

STATE OF TEXAS

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COUNTY OF TRAVIS

**AMENDMENT 9 TO CONTRACT NUMBER CON0000311**

The **Texas Juvenile Justice Department**, hereinafter **TJJD**, and **Consolidated Telecom, Inc. (C-Tel)**, hereinafter **Service Provider**, acknowledge that they have previously entered into a contract for the provision of Youth Residential Telephone Services for the period of **September 1, 2013**, through **March 31, 2022**. This contract is identified as Contract Number **CON0000311**.

Both parties wish to continue the relationship that exists without a lapse in services. Service Provider agrees to continue to provide services under the aforementioned existing contract, and the TJJD agrees to continue to use Service Provider's services during the term of this contract.

Service Provider represents and warrants that the individual signing this Amendment is authorized to sign this document on behalf of Service Provider and to bind Service Provider under this Amendment.

Both parties hereto agree to be bound by the terms of the existing contract and amendments, subject to the following changes:

1. TJJD is hereby extending the current contract term through **November 30, 2022**.
2. Section I. Service Provider, sixth paragraph, is deleted and replaced in its entirety with the following:  

"The total contract amount for the extension period **April 1, 2022, through November 30, 2022**, shall not exceed **\$224,000.00**."
3. Section III, Certifications and Section IV, General Terms and Conditions, are deleted, and replaced with Exhibit A, Terms and Conditions attached hereto as Exhibit A, Terms and Conditions and hereby incorporated by reference.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Amendment as of the day and year last below written.

**For the Texas Juvenile Justice Department:**

	4/18/22
Camille Cain, Executive Director	Date

**For Service Provider:**

	<i>Jerome Jacobs</i>	<i>vice-president</i>	<i>4-15-2022</i>
Signature	Printed Name	Title	Date

## TERMS AND CONDITIONS

### 1. Americans with Disabilities Act and Equal Employment Opportunity

Service Provider represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.

### 2. Antitrust Affirmation

The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Contract, neither I nor any representative of the Service Provider have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Contract, neither I nor any representative of the Service Provider have violated any federal antitrust law; and (3) neither I nor any representative of the Service Provider have directly or indirectly communicated any of the contents of this Contract to a competitor of the Service Provider or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Service Provider.

### 3. Assignment

Service Provider shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from TJJJ. Any attempted assignment in violation of this Section is void and without effect.

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### 5. Buy Texas Affirmation

In accordance with Section 2155.4441 of the Texas Government Code, Service Provider agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

### 6. Change in Law and Compliance with Laws

Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

### 7. Child Support Obligation Affirmation, Section 231.006, Texas Family Code

**Under Section 231.006, Family Code, the vendor or applicant [Service Provider] certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.** A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. **FEDERAL PRIVACY ACT NOTICE:** This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

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### 9. Compliance with Section 572.054, Texas Government Code, Former Officer or Employee of TJJJ

Service Provider certifies compliance with Texas Government Code Section 572.054. Service Provider has not employed a former officer or employee of TJJJ to perform services on Service Provider's behalf, to secure the contract, or to represent Service Provider in any manner prohibited by Section 572.054. A false certification could result in termination of this contract, withholding of payments, or other sanctions.

### 10. Compliance with the Prison Rape Elimination Act of 2003 (PREA)

Service Provider shall comply with the Prison Rape Elimination Act of 2003 (PREA) (34 U.S.C. 30301 et seq.) and with all applicable standards, rules, regulations, and TJJJ policies related to PREA. Service Provider shall make itself familiar with and at all times shall observe and comply with all PREA regulations which affect performance in any manner under this contract. Failure to comply with PREA standards, rules, regulations, and TJJJ policies may result in termination of this contract.

#### **11. Confidentiality and Security**

**Section 1:** Service Provider agrees that all of its employees, contractors, subcontractors, or associates will comply with all state and federal law and with TJJJ policies regarding maintaining the confidentiality of TJJJ youth, including, but not limited to, maintaining confidentiality of student records and identifying information.

**Section 2:** Service Provider agrees that all information regarding TJJJ and/or its youth that is gathered, produced, or otherwise derived from this contract shall remain confidential and subject to release only by permission of TJJJ.

**Section 3:** Service Provider's employees, contractors, subcontractors, or associates who visit any TJJJ facility will comply with that facility's security regulations.

**Section 4:** Identifying pictures, appearances, films, or reports of TJJJ youth may not be disclosed by Service Provider without the written consent of TJJJ, of the youth and, if under age 18, of the youth's parent, guardian, or managing conservator.

#### **12. Contract Amendment and Merger Clause**

This contract encompasses the complete and entire agreement of the parties. Neither party has made nor relied on any representations, stipulations, or agreements other than those expressly contained in this contract. No other contracts or agreements, oral or written, shall constitute a part of this contract unless such is made in writing, executed by the parties hereto or their successors, and expressly made a part of this contract. This contract may only be amended or supplemented in a writing, executed by the parties hereto or their successors, and expressly made a part of this contract, except that TJJJ reserves the right to make unilateral minor administrative changes to correct typographical errors, change TJJJ contract identification number, or increase the "not to exceed" amount (if applicable) necessary for continuation of services.

#### **13. Contracting Information Responsibilities**

In accordance with Section 552.372 of the Texas Government Code, Service Provider agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the TJJJ for the duration of the contract, (2) promptly provide to the TJJJ any contracting information related to the contract that is in the custody or possession of the Service Provider on request of the TJJJ, and (3) on termination or expiration of the contract, either provide at no cost to the TJJJ all contracting information related to the contract that is in the custody or possession of the Service Provider or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the TJJJ. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the contract and the Service Provider agrees that the contract can be terminated if the Service Provider knowingly or intentionally fails to comply with a requirement of that subchapter.

#### **14. COVID-19 Vaccine Passport Prohibition**

Service Provider certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Service Provider's business. Service Provider acknowledges that such a vaccine or recovery requirement would make Service Provider ineligible for a state-funded contract.

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### 17. Damage to Government Property

Service Provider shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Service Provider and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Service Provider shall notify the TJJD in writing of any such damage within one (1) calendar day. Service Provider is responsible for the removal of all debris resulting from work performed under the contract.

### 18. Dealings with Public Servants Affirmation

Pursuant to Section 2155.003 of the Texas Government Code, Service Provider represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the contract.

### 19. Debts and Delinquencies Affirmation

Service Provider agrees that any payments due under the contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

### 20. Disaster Recovery Plan

In accordance with 13 TAC § 6.94(a)(9), Service Provider shall provide to TJJD the descriptions of its business continuity and disaster recovery plans if it has or is to have custody of vital state records.

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### 22. Disentanglement Services

(a) The following definitions are incorporated into the contract and relevant to this Article:

- (1) **Disentanglement Period** - the period of time during and after the contract terminates that is necessary to provide disentanglement services.
- (2) **Disentanglement Services** - the obligations of each party imposed upon notice of contract termination or expiration that are designed to extract and protect proprietary data, databases, and structure.

(b) Service provider must provide disentanglement services as soon as possible after Notice of Contract Termination or contract expiration. The disentanglement period shall be for one month unless otherwise agreed upon. If disentanglement services cannot be completed during the agreed disentanglement period, Service provider must notify TJJD in writing 14 days before the end of the disentanglement period and must include an explanation of the cause for delay and a proposed timeframe for completion.

(c) Disentanglement services that Service provider must provide include: (1) Up-to-date documentation of data format and structure; and (2) documentation of what, if any, of Service provider's proprietary information is embedded within TJJD data. Service provider should also provide TJJD with their proprietary data in the same format and structure as used in Service provider's system before Contract Termination. If Service provider is unwilling to provide data in the same format and structure, then Service provider must work with TJJD or a 3rd party of TJJD's choice to provide the data and appropriate documentation in an acceptable alternate format agreed to by TJJD. After completion of the aforementioned obligations, TJJD shall continue to allow Service provider access to its shared servers so Service provider may uninstall their software, databases, and proprietary data and information. After removal of all proprietary data, Service provider shall confirm removal with written certification of such.

- (d) Both parties shall have full access to shared servers, including source code and technical documentation, during the disentanglement period. If any disagreement between the parties arises before disentanglement services are completed, both parties shall continue to have full access while seeking resolution.
- (e) Confidentiality requirements, restrictions on use of data, and intellectual property rights described in the contract remain effective until disentanglement services are completed.

### **23. Dispute Resolution**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.

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### **25. Drug-Free Workplace**

Service Provider represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.

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### **27. Entities that Boycott Israel**

Pursuant to Section 2270.002 of the Texas Government Code, Service Provider certifies that either: (i) it meets an exemption criterion under Section 2270.002; or (ii) that it does not, and shall not for the duration of the contract, boycott Israel as the term is defined by 808.001(1) of the Texas Government Code.

### **28. E-Verify Program**

Service Provider certifies that for contracts for services, Service Provider shall utilize the U.S. Department of Homeland Security's E-Verify system (E-Verify) during the term of the contract to determine the eligibility of:

1. all persons employed by Service Provider to perform duties within Texas; and
2. all persons, including subcontractors, assigned by Service Provider to perform work pursuant to the contract within the United States of America.

Service Provider shall provide, upon written request by the TJJD, an electronic or hard copy screenshot of the confirmation that Service Provider is enrolled in E-Verify. Service Provider shall provide, upon written request by the TJJD, an electronic or hard copy of the confirmation or non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for each Service Provider employee, subcontractor, and subcontractor employee that meet the criteria above, following any required E-Verify protocols to allow for the provision of such information.

If it is determined that Service Provider has violated the certifications set forth in this provision, then (1) Service Provider shall be in breach of contract, (2) TJJD shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to TJJD under the contract, Service Provider shall be responsible for all costs incurred by TJJD to obtain substitute services to replace the terminated contract.

### **29. Equal Employment Opportunity**

Service Provider represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

**30. Excess Obligations Prohibited - Funding Out Clause**

The contract is subject to termination or cancellation, without penalty to TJJD, either in whole or in part, subject to the availability of state funds.

**31. Excluded Parties**

Service Provider certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

**32. Executive Head of a State Agency Affirmation**

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Service Provider certifies that it is not (1) the executive head of TJJD, (2) a person who at any time during the four years before the date of the contract was the executive head of the TJJD, or (3) a person who employs a current or former executive head of TJJD.

**33. False Statements**

Service Provider represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

**34. Federal Confidentiality Compliance**

Any program that specializes, in whole or in part, in providing treatment, counseling, and/or assessment and referral services for youth with alcohol or other drug problems must comply with federal confidentiality regulations. Said regulations apply only to programs that are federally assisted either directly or indirectly. Service Provider certifies compliance with these federal requirements for confidentiality (42 USC 290dd-2; 42 CFR Part 2) and agrees to comply with said requirements for so long as this contract is in force.

**35. Financial Participation Prohibition Affirmation**

Under Section 2155.004, Government Code, the vendor [Service Provider] certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**36. Fingerprinting and Background Check**

**A. Unless Service Provider is addressed in Section B below, Service Provider shall:**

1. As directed, provide information regarding persons providing services under this contract with access to TJJD youth or youth records for a criminal background checks, which may include fingerprinting, criminal records check, sex offender registration records check, PREA employment standards check, child abuse registry check, and drug test. Criminal background checks shall be conducted at TJJD's expense. Any Service Provider employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker who is unwilling to provide or who does not provide required information will not be allowed to work under this contract. Any Service Provider employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker shall not work under this contract until the criminal background check is completed and approval is obtained from TJJD's Director of Human Resources.
2. Notify TJJD's Director of Human Resources of any employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker who works with TJJD youth and who is arrested, indicted, or charged with a criminal offense or who resigns while under investigation for inappropriate conduct or policy violations. Such employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker shall be immediately suspended from working under this contract unless authorized by TJJD's Director of Human Resources.

**B. Service Provider Licensed by the Texas Department of Family and Protective Services**

1. Employees, contractors (including subcontractors), or volunteers who provide services in a facility that contracts to accept TJJJ youth and that is licensed by the Department of Family and Protective Services (DFPS) must, in order to work with TJJJ youth, obtain clearance under DFPS background check rules. Further:
  - a. Service Provider must provide sufficient information to allow TJJJ to verify DFPS clearance; and
  - b. Service Provider must notify TJJJ's Director of Human Resources **within 24 hours** of learning of the arrest of any employee, contractor (including subcontractor), or volunteer.
3. **TJJJ Approval**

TJJJ will approve or deny any Service Provider employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker in accordance with TJJJ policies and procedures. TJJJ's designated contact for criminal background checks is the Human Resources Department, Manager of Criminal Background Checks, (512) 490-7674.

### **37. Firearm Entities and Trade Association Discrimination**

If Service Provider is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Service Provider verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Service Provider does not make that verification, Service Provider must so indicate in its Response and state why the verification is not required.

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### **39. Foreign Terrorist Organizations**

Section 2252.152 of the Texas Government Code prohibits TJJJ from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Service Provider certifies that it is not ineligible to receive the contract.

### **40. Former Agency Employees**

Service Provider represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of TJJJ during the twelve (12) month period immediately prior to the date of execution of the contract.

### **41. Franchise Taxes**

**Section 1:** Service Provider certifies that should Service Provider be subject to payment of Texas franchise taxes, all franchise taxes are current. If such certification is false, this contract may be terminated at the option of TJJJ or other sanctions may be exercised.

**Section 2:** If Service Provider is exempt from payment of Texas franchise taxes, Service Provider shall so indicate by attachment to this contract.

**Section 3:** If Service Provider's payment of Texas franchise taxes becomes delinquent during the term of this contract, Service Provider will notify TJJJ within twenty-four (24) hours. If such delinquency cannot be cured within twenty-four (24) hours and a copy of the Certification of Account Status proving payment of delinquent taxes cannot be provided to TJJJ, this contract may be terminated at the option of TJJJ or other sanctions may be exercised under the provisions of this contract.

### **42. Governing Law and Venue**

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TJJJ.

**43. Human Trafficking Prohibition**

Under Section 2155.0061, Government Code, the vendor [Service Provider] certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**44. Indemnification**

SERVICE PROVIDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TJJJ, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF SERVICE PROVIDER OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SERVICE PROVIDER WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SERVICE PROVIDER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. SERVICE PROVIDER AND TJJJ AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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**47. Independent Contractor - Relationship of the Parties**

The contract shall not create any joint venture, partnership, agency, or employment relationship between Service Provider and TJJJ. Service Provider and Service Provider's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Service Provider nor TJJJ is an agent of the other and neither may make any commitments on the other party's behalf. Should Service Provider subcontract any of the services required in the contract, Service Provider expressly understands and acknowledges that in entering into such subcontract(s), TJJJ is in no manner liable to any subcontractor(s) of Service Provider. In no event shall this provision relieve Service Provider of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

Service Provider agrees and acknowledges that during the existence of the contract, Service Provider shall be entirely responsible for the liability and payment of Service Provider's and Service Provider's employees' taxes of whatever kind, arising out of the performance of the contract. Service Provider agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. TJJJ shall not be liable to Service Provider, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a TJJJ or other state employee. Service Provider shall have no claim against TJJJ for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Further, Service Provider shall indemnify and hold harmless TJJJ, state agencies, the State of Texas, and/or their employees, agents, representatives, and/or assignees from any liability, actions, claims, demands, or suits, and all related costs, attorneys' fees, and expenses relating to tax liability, unemployment insurance, and/or workers' compensation payments.

#### **48. Insurance**

**Section 1:** Service Provider shall maintain liability insurance in the amount of \$1,000,000.00 for each occurrence of negligence. The insurance must also cover injury to a youth that occurs when the youth is in Service Provider's care, custody, or control.

**Section 2:** Service Provider shall provide the TJJJ Contracts Department proof of insurance listing TJJJ as an additional insured upon contract execution, upon insurance renewal if coverage expires during the contract term (including contract extensions, if any), and upon request.

**Section 3:** The required insurance coverage, in the above-stated amount, must be maintained during the term of this contract and through any subsequent extensions. Failure to maintain the required insurance coverage may result in termination of this contract or sanctions.

#### **49. Legal and Regulatory Action**

Service Provider represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Service Provider or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Service Provider's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to TJJJ's consideration of the Response. If Service Provider is unable to make the preceding representation and warranty, then Service Provider instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Service Provider's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to TJJJ's consideration of the Response. In addition, Service Provider represents and warrants that it shall notify TJJJ in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update TJJJ shall constitute breach of contract and may result in immediate termination of the contract.

#### **50. Limitation on Authority**

Service Provider shall have no authority to act for or on behalf of TJJJ or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Service Provider may not incur any debt, obligation, expense or liability of any kind on behalf of TJJJ or the State of Texas.

#### **51. Lobbying Prohibition**

Service Provider represents and warrants that TJJJ's payments to Service Provider and Service Provider's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

#### **52. Media Releases**

Service Provider shall not use TJJJ's name, logo, or other likeness in any press release, marketing material, or other announcement without TJJJ's prior written approval. TJJJ does not endorse any vendor, commodity, or service. Service Provider is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without TJJJ's prior written consent, and then only in accordance with explicit written instructions from TJJJ.

#### **53. No Conflicts of Interest**

Service Provider represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create the appearance of impropriety. Service Provider has disclosed in writing to TJJJ all existing or potential

conflicts of interest relative to the performance of the contract. And if circumstances change during the course of the contract, Service Provider shall promptly notify TJJD.

**54. No Implied Waiver**

The failure of a party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

**55. No Quantity Guarantees**

TJJD makes no express or implied warranty whatsoever that a minimum compensation or minimum quantity will be guaranteed under this contract.

**56. No Third-Party Beneficiaries**

The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

**57. Notice**

Any written notice required under this contract will be either through hand delivery or by U.S. Mail, certified, return receipt requested, to Service Provider at the address indicated on page 1 of the contract and to TJJD at Texas Juvenile Justice Department, Office of General Counsel, P.O. Box 12757, Austin, Texas 78711-2757 or 1711 San Jacinto Blvd., Austin Texas 78701.

**58. Notice of Changes**

**Section 1:** Service Provider shall notify TJJD immediately in writing in advance of any significant change affecting Service Provider, including, but not limited to, change of Service Provider's name or identity, location of services, ownership or control, operating entity, governing board membership, key personnel, payee identification number, and any other significant changes that may affect the delivery of services under the terms of this contract.

**Section 2:** Service Provider shall not transfer or assign this contract or enter into any subcontract for the services under this contract without prior written approval from TJJD.

**Section 3:** Service Provider shall not relocate the services provided under this contract from the location stated in the preamble, if applicable, without prior written approval from TJJD and a certification that the location to which services are to be relocated is in compliance with Chapter 244, Texas Local Government Code, if applicable.

**59. Permits, Certifications, and Licenses**

Service Provider represents and warrants that it has determined what licenses, certifications, and permits are required under the contract and has acquired all applicable licenses, certifications, and permits and shall maintain them as necessary throughout the term of the contract.

**60. Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Service Provider certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**61. Prompt Payment**

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

## **62. Public Information Act**

Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Service Provider is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

## **63. Problem Solving in the Ordinary Course of Business**

**Section 1:** The parties to the contract shall use the procedures contained in this provision for routine problem solving. These procedures may also be used if a party is asserting a claim for breach of contract. Should these procedures not resolve claims for breach of the contract, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used.

**Section 2:** Informal Resolution: Service Provider and TJJD staff will communicate regularly and engage in informal problem-solving efforts as a routine measure, thus preventing differences from becoming major problems. When routine measures have been exhausted, Service Provider and TJJD staff are encouraged to utilize the following mechanism to resolve problems.

**Section 3:** Formal Resolution:

1. Service Provider or TJJD staff who wish to submit problems for resolution may do so in writing, including all relevant information and a recommended resolution (Statement of Problem).
2. The Statement of Problem will be submitted to the designated contact unless the problem specifically involves the designated contact, in which case, it will be submitted to the designated contact's supervisor.
3. Problems are to be addressed within ten (10) working days; a written decision will be sent to the individual or program that submitted it, with copies retained by the designated contact and the designated contact's supervisor.

**Section 4:** Appeal: Service Provider or TJJD staff desiring to appeal the decision may do so in writing, within ten (10) working days from the date of written decision, by providing all pertinent information relevant to the appeal to the designated contact's supervisor if the problem was originally addressed by the designated contact, or to TJJD's Office of General Counsel if the problem was addressed by the designated contact's supervisor. When appealed, the problem shall be addressed within fourteen (14) working days, with written responses sent to the individual or program who submitted it, and copies retained by the designated contact, the designated contact's supervisor, and TJJD's Office of General Counsel.

## **64. Required Disclosure of Lobbyist Activity and Certificate of Interested Parties**

Service Provider agrees that if, at any time during the term of the contract, an employee, director, subconsultant, or subcontractor of Service provider is required to register as a lobbyist under Texas Government Code Chapter 305, Service provider shall notify TJJD and provide timely copies of all reports filed with the Texas Ethics Commission, as required by Chapter 305.

Additionally, pursuant to House Bill 1295 and Texas Government Code Section 2252.908, Service provider must submit a Certificate of Interested Parties or disclosure of interested parties on a form prescribed by the Texas Ethics Commission, currently identified as Form 1295. Prior to submission of this signed contract to TJJD, Service provider must file Form 1295 through the online filing application process on the Texas Ethics Commission website at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). TJJD will acknowledge Service provider's Form 1295 within thirty (30) days of submission.

## **65. Restricted Employment for Certain State Personnel**

Pursuant to Section 572.069 of the Texas Government Code, Service Provider certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for TJJD involving Service Provider within two (2) years after the date that the contract

is signed or the procurement is terminated or withdrawn. This certification applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

#### **66. Restriction on Possession of Weapons**

Service Provider agrees that Service Provider or any employees, contractors, subcontractors, or associates providing services on behalf of Service Provider shall not carry or possess any type of firearm or other weapon listed in Texas Penal Code Section 46.01 while rendering services to TJJD youth under this contract. This prohibition includes the carrying of a handgun licensed under the authority of Chapter 411, Subchapter H, Texas Government Code. Service Provider shall be under an affirmative duty to keep weapons out of the possession of TJJD youth in Service Provider's care.

#### **67. Sanctions**

**Section 1:** In addition to its authority to terminate this contract under the termination provision or other provisions of this contract, TJJD, based on information from monitoring or other verifiable sources, may take other actions including, but not limited to:

1. Requiring Service Provider to take specific corrective actions in order to remain in compliance with the terms of this contract; and/or
2. Recouping payment made to Service Provider; and/or
3. Imposing recommendations from audit or investigative findings, and minor or major sanctions; and/or
4. Recovery of damages to the extent allowed by Texas law for each instance of non-compliance; and/or
5. Suspending, placing into abeyance, or removing any contractual rights including, but not limited to, withholding payment.

**Section 2:** Service Provider shall fully cooperate with TJJD and its authorized representatives in carrying out corrective action plans.

#### **68. Severability**

If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

#### **69. Signature Authority**

Service Provider represents and warrants that the individual signing this contract is authorized to sign this document on behalf of Service Provider and to bind Service Provider under this contract. This contract shall be binding upon and shall inure to the benefit of TJJD and Service Provider and to their representatives, successors, and assigns.

#### **70. Sovereign Immunity**

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the TJJD or the State of Texas of any immunities from suit or from liability that the TJJD or the State of Texas may have by operation of law.

#### **71. Specifications**

Service Provider shall provide services in accordance with the specifications contained in this contract. TJJD will determine the answers to all questions that may arise as to the interpretation of the specifications and the quality or acceptability of work performed. Substitutions cannot be made without TJJD prior approval. TJJD will decide the rate of progress of the work and the acceptable fulfillment of services on the part of Service Provider.

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### **73. State Auditor's and TJJJ's Right to Audit**

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by Service Provider or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Service Provider or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Service Provider shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.

Service Provider shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with TJJJ and State of Texas requirements. Service Provider shall maintain all such documents and other records relating to this contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions or contract issues, whichever is later. Service Provider shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this contract, for purposes of inspecting, monitoring, auditing, or evaluating by TJJJ, the State of Texas, or their authorized representatives. Service Provider shall cooperate with auditors and other authorized TJJJ and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by TJJJ or the State of Texas. Service Provider's failure to comply with this provision shall constitute a material breach of this contract and shall authorize TJJJ to immediately terminate and/or assess liquidated damages to the extent allowed by Texas law. TJJJ may require, at Service Provider's sole cost and expense, independent audits by a qualified certified public accounting firm of Service Provider's books and records or the State's property. The independent auditor shall provide TJJJ with a copy of such audit at the same time it is provided to Service Provider. TJJJ retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this contract.

The contract may be amended unilaterally by TJJJ to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

### **74. Subcontractors**

Service Provider may not subcontract any or all of the work and/or obligations due under this contract without prior written approval of the TJJJ. Subcontracts, if any, entered into by the Service Provider shall be in writing and be subject to the requirements of this contract. Should Service Provider subcontract any of the services required in this contract, Service Provider expressly understands and acknowledges that in entering into such subcontract(s), TJJJ is in no manner liable to any subcontractor(s) of Service Provider. In no event shall this provision relieve Service Provider of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with this contract.

### **75. Survival**

Expiration or termination of the contract for any reason does not release Service Provider from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

### **76. Suspension and Debarment**

Service Provider certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the

Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.

#### **77. Taxes**

Purchases made for state uses are exempt from Texas State Sales Tax and Federal Excise Tax. A Tax Exemption Certificate will be furnished upon written request to TJJJ. Service Provider represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Service Provider or its employees. TJJJ shall not be liable for any taxes resulting from the contract.

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#### **80. Termination**

**Section 1:** Service Provider may terminate the contract for convenience by giving one hundred eighty (180) calendar days' written notice to TJJJ.

**Section 2:** TJJJ may terminate the contract for convenience on thirty (30) calendar days' written notice. There is no buy out or other amounts due if TJJJ terminates early. Upon termination under this provision, Service Provider shall refund to TJJJ any amounts attributable to the terminated months within thirty (30) days of the termination.

**Section 3:** TJJJ shall terminate this contract in the event that TJJJ is not granted funding to pay for the herein described services or in the event that funding is lost due to either a reduction in the budget or a reallocation of budgeted funds.

**Section 4:** Cause/Default/Breach: If Service Provider fails to provide the goods or services contracted for according to the provisions of this contract, or fails to comply with any terms or conditions of this contract, TJJJ may, upon written notice of default or breach to Service Provider, immediately terminate all or any part of this contract. Termination is not an exclusive remedy, but exists in addition to any other rights and remedies provided in equity, by law, or under this contract. TJJJ may exercise any other right, remedy, or privilege available to it under applicable law or may proceed by appropriate court action to enforce the provisions of this contract. The exercise of any of the foregoing remedies will not constitute a termination of this contract unless TJJJ notifies Service Provider in writing prior to the exercise of such remedy. Service Provider shall be liable for all costs and expenses, including court costs, incurred by TJJJ with respect to the enforcement of any of the remedies listed herein.

#### **81. Unfair Business Practices**

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