTAL

The letter of transmittal shall be on official business letterhead. The letter of transmittal shall include:

- < A statement that the respondent will comply with all terms and conditions as indicated in the RFP.
- < A statement indicating whether the respondent is a corporation or other legal entity.
- < A statement of affirmative action that the respondent does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or handicap.
- < A certification statement to the effect that the person signing the proposal is authorized to do so on behalf of the respondent.
- < Names of the key contact persons with their title, telephone numbers and

email addresses. Also indicate first and second back-up contact persons if the person signing the proposal is not available to take the call from Utah County.

Vendor is required to mark any specific information contained in its Proposal which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any Proposal will not be considered proprietary.

4.2 DETAILED INFORMATION RESPONSE FORM

The Detailed Vendor Information Form attached as Attachment A must be completed and included in the submission.

4.3 SIGNATURE PAGE

A signature page in the form attached as Attachment B must be executed and included in the submission.

SECTION 5 EVALUATION PROCEDURES

This process will include, but not be limited to, proposal evaluation and verification by appropriate Utah County Security Center staff and/or its authorized representatives.

5.1 ACCEPTANCE OF PROPOSAL

Utah County reserves the right to reject any or all proposals or waive minor irregularities when to do so would be in the best interests of Utah County. Minor irregularities are those which will not have a significant adverse effect on overall competition or performance levels.

The responding party agrees that Utah County may terminate this procurement procedure at any time, and Utah County shall have no liability or responsibility to the responding party for any costs or expenses incurred in connection with this RFP, or such party's response.

Acceptance of the proposal is subject to entering into the agreement attached as Attachment D which contains additional terms and conditions not included in this RFP. Utah County will be legally bound only when and if there is a definitive

signed agreement with the awarded Offeror.

By responding to this RFP, Offeror acknowledges that neither Utah County nor any of its representatives is making or has made any representation of warranty, either express or implied, as to the accuracy or completeness of any portion of the information contained in this RFP. The Offeror further agrees that neither Utah County nor any of its representatives shall have any liability to the Offeror or any of its representatives as a result of this RFP process or the use of the information contained on this RFP. Only the terms and conditions contained in the Agreement when, as, and if executed, and subject to such limitations and restrictions as may be specified therein, may be relied upon by the Offeror in any manner as having any legal effect whatsoever.

5.2 DISPOSITION OF PROPOSALS

All proposals (and the information contained therein) shall become the property of Utah County. No proposals shall be returned to the respondent regardless of the outcome of the selection process.

All proposals will be evaluated by authorized representatives of Utah County.

The Utah County Jail expressly reserves the right, in its sole judgment, to accept or reject any or all proposals, with or without cause, modify, alter, waive any technicalities or provisions, or to accept the proposal which County determines to be the best evaluated offer. Therefore, in selecting the Offeror, the Utah County Jail will not rely exclusively on commission in awarding the proposal as noted in the evaluation criteria.

5.3 INCURRED EXPENSES

Utah County will not be liable for any cost which Offerors may incur in the preparation of their proposals, site visits, pre-bid conferences, presentations, etc. This provision also includes any costs involved in providing an oral presentation of the proposal. Proposals should be concise, straight-forward, and can be prepared simply and economically. Expensive displays, bindings, or promotional materials are not required. These instructions are not intended to limit a proposal's content or exclude any relevant essential information therefrom.

5.4 PROPRIETARY INFORMATION

Offerors responding to this RFP are required to note any specific information

contained in their proposal which Is not to be disclosed to the public or used for purposes beyond the evaluation of the proposals. Any such restrictions must be clearly stated within the proposal itself. Though every attempt will be made to comply with such restrictions, non-disclosure following signing of the Agreement cannot be fully guaranteed due to public records law considerations.

ATTACHMENT A

VENDOR INFORMATION FORM

In order to receive consideration, submitted proposals must contain responses to all questions.
Failure to respond to all questions may result in disqualification of the proposal.

COMPANY NAME & ADDRESS: _____

Is this an Office: _____, Home: _____, Shop: _____, Other: _____
Telephone Number: (____) _____, Emergency Number: (____) _____.

Email Address: _____

COMPANY OWNER: _____
COMPANY PRESIDENT: _____
CONTACT PERSON: _____ Phone: _____

Type of Company (Partnership, Corporation, Venture etc.): _____

If a Corporation, in what State Incorporated: _____

Business License Number: _____

Federal Tax Identification Number: _____

D&B D-U-N-S Number: _____

How long has this company been in business: _____ Years, and _____ Months.

Officers authorized to execute contracts: _____

What would happen to your company in the event of the owner's absence or death?

Brief History of the Company: _____

Are there any judgments, suits or claims pending
against your company? If Yes, attach a written explanation. **YES NO**
☐ ☐

Has your company operated under any other name (s)? **YES NO**
If Yes, attach a written explanation.

Has your firm failed to complete a contract within the last five years?
If "yes" attach explanation. **YES NO**
☐ ☐

Has your firm or any partner or officers ever been involved in any
bankruptcy action? If "yes" attach explanation. **YES NO**
☐ ☐

Has your firm ever been listed on the Excluded Parties List System? **YES NO**
☐ ☐

Are any of your firm's owners, officers, employees, or agents also
employees of Utah County or related to any employees of Utah County
If "yes" attach explanation. **YES NO**
☐ ☐

FINANCIAL REFERENCES

1. Bank Name & Address _____

Manager _____ Phone _____

CLIENT REFERENCES

1. Name: _____, Contact: _____
Address: _____, Phone: _____

2. Name: _____, Contact: _____
Address: _____, Phone: _____

3. Name: _____, Contact: _____
Address: _____, Phone: _____

ATTACHMENT B
SIGNATURE SHEET

I hereby certify that the information submitted by me/my company in response to this RFP, including the pricing and all written and electronic information in this RFP response is true and accurate.

I understand that Utah County has the right to reject any or all proposals or to waive minor irregularities when to do so would be in the best interests of Utah County.

Name: _____

Address: _____

Phone Number: _____

Email Address: _____

Print Name: _____

Signature: _____ Date: _____

CERTIFICATE OF NON-COLLUSION

AFFIDAVIT

solemnly swear that neither I, nor to the best of my knowledge any member or members of my firm or company have either directly or indirectly restrained free and competitive bidding on this project by entering into any agreement, participating in any collusion, or otherwise taking any action unauthorized by Utah County, with regard to this bid or potential agreement resulting therefrom.

By: _____
Title: _____

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AGREEMENT NO. 2021-_____

JAIL TABLET AGREEMENT

Agreement made, and executed this ____ day of _____, 2021, by and between Utah County, a political subdivision of the State of Utah, with its office located at 100 East Center Street, Provo, Utah, 84606, hereinafter referred to as “Customer”, “County”, “Utah County”, “Utah County Jail”, “Utah County Security Center”, “Jail”, “Security Center” or any other similar references referring to the Utah County Sheriff’s Office or Utah County; and _____, whose principal office is located at _____, hereinafter referred to as “Offeror” or “Provider”.

WHEREAS, County desires to tablet services for Utah County Jail inmates ; and

WHEREAS, Offeror desires to provide the same to Utah County.

NOW THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between County and Offeror as follows:

I. DESCRIPTION OF WORK

In consideration of the compensation set forth in Section II, the Offeror agrees to provide County with inmate tablet services to deliver digital content and electronic services for Utah County Jail inmates free educational and self-help opportunities with an option to inmates to pay to access County approved movies, music, books, and games on a tablet-based platform with vendor-provided labor, material, equipment, and network to deliver the digital content. (hereinafter collectively referred to as the “Services”) Tablets will be used by the inmates for their self-improvement, to prepare for their release, and to occupy their time with productive activities. The Services shall meet the criteria set forth herein, Attachment 1, which is incorporated herein by this reference, and in the Request for Proposal for Inmate Tablet Services (RFP), which is incorporated herein by this reference to the extent the RFP is not in conflict, contrary to or inconsistent with this Agreement and Attachment 1 as provided in Section XXVII of this Agreement.

Offeror, at its sole expense, agrees to provide the Services for County at the Utah County Security Center, Spanish Fork, Utah on the terms, requirements and conditions contained herein.

Offeror, at its sole expense, agrees to provide, install, maintain, and replace all equipment and software necessary in order to fulfill the purposes of this Agreement as set forth herein.

II. COMPENSATION

1. In exchange for the right to provide the Services for the Utah County Security Center, Offeror shall be responsible for all costs associated therewith.
2. The costs related to the Services are the responsibility of the Offeror and are to be covered in the user fees and rates. The operation of the Services shall provide a return of profit to the County.
3. a. Rates. Offeror shall charge the following rates:

Or other mutually agreed pricing as documented by the parties in writing. Applicable taxes and fees will be borne by Offeror and no commission will be paid on taxes and fees. Offeror shall not charge users any other or additional rates or fees not specifically provided for in this Agreement. Rates and fees for any new features or equipment not yet established above shall be mutually set in writing by Offeror and County. User rates and fees shall not violate applicable laws, rules and regulations including FCC rules and regulations. Offeror shall indemnify and hold Utah County harmless for any and all damages arising out of a violation of applicable rate laws, rules, and regulations.

- b. Commissions. Offeror shall pay County monthly commissions of _____.
- c. Fees. User fees for account deposits shall not exceed \$_____.

Offeror shall not charge inmates or system users any other or additional fees including but not limited to the provision, payment, billing, refund, account setup or any service provided by Offeror.

- d. Taxes. Provider will charge all applicable taxes required to be charged by various government agencies in connection with the Services and hold Utah County harmless therefore.
4. Commissions shall be paid monthly to Utah County within 30 days of the end of the month in which the Services are rendered.
5. Commissions, rates and fees shall be valid for the initial and all renewal periods of the Agreement. Any subsequent commission, rate or fee changes shall be requested in writing, with justification, and must be accepted by the County prior to implementation.
6. The Offeror shall, on a monthly basis, submit a report of gross revenues for the previous month for all Services provided pursuant to this Agreement sufficient to verify the amount of the monthly commission or any other amounts paid to County. A check will be issued monthly by Offeror to County on or before the 30th day of each month for County's commission for all Services provided by Offeror from the previous month.
7. Offeror shall inform users responsible for payment in advance of any and all applicable rates, fees, and charges of any kind prior to providing any Services which incur a charge.
8. Offeror shall inform all participants in advance of any communication that the communication is subject to recording and monitoring.
9. In the event any government regulatory body issues an order regulating the Services, this Agreement shall be amended as of the effective date of the regulatory order to include the allowed rates and/or commissions and cost recovery. Any charge allowed in the regulatory order for increased rates for cost recovery for County's costs associated with the regulated services shall be charged and collected

by Offeror and paid to County monthly in addition to any commission due on the Services.

III. DURATION

1. The initial term of this Agreement will be for a period of approximately three (3) years commencing upon the execution hereof by all parties and terminating December 31, 2024. At the expiration of the initial term, Utah County will have the option of continuing the Services with the Offeror on written notice to Offeror given at least 60 days prior to the end of the Agreement term on the same terms and conditions and at the same commission and rates for a period of two (2) additional years in one-year increments. Each optional year will require the Utah County's 60 day advance written notice of renewal. Commission rates paid to Utah County shall be valid for the initial and all renewal periods of the Agreement. Any subsequent commission rate changes must be requested in writing, with justification, and must be accepted by Utah County prior to implementation. In the event this Agreement is terminated by either party, there shall be no disruption of service between the termination of the existing services and the implementation of an alternate services provider. Offeror shall continue providing the Services until a new vendor is selected and commences to provide services (cutover to subsequent vendor services).
2. Upon termination for any reason, all financial obligations paid in advance by either party shall be adjusted on a per diem basis as of such termination date. Any notice and other communications given pursuant to the provisions of this paragraph shall be in writing and shall be given by mailing the same by certified mail or registered mail, return receipt requested, postage prepaid, to the other party to this Agreement.

IV. TERMINATION

The obligation to provide further service under the terms of this Agreement may be terminated by Utah County immediately upon written notice to Offeror in the event of material breach by the Offeror to perform in accordance with the terms hereof. In the event that the

Agreement is terminated for any reason, the Offeror warrants that it will remove all its equipment from the facilities without charge. Service and equipment will not be removed until another contractor has been acquired and is able to commence providing services. The removal of equipment and disconnection of service process will occur during the implementation of the new system with minimal interruption of service to this facility. The Offeror shall cooperate with the new contractor during the implementation of the new system.

Except for a material breach, if either party defaults in the performance of any obligation under this Agreement, then the non-defaulting party shall give the defaulting party written notice of its default setting forth with specificity the nature of the default. If the defaulting party fails to cure its default within 30 days after receipt of the notice of default, then the non-defaulting party shall have the right to immediately terminate this Agreement and pursue all other remedies available to the non-defaulting party, both at law and in equity.

Upon termination for any reason, all financial obligations paid in advance by either party shall be adjusted on a per diem basis as of such termination date. Any notice and other communications given pursuant to the provisions of this paragraph shall be in writing and shall be given by mailing the same by certified mail or registered mail, return receipt requested, postage prepaid, to the other party to this Agreement.

V. INSTALLATION REQUIREMENTS

1. The Offeror will provide and install the Services at no cost to the County and provide all documentation for the Services within 60 days of award. The Offeror shall oversee and perform the initial set-up of the Services. The Offeror will be responsible for all costs of installation or disconnection of Offeror's equipment. The Offeror will be required to furnish and install equipment, dedicated lines, and any other item(s) necessary to make the Services functional. The Offeror will remove all equipment installed by Offeror from the Utah County Jail facilities without charge upon the termination of services.

Offeror shall be responsible for installation of the Services hardware at COUNTY's location in conformance with the applicable installation specifications at no charge to COUNTY in addition to any installation requirements contained in Attachment "A".

2. The Offeror shall be responsible for all costs associated with the Services, including but not limited to, purchase/replacement of equipment, installation, service, maintenance, data network, and day-to-day operations. Any additional equipment associated with any future expansion of housing units while the Agreement is in effect shall be borne by Offeror. The Offeror will be responsible for all costs of installation or disconnection of Offeror's equipment. The Offeror will be required to furnish and install equipment, dedicated lines, and any other item(s) necessary to make the Services functional. The Offeror will remove all Services equipment, installed by Offeror from the Utah County Jail facilities without charge upon the termination of the Services.
3. The Offeror is responsible for determining all wiring and software requirements and costs associated with the integration of the services with other inmate service providers, such as phone and other communications, commissary, or other third-party services.
4. The Offeror will provide at no cost to the County training on the Services to members of the Security Center Information Systems Division and the Sheriff's Department Finance Office, or other employees as necessary.
5. Offeror shall be responsible for installation of the system hardware at County's location in conformance with the applicable installation specifications at no charge to County.

VI. DAMAGE AND REPAIR LIABILITY

1. The Utah County Jail will have no liability to the Offeror for fraud, theft, vandalism/damage or loss of the Offeror's equipment inflicted by the inmates or the public. All costs associated with the repair or replacement will be the responsibility of the Offeror.

2. Offeror warrants that all repairs and replacements will be made at Offeror's expense. Offeror shall make all reasonable efforts to ensure that the Services are operational and repaired or replaced as quickly as possible. Offeror will repair and maintain its equipment in good operating condition and shall exclusively maintain its equipment in such condition by furnishing all necessary parts and labor reasonably necessary for the successful operation of the equipment. Offeror has the exclusive access to open, adjust, remove, disconnect, repair, replace, or alter the equipment. County shall permit security cleared employees or contractors of Offeror reasonable access in order to provide such service, repair, and maintenance on equipment. Offeror's equipment shall remain the property solely of Offeror. Upon termination of this Agreement, Offeror shall have the right to enter upon the premises to remove the equipment. County shall notify Offeror of any misuse, destruction, damage, or vandalism of the equipment as soon as practicable.
3. All software installed as part of this Agreement, and all systems attaching to County communication or internet services shall be secure and free of viruses. The Offeror shall provide, document and comply with anti-virus software licenses and virus scanning procedures to be followed by the Offeror prior to accessing/installing software within the County environment.
4. Remote access shall be coordinated through the County's Information Systems Division. The Offeror is responsible for maintaining remote access to appropriate systems.
5. When recommending or performing future software upgrades and/or fixes, the Offeror shall inform County of potential impacts on existing hardware and operating system configurations. The Offeror shall notify the County in advance that software enhancements will require modifications to workstation configurations. Software installation, upgrades and/or fixes shall not adversely impact existing County hardware/operating system configurations or operation.
6. Various levels of security shall be present in the software (i.e., normal user, inquiry, managerial, auditing, and diagnostic). Security levels shall have the ability to be

customized by the County, including password control, and tracking of transactions by individuals or stations. The tablets will be operated through a secure network which prohibits access to third parties.

7. Software updates shall be provided free of charge to Utah County for the length of the Agreement.
8. The software shall be windows based with a relational database. The Services shall have the capability to operate on a network of PC's with Windows 98, Windows XP and Windows NT.
9. All hardware necessary for the performance of this Agreement will be provided by the Offeror for the length of the Agreement. Maintenance or replacement of said hardware shall be the responsibility of the Offeror. Offeror will bear the cost of all hardware, maintenance and replacement.
10. The Offeror shall be able to restrict the Services by location and/or inmate based on facility-imposed restrictions as deemed necessary for the effective, safe, and secure operation of the Security Center and management of inmates.

VII. EQUIPMENT

1. The amount, type and location(s) of equipment installed at Utah County's Facility shall be mutually agreed by the parties. All onsite equipment shall be suitable for use in a jail, indestructible type, with shockproof keypads and touchscreens. All instruments shall be waterproof and fireproof. With the exception of tablets, all onsite equipment will be mounted firmly to the wall including cabling to support the equipment. Mounting will be done in a secure manner and approved by County's designee.
2. In the event the County requires integration with a 3rd party's software or application, the Offeror must pay for said integration with the 3rd party if and when required by the County.
3. Hardware and software upgrades are the responsibility of Offeror at no cost to Utah County.
4. System upgrades should be fully tested and QA'd prior to installation on County's

production servers.

5. Offeror shall bear the cost of integration with County's Jail Management System.
6. In connection with integration of the Services with County's Jail Management System/software or third-party software, such integration shall be for the operation of the Services only. Offeror may not modify, translate, port to any other computer or human language, disassemble, reverse engineer or decompile County's Jail Management System or third party software or otherwise attempt to discover any portion of the source code, object code or trade secrets related to County or third party software. This Agreement is not intended to and shall not be construed to convey or otherwise transfer title to, ownership of, or any proprietary rights in County or third-party software.
7. Offeror shall not disclose, furnish, transfer, or otherwise make available County or third-party software or any portion thereof or any related documentation to any third party or duplicate any portion of County or third-party software. Any County software and documentation provided to Offeror shall be provided only to those employees of Offeror with a need to know. The provisions of this Section shall survive the expiration or termination of this Agreement.

VIII. NOTICES

Unless otherwise provided, any notice, demand, request or any other instrument which may be or is required to be given under this Agreement shall be delivered in person or sent by certified mail, postage prepaid, addressed to the appropriate party as noted here:

To County: Utah County Sheriff
 3075 North Main
 Spanish Fork, Utah 84660

With Copies to: Utah County Attorney
 Civil Division
 51 South University Avenue #206
 Provo, Utah 84606

To Offeror:

IX. ASSIGNMENT

This Agreement may not be assigned, in whole or part, without the express written consent of Utah County. In the event Provider is acquired by or transferred to a successor company or entity, County, in its sole discretion, may terminate the Agreement subject to the provisions of Section IV.

X. INDEMNIFICATION

The Offeror shall defend, indemnify, save and hold harmless Utah County, its officers, employees, and agents, from and against any and all claims, demands, causes of action, orders, decrees, judgments, losses, damages, and liabilities (including all costs and attorney's fees incurred in defending any claim, demand, or cause of action) occasioned by, growing out of, or arising or resulting from any act or omission of Offeror, or its subcontractors, agents or employees. The Offeror shall assume sole liability for any injuries or damages caused to a third party as a result of its acts or omissions.

Information Technology Systems. In connection with the services being provided hereunder, Offeror may need to operate certain information technology systems ("Non-County Systems"), which may need to interface with or connect to County's networks or information technology systems ("County Systems"). Offeror shall be responsible for all Non-County Systems, and County shall be solely responsible for County Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. If Offeror serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then Offeror will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data. Offeror shall indemnify, defend and hold County harmless from all claims, liabilities, damages and costs (including reasonable attorneys' fees) to the extent caused by Offeror's failure to comply with its obligations herein.

Offeror shall defend all suits brought upon such claim or demand and pay all costs and expenses incidental thereto, but County shall have the right, at its option and expense, to participate

in the defense of such suit without relieving Offeror of any obligation hereunder.

XI. INDEPENDENT CONTRACTOR

Offeror states and affirms that he is acting as an independent contractor, holding himself out to the general public as an independent contractor for other work or contracts as he sees fit; that he advertises his services as he sees fit to the general public, maintains his office or place of employment

separate from Utah County, and that this Agreement is not exclusive of other agreements, contracts or opportunities.

The parties intend that an independent contractor relationship will be created by this Agreement. Utah County is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Offeror. Offeror is not to be considered an agent or employee of Utah County for any purpose, and the employees of Offeror are not entitled to any of the benefits that Utah County provides for County's employees. It is understood that Offeror is free to contract for similar services to be performed for others while working under the provisions of this Agreement with Utah County.

Both parties agree that Offeror shall be deemed an independent contractor in the performance of this Agreement, and shall comply with all laws regarding unemployment insurance, disability insurance, and workers' compensation. As such, Offeror shall have no authorization, express or implied, to bind Utah County to any agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for Utah County. The compensation provided for herein shall be the total compensation payable hereunder by Utah County.

XII. INSURANCE

The Offeror agrees to carry commercial general liability insurance and umbrella coverage equal to or greater than \$779,600 per person, \$3,138,300 per occurrence, and \$307,700 for property damage in any one occurrence, or as modified by the risk manager pursuant to state statute(UCA 63G-7-604) during the term of this Agreement. This coverage shall provide insurance to cover the activities of Offeror and Offeror's agents, employees and subcontractors, and for all equipment and vehicles, public or private, used in the performance of this Agreement.

This insurance shall name 'Utah County, 100 East Center, Provo, Utah 84606' as a certificate holder. The Offeror shall maintain the insurance in full force and effect, coverage equal to or greater than the above stated amounts for the duration of this Agreement. The Offeror shall submit a certificate of insurance to Utah County naming Utah County as a certificate holder in the minimum amounts indicated above before beginning work.

The Offeror shall furnish, with the bid submission, a Certificate of Insurance to Utah County evidencing that the Offeror has Workers Compensation Insurance for the Offeror, all subcontractors, and all employees of the Offeror and/or subcontractors and shall maintain the same in effect for the duration of this Agreement.

The Offeror shall furnish, with the bid submission, a Certificate of Insurance to Utah County evidencing that the Offeror has general liability insurance in the above stated amounts.

XIII. APPLICATION OF LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

XIV. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement. This Agreement replaces and supersedes the parties' prior agreement relating to the subject matter hereof, ITS Agreement 2015-559 as amended by Agreement 2016-499 between Utah County and Securus Technologies, Inc. for Inmate Telephone, Video Visitation, Email, Automated Information System, Investigative Tools and Other Services as Provided Therein. The parties' rights and obligations shall be governed by the prior agreement until the effective date of this Agreement, after which this Agreement will govern.

XV. MODIFICATION

Any modification of this Agreement, or additional obligation assumed by either party in connection with this Agreement, shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

XVI. SUCCESSORS IN INTEREST

This Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties thereto.

XVII. CONFLICT

If any of the provisions of this Agreement and Attachment 1 are contrary to, conflict, or are inconsistent with the provisions of the RFP, the provisions of this Agreement and Attachment 1 shall control and govern. Failure to include any terms or conditions from the RFP in this Agreement shall not constitute a waiver of any RFP terms and/or conditions not stated in this Agreement.

XVIII. DELIVERY, RISK OF LOSS

At no additional charge to County, Offeror shall deliver the hardware to the applicable location established by the parties on or before the scheduled delivery date which shall be mutually agreed to by the parties. Offeror shall bear the risk of loss and all freight, shipping and handling costs associated with delivery of the hardware to the designated location.

XIX. TIME

All services shall be provided in a timely and professional manner. Time is of the essence.

XX. NO THIRD-PARTY BENEFICIARIES

This Agreement is not intended to benefit any party or person not specifically named as a party herein.

XXI. SYSTEM SOFTWARE LICENSE:

1. Grant. Offeror hereby grants to County a non-exclusive, nontransferable license to use the system software. Use of the system software is restricted to the system described in Offeror's proposal and shall be for the operation of the Services only. County may not modify, translate, port to any other computer or human language, disassemble, reverse engineer, or decompile the system software or otherwise attempt to discover any portion of the source code, object code or trade secrets related to the system software. This Agreement is not intended to and shall not be construed to convey or otherwise transfer title to, ownership of, or any proprietary rights in the system software to County.

2. Nondisclosure and Copies. County shall not disclose, furnish, transfer or otherwise make available the system software or any portion thereof or any related documentation to any

third party or duplicate any portion of the system software. County shall, however, have the right to make one archival or backup copy of the system software. County may also reproduce the accompanied documentation for County's own internal use. Any such backup copies of the system software or reproductions of the documentation shall include any copyright or similar proprietary notices contained in the materials being copied or reproduced. The system software and documentation shall be provided only to those employees of County with a "need to know". The provisions of this Section shall survive the expiration or termination of this Agreement.

3. Representations. Offeror represents to County that Offeror has the right to grant a license to use the system software specified in this Agreement.

4. Proprietary Rights. Nothing in this Agreement shall be construed as warranty or representation that the system software is or will be free from infringement of patents or other intellectual property rights of third parties. Should County's use of the system software be enjoined or, in County's reasonable judgment, be likely to be enjoined, due to actual or alleged infringement of any patent, trademark, copyright, trade secret or other proprietary right of any third party, provided that Offeror is notified promptly in writing by County of such injunction or threat thereof, is given complete control of the defense of any claim and County cooperates with Offeror in the settlement or defense of such claim, Offeror shall at its expense:

- Defend and indemnify County from and against any actual or alleged infringement of any patent, trademark, copyright, trade secret or other proprietary right of any third party; and
- procure for County, under reasonable terms and conditions, the right to continue using the system software; or
- replace or modify the system software so that it becomes non-infringing in a manner which does not adversely affect the specifications for, or the use or operation by County of the system.

If neither of the foregoing alternatives is possible even after Offeror's reasonable efforts, Offeror may in the case of the provision of an Offeror owned system, terminate this Agreement, subject to the rights and remedies of County as provided in this Agreement.

Offeror shall have no obligations under this Section if the system software has been modified by County and the unmodified version would not have been infringing.

XXII. TITLE TO EQUIPMENT/SERVICES:

Title and ownership of the Services shall remain with Offeror. County will not encumber or dispose of said system and/or equipment, and except for equipment damaged beyond use or repair by inmates or third parties or through no cause or fault of County; or permit the system and/or equipment to be taken from County's location or tampered with. County agrees that the installation of the system does not constitute the system as a fixture. County shall cooperate with Offeror in the preparation and filing of any documents deemed necessary by Offeror to preserve such title and ownership rights.

XXIII. SOFTWARE:

Upon learning of any defect in the system software at any time during the term of this Agreement, Offeror shall repair or replace, whichever is appropriate, the system software at no charge to County.

Offeror shall provide County with any updates to the system software that are available and shall install or assist in the installation of the updates. Offeror shall also provide County with reasonable training and other assistance in the operation of the updates provided by Offeror. Offeror's installation, training and other services provided in connection with the updates shall be provided at no charge to County.

XXIV. SEVERABILITY

If any provisions of this Agreement are held to be invalid or unenforceable by a court of proper jurisdiction, the remaining provisions shall remain in full force and effect, unless the invalid or unenforceable provision is material. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

XXV. WAIVER

A waiver by any party of any provision of this Agreement, whether in writing or by course of conduct or otherwise, shall be valid only in the instance for which it is given, and shall not be deemed a continuing waiver of said provision, nor shall it be construed as a waiver of any other provision.

XXVI. STANDARD OF PERFORMANCE

Unless otherwise stated herein, OFFEROR'S services under this Agreement shall be performed in a reasonable and prudent manner in accordance with generally accepted industry practices. The Services will provide clear audio and video sound and pictures and the audio and video will be synchronized.

XXVII. NO PRESUMPTION

Should any provision of this Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against a party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that all parties have participated in the preparation hereof.

XXVIII. ATTORNEY'S FEES

If either party defaults in the performance of this Agreement, or any of its covenants, terms, conditions, or provisions, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement, or from pursuing any remedy provided hereunder or otherwise provided by law except in the instance that the defaulting party cures the default as provided in this Agreement.

XXIX. GENERAL COVENANTS

Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa. The use of any gender shall include the other gender and all business entities. The paragraph and section headings contained in this Agreement are for convenience only, and do not constitute a part of the provisions hereof. In the event of a default or dispute arising in any manner under this Agreement, the default or dispute will be resolved in the courts of the state of Utah and jurisdiction and venue for any said default or dispute shall be in Utah County. This Agreement may be executed in two or more counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier, fax, email or other electronic delivery, shall be sufficient to bind the parties to the terms and conditions of this

Agreement. A copy in whole or any part of this Agreement shall have the same effect as an original.

XXX. CONFIDENTIALITY

Offeror recognizes that County may have certain proprietary information such as cost, process information, technical information, inmate personal information, inmate charges, and security information, which are valuable, special and unique assets of County. Offeror agrees that it will not, nor will any of its employees, use any such information for personal benefit, or divulge, disclose, or communicate in any manner any such information to any third party without the prior written consent of County. Offeror will protect the information, treat it as strictly confidential and will not release any information which would violate the Utah Government Records Access Management Act, UCA 63-2-101 et. seq.

Any technical information relating to the Services or any information concerning a program participant or any other information marked as Proprietary or Confidential furnished by one party (the Disclosing Party) to the other (the Receiving Party), under this Agreement, shall be considered Confidential Information. The Receiving Party shall not, without first obtaining the Disclosing Party's written consent, disclose to any third party or use for any purpose other than the performance of its obligation under this Agreement, any information or materials developed by the Receiving Party based on Confidential Information that it has received or to which it has access. In addition, the Receiving Party shall likewise protect the confidentiality of oral statements made to it by the Disclosing Party, provided that the Disclosing Party identifies the statement as confidential or proprietary when made and, no later than seven (7) days thereafter, provides the Receiving Party with a written notice that summarizes the statement and confirms the Disclosing Party's request for confidential treatment.

Confidential information shall not include:

- information generally available to, or known to, or which becomes known by, the public through no wrongful act of the Receiving Party;
- information lawfully known by the Receiving Party prior to negotiations leading to this Agreement;
- information lawfully disclosed by a third party to the Receiving Party;

- information independently developed by the Receiving Party without the use of information disclosed by the Disclosing Party;
- information lawfully disclosed to a third party by the Disclosing Party without restriction; and
- information lawfully required to be disclosed to any governmental agency or which is otherwise required to be disclosed by law, provided that before making such disclosure the Receiving Party shall give the Disclosing Party an adequate opportunity to object to such disclosure or take action to assure confidential handling of such information.
- information required to be disclosed by the Utah Government Records Access Management Act, UCA 63-2-101 *et. seq.*

Upon the request of the Disclosing Party which may be made at any time, the Receiving Party shall return to the Disclosing Party or, at the option of the Disclosing Party, shall destroy the Confidential Information provided by the Disclosing Party or material developed by it based on the Disclosing Party's Confidential Information. Upon the request of the Disclosing Party, the Receiving Party shall certify that the destruction of Confidential Information provided for herein has occurred. This paragraph shall not apply to information in County's possession which is necessary for County to receive the services provided pursuant to this Agreement or information governed by the Government Records Access Management Act, UCA 63G-7-101 *et. seq.*

If the Receiving Party fails to abide by its obligations under this section, the Disclosing Party shall be entitled to seek immediate injunctive relief, in addition to any other rights and remedies available to it at law and in equity.

The provisions of this section shall survive the expiration or termination of this Agreement.

XXXI. PERFORMANCE AND EXCUSABLE DELAY

Neither party shall be liable to the other for any delay or failure to perform under this Agreement if the delay or failure to perform is without fault or negligence of the party claiming excusable delay and is due to causes beyond the control of said party, including, but not limited to: acts of God; war; acts of the government; fires; floods; epidemics; quarantine restrictions; strikes, labor disputes or work stoppages; and freight embargoes.

XXXII. GOVERNMENTAL IMMUNITY

Notwithstanding anything in this Agreement, Attachment 1, and any exhibits, any obligation of County to indemnify Offeror is subject to, controlled and governed by the Governmental Immunity Act of Utah, UCA 63G-7-101 *et. seq.*, including but not limited to all procedures, protections, and limits of liability contained therein.

XXXIII. AUTHORITY

County and Offeror warrant and represent to each other they have the authority to enter into this binding Agreement and to bind themselves to such Agreement.

XXXIV. MAINTENANCE/SUPPORT

The Offeror shall be responsible for maintenance, repair, replacement, and support on a twenty-four (24) hour, seven (7) day per week basis. The Offeror shall respond, in person, to a telephone request for maintenance, repair, or replacement.

Support/Maintenance shall include remote access, diagnostics, downloading and troubleshooting through a secure virtual private network (VPN) to diagnose and troubleshoot systems. All costs for maintenance, support, repair and replacement of all software and equipment will be borne by the Offeror and will not be deducted from any commissions. During the term of the Agreement, the Offeror agrees to provide maintenance, to diagnose problems, determine proper solutions and provide:

- The implementation of any required solutions, changes, modifications, updates, or other services which are necessary to allow the software, hardware, and any other Services equipment to perform in accordance with the requirements of this Agreement.
- Upgrade the software and/or hardware to required performance standards, and
- Provide support provided via an 800 number over which we speak with a person.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
UTAH COUNTY, UTAH

By: _____, Commissioner

ATTEST:
AMELIA POWERS-GARDNER
County Clerk/Auditor

By: _____
Deputy

APPROVED AS TO FORM:
DAVID LEAVITT
Utah County Attorney

By: _____
Deputy

OFFEROR:

By: