

STATE OF TEXAS §

COUNTY OF TRAVIS §

## CONTRACT SI1412 FOR YOUTH RESIDENTIAL TELEPHONE SERVICES

This contract effective (upon execution), and is by and between the **Texas Juvenile Justice Department**, hereinafter **TJJJ**, and **Consolidated Telecom, Inc. (CTel)**, [REDACTED] Texas Vendor ID: 17528440542, hereinafter referred to as **Service Provider**, for the provision of Youth Residential Telephone Services, located in TJJJ Institutions and Halfway Houses. This contract number **SI 1412**, will expire on August 31, 2015 unless renewed per Section IV, Article 10.

This contract is entered into under the authority of §61.037, Human Resources Code, for the mutual considerations described in this contract.

This Agreement is composed of the following documents:

1. This Contract, including all attachments;
2. Service Provider's Best and Final Offer (BAFO) dated August 13, 2013;
3. Service Provider's Statement of Work;
4. Service Provider's Historically Underutilized Business (HUB) Subcontracting Plan;
5. Service Provider's proposal dated July 30, 2013;
6. RFO #644-14-07253.

In the event there is conflict between the Agreement documents, the order of precedence shall be the order listed above.

The initial contract term shall be from September 1, 2013 through August 31, 2015, with the option to renew for two additional two year terms.

### I. SERVICE PROVIDER

For and in consideration of the payment of fees for providing youth residential telephone services, Service Provider will provide such services, equipment, and related matters in accordance with the requirements of the Request for Offer RFO #644-14-07253 dated July 30, 2013, TJJJ Resident Telephone Program, Service Provider's Request for Offer Response with attached Execution of Offer Form dated July 30, 2013, and Service Provider's Best and Final Offer dated August 13, 2013, all documents of which are attached hereto and incorporated herein for all purposes.

TJJJ will be charged at a rate of \$0.22 cents per minute for purchase of minutes for use by TJJJ Youth.

The Service Provider will provide at no charge 10 additional minutes to each individual youth for the Christmas and Easter Holidays. This will be done at the onset of the month for each respective holiday.

The Service Provider will provide at no charge 5 additional minutes to each individual youth for the Mother's Day and Father's Day Holidays. This will be done at the onset of the month for each respective holiday.

Service Provider will submit invoices for payment to TJJJ at the following address: Texas Juvenile Justice Department 11209 Metric Boulevard, Bldg. Austin, Texas 78758, Attn: Claims Department. The invoice will include total number of minutes to be added for current month, the cost per minute and a credit of minutes not used in the previous month.

The total contract amount for the period September 1, 2013 through August 31, 2015 shall not exceed **\$507,378.00.**

It is the Service Provider's responsibility to monitor the total amount of fees and expenses invoiced under this contract and notify TJJJ prior to exceeding the NTE amount identified within this contract. Once billable services exceed seventy-five percent (75%) of the NTE amount and the remaining twenty-five percent (25%) will not cover a reasonable estimate of services for the remaining term of the contract, the Service Provider shall advise TJJJ in writing, requesting an increase in the NTE amount.

## **II. TJJJ**

For and in consideration of the receipt of fees for youth residential telephone services, TJJJ will provide access and related matters in accordance with the requirements of the Request for Offer RFO # 644-14-7253 dated July 30, 2013, TJJJ Resident Telephone Program, Service Provider's Request for Offer with attached Execution of Offer Form Response dated July 30, 2013, and Service Provider's Best and Final Offer dated August 13, 2013, all documents of which are attached hereto and incorporated herein for all purposes.

Terms of payment shall be in accordance with Chapter 2251, Texas Government Code and Texas Government Code 403.0551 that payment owing to the service provider under this contract will be applied toward elimination of the contractor's indebtedness to the state, delinquency in payment of taxes to the state, or delinquency in payment of taxes that the Comptroller administers or collects until the indebtedness or delinquency is paid in full.

## **III. CERTIFICATIONS**

### **ARTICLE 1: EQUAL OPPORTUNITY**

Service Provider certifies compliance with all terms, provisions, and requirements of Titles VI and VII, Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and any other Federal, state, local or other anti-discriminatory act, law, statute or regulation, along with all amendments and revisions of the acts, laws, statutes or regulations, in the performance of this contract, and will not discriminate against any child or youth, client, employee, or applicant for employment because of race, creed or religion, age, sex, color, national or ethnic origin, handicap, or any other illegal discriminatory basis or criteria.

### **ARTICLE 2: UNFAIR BUSINESS PRACTICES**

Service Provider certifies that it or its officers have not been found guilty in a judicial or state administrative agency proceeding of unfair business practices as set out in the Texas Business and Commerce Code and that no officer of Service Provider has served as an officer of another company which has been found guilty in a judicial or state administrative agency proceeding of unfair business practices. If the above certifications are false, this contract is void.

### **ARTICLE 3: 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 administrative error sanctions may be taken.

**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 24 hours. If such delinquency cannot be cured within 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 administrative error sanctions may be taken under the provisions of the contract.

## **ARTICLE 4: ASBESTOS REGULATION COMPLIANCE**

If applicable, Service Provider certifies compliance with the Asbestos Hazard Emergency Response Act of 1986 (ASHERA) by having on file with the Texas Department of State Health Services (DSHS) a copy of Service Provider's ASHERA Management Plan for each facility the Service Provider owns, leases, or otherwise uses as a school or is part of a school, grades kindergarten through 12, inclusive where applicable. Prior to the initiation of services under this contract, Service Provider shall provide to TJJD a certification of an asbestos-free environment or a copy of the DSHS acceptance and approval for the Service Provider's ASHERA Asbestos Management Plan(s). Service Provider shall comply with the approved Management Plan during the term of this contract and any renewals; failure to do so shall be grounds for termination of the contract. Should DSHS approve a revised or modified Management Plan, a copy of the DSHS acceptance and approval of the revised or modified Management Plan shall be furnished to TJJD.

## **ARTICLE 5: HUMAN IMMUNODEFICIENCY VIRUS SERVICES ACT COMPLIANCE**

**Section 1:** Service Provider certifies compliance with the HIV Services Act, [Vernon's Texas Code Annotated (VTCA); Health and Safety Code, Section 85.001, et seq] requirements for maintenance of confidentiality regarding HIV and its related conditions, including Acquired Immunodeficiency Syndrome (AIDS).

**Section 2:** Service Provider further certifies that workplace guidelines are developed and implemented. Service Provider may elect to use workplace guidelines developed and implemented by TJJD. Should Service Provider not elect to use workplace guidelines developed and implemented by TJJD, Service Provider agrees its workplace guidelines shall be similar to TJJD's as required by §85.113, Texas Health & Safety Code.

**Section 3:** In the absence of confidentiality guidelines, Service Provider is not eligible to receive state funds, and Service Provider agrees to refund to the state any state funds Service Provider receives while ineligible.

## **ARTICLE 6: COMMUNICABLE DISEASE PREVENTION & CONTROL ACT COMPLIANCE**

Service Provider certifies compliance with the applicable provisions of the Communicable Disease Prevention and Control Act, [Vernon's Texas Code Annotated (VTCA); Health & Safety Code, Section 81.001 et seq].

## **ARTICLE 7: 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 the 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 Section 290 dd-2; 42 CFR Part 2] and agrees to comply with said requirements for so long as this contract is in force.

## **ARTICLE 8: EDUCATIONAL REQUIREMENT**

Service Provider is responsible for implementing and ensuring that youth placed in their program are provided with the appropriate educational services as required by state and federal law.

## **ARTICLE 9: RESTRICTION ON POSSESSION OF WEAPONS**

Service Provider agrees that Service Provider or any associates providing services on behalf of Service Provider, shall not carry or possess any type of firearm or other weapon as defined by Texas Penal Code Section 46.02 while rendering services to TJJD youth under this contract. This prohibition includes the carrying of a concealed 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.

**ARTICLE 10: REQUIRED DISCLOSURE OF LOBBYIST ACTIVITY**

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

**ARTICLE 11: NOTIFICATION TO TJJJ OF SUBCONSULTANTS & SUBCONTRACTORS**

**Section 1:** TJJJ shall be notified of the selection and/or use of all subcontractors, or subconsultants regularly used by the Service Provider in performing or assessing the performance of Service Provider’s duties under this contract if paid or anticipated to be paid an amount exceeding \$5,000.00 during the term of this contract, and they are subject to the approval of TJJJ; said approval will not be unreasonably withheld.

**Section 2:** No contractual relationship will exist between Service Provider’s subconsultants or subcontractors and TJJJ. TJJJ shall have no responsibility whatsoever for the conduct, actions, or commissions (active or passive) of any subconsultants or subcontractors in the performance of their duties under this contract.

**Section 3:** Service Provider shall be solely responsible for the management of any subconsultants or subcontractors in the performance of their duties under this contract.

**Section 4:** If the Service Provider has contracted with a subcontractor to perform its primary management responsibilities, the independent audit shall be performed for the subcontractor’s financial statements. Otherwise, the independent audit shall be performed for the Service Provider’s financial statements.

**Section 5:** If more than \$400,000 is received annually under this contract, an annual independent audit must be obtained; otherwise a biannual independent audit must be obtained. The audited financial statements, notes, opinions, and, if applicable, the schedule of findings and questioned costs shall be submitted to the TJJJ Director of Youth Services no later than 30 days after receipt from the independent auditor. However, audited financial statements must be submitted no later than 10 months following the reporting period to the TJJJ Director of Youth Services.

**Section 6:** Independent audits must be performed according to Generally Accepted Auditing Standards and any other standards that apply to the Service Provider or subcontractor. The independent audit must be performed by a Certified Public Accountant or firm licensed to practice public accountancy in the state in which the audit is performed. The independent audit must comply with the Single Audit Act of 1984 if the Service Provider or subcontractor is a local government or non-profit organization.

**ARTICLE 12: COMPLIANCE WITH CHILD SUPPORT, §231.006, FAMILY CODE**

Under Section 231.006 of the Texas Family Code (relating to child support), contractor represents and warrants that Contractor is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate.

For nonprofit corporations with no identifiable owner of twenty-five percent (25%) or more of the corporation, indicate with “none” on the first line below.

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Name, Social Security Number, Percent (%)

**ARTICLE 13: COMPLIANCE WITH §572.054, TEXAS GOVERNMENT CODE, FORMER OFFICER OR EMPLOYEE OF TJJJ**

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

**ARTICLE 14: SIGNATORY AUTHORITY**

The undersigned signatory certifies by his/her signature that he/she has the authority to bind the Service Provider to the contract provisions stated herein.

**ARTICLE 15: COMPLIANCE WITH §2252.901, TEXAS GOVERNMENT CODE, FORMER OR RETIRED EMPLOYEE OF THE AGENCY**

Service Provider certifies compliance with §2252.901, Texas Government Code, which provides "A state agency may not enter into an employment contract, a professional services contract under chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided the former or retired employee does not perform services on projects for the corporation, firm or other business entity that the employee worked on while employed by the agency." Service provider certifies that he/she is not prohibited from entering into this contract because of any prior employment with TJJJ.

**ARTICLE 16: SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST**

Service Provider certifies that it is not on the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control.

**ARTICLE 17: COMPLIANCE WITH §2161.253, TEXAS GOVERNMENT CODE, GOOD FAITH COMPLIANCE WITH HISTORICALLY UNDERUTILIZED BUSINESS (HUB) SUBCONTRACTING PLAN**

Service Provider certifies compliance with §2161.253, Texas Government Code. Service Provider agrees to make good faith efforts to implement the HUB subcontracting Plan. Service Provider agrees to submit to TJJJ monthly compliance reports (HUB Subcontracting Plan Contractor Progress Assessment Report) for the term of the contract. The Progress Assessment Report should be submitted to the following address: TJJJ, 11209 Metric Boulevard, Bldg. H, Austin, Texas 78758, ATTN: TJJJ HUB Coordinator.

## **ARTICLE 18: FINGER PRINT AND CRIMINAL BACKGROUND CHECKS**

Service Provider will:

1. As directed, provide information regarding persons providing services under this Agreement and personnel access for a criminal background check including, but not limited to, fingerprinting check, criminal records check, sex offender registration records check, and drug test. Criminal background checks shall be conducted at Service Provider's expense but conducted through TJJJ or TJJJ's contract providers for each of the Service Provider's employees, agents, consultants, subcontractors, subcontractor's employees, and volunteer workers. Any Service Provider employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker who is unwilling to provide or who does not provide required information will not be allowed to work under this agreement. Any Service Provider employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker shall not work under this agreement until the criminal background check is completed and approval is obtained from TJJJ's Director of Human Resources.
1. Notify TJJJ's Director of Human Resources of any employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker who works with TJJJ 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's employee, or volunteer worker shall be immediately suspended from working under this agreement unless authorized by TJJJ's Director of Human Resources.

TJJJ will approve any Service Provider employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker in accordance with TJJJ policies and procedures. TJJJ's designated contact for criminal background checks is the Director of Human Resources (512) 490-7130.

## **ARTICLE 19: VIOLATION OF FEDERAL LAW RELATING TO RECONSTRUCTION EFFORTS AS A RESULT OF HURRICANES RITA, KATRINA OR ANY OTHER DISASTER AFTER SEPTEMBER 24, 2005**

Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting may be terminated and payment withheld if this certification is inaccurate.

## IV. GENERAL TERMS AND CONDITIONS

### ARTICLE 1: RELATIONSHIP OF PARTIES – Independent Contractor

The Service Provider is acting as an independent contractor and is wholly responsible in providing the services under this RFO and for the day-to-day operations of its programs and employees; no joint venture, partnership, or agency exists nor shall be implied by the terms of this contract. No employee of Service Provider shall become an employee of TJJJ by virtue of this contract. Should Service Provider subcontract any of the services required in this RFO, 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 bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFO.

### ARTICLE 2: INDEMNITY

Service Provider agrees to be liable for, and hereby does indemnify and hold harmless TJJJ and its officers, directors, agents, employees and representatives from and against any and all liability for any and all claims, suits, demands, causes of action, and/or damages, (including costs of court and reasonable attorneys' fees) arising from or based upon misconduct, intentional or negligent acts or omissions on the part of Service Provider, its officers, directors, agents, representatives, employees, or visitors which may arise out of or could result from this contract.

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of TJJJ. All right, title and interest in and to said property shall vest in TJJJ upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in TJJJ, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TJJJ. TJJJ shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof.

Contractor must give TJJJ and/or the State of Texas, as well as any person designated by TJJJ and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

### ARTICLE 3: LIABILITY INSURANCE

**Section 1:** Service Provider represents and warrants that it will, within five (5) business days of executing this Contract, provide TJJJ with current certificates of insurance or other proof acceptable to TJJJ of the following insurance coverage: Standards Workers Compensation Insurance, covering all personnel who will provide services under this Contract; Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: \$500,000.00 minimum each occurrence; \$1,000,000.00 per general aggregate. The insurance must 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 proof of insurance documents to the TJJJ Quality Assurance Manager, upon request.

**Section 3:** The required insurance coverage must be maintained for the full term of the contract and any subsequent extensions in the above stated amount. Failure to maintain the required insurance coverage may result in termination of this contract or any other administrative error sanctions.

## **ARTICLE 4: CONFIDENTIALITY AND SECURITY**

- Section 1:** Service Provider agrees that all its employees will comply with state and federal law and with TJJD policies regarding the confidentiality of student records and identifying information.
- Section 2:** Service Provider agrees that all information regarding TJJD and/or its youth that is gathered, produced, or otherwise derived from this contract shall remain confidential subject to release only by permission of TJJD.
- Section 3:** Service Provider's employees who visit any TJJD facility will comply with that facility's security regulations.
- Section 4:** Identifying pictures, appearances, films, or reports of TJJD youth may not be disclosed by Service Provider without the written consent of the youth and, if under age 18, of his or her parents, guardian, or managing conservator.

## **ARTICLE 5: ADMINISTRATIVE ERROR SANCTIONS**

- Section 1:** TJJD, based on information from monitoring or other verifiable sources, may terminate this contract for the reasons set forth in the article dealing with termination below, or take other actions including, but not limited to:
- a. Require the Service Provider to take specific corrective actions in order to remain in compliance with the terms of this contract; and/or
  - b. Recoup payment made to Service Provider; and/or
  - c. Impose recommendations from audit or investigative findings, and minor or major sanctions; and/or
  - d. Assess liquidated damages for each instance of non-compliance with the terms of this contract equal to \$150 multiplied by the average daily population of TJJD youth placed with the Service Provider in the preceding month; and/or
  - e. Suspend, place into abeyance, or remove any contractual rights including, but not limited to, withholding payment, moratorium on placements, population limitations and/or removal of all youth presently in the program.
- Section 2:** Service Provider shall cooperate fully with TJJD and its authorized representative in carrying out corrective action plans.

## **ARTICLE 6: TERMINATION**

- Section 1:** Service Provider may terminate its obligations under this contract for convenience by giving ninety (90) days notice and assisting in relocating youth in the program to other placements.
- Section 2:** TJJD may terminate for convenience its obligations under this contract by giving thirty (30) days notice, or immediately in the event youth are removed from the program when conditions exist that threaten the health, safety or welfare of TJJD youth in the program, or in the event of breach of contract by Service Provider.
- Section 3:** TJJD may terminate its obligations under this contract with the Service Provider for Service Provider failing to complete the corrective action specified and no extenuating circumstances exist; or is non-compliant with any area of the contract; or is below average in any single TJJD performance measure; or is below standards in overall performance measure rating.
- Section 4:** TJJD shall terminate this contract in the event that TJJD 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.

## **ARTICLE 7: WAIVER**

No waiver by either party of any breach or default of the other under this contract shall operate as a waiver of any future or other breach or default, whether of a like or different character or nature.

## **ARTICLE 8: SEVERABILITY**

If any part of this contract is contrary to any federal, state, or local law, it is not applicable and such invalidity shall not affect the other provisions or applications of this agreement which can be given effect without the invalid provision or application and to that end the provisions of this contract are declared to be severable.

## **ARTICLE 9: CONTRACT AMENDMENT**

No other 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 thereof. TJJJ reserves the right to make unilateral minor administrative changes and to increase the not to exceed amount, if additional funding is required.

## **ARTICLE 10: CONTRACT RENEWAL**

The contract will not be automatically renewed. The contract may be renewed for two additional two year periods provided that both parties agree in writing to do so prior to the expiration date. The rate and services may be renegotiated based on performance and service delivery and the mutual agreement of both parties.

## **ARTICLE 11: NOTICE OF CHANGES**

- Section 1:** Service Provider shall notify TJJJ immediately in writing in advance of any significant change affecting the 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 other significant changes including residential, educational or clinical services/programming that may affect the delivery of services under the terms of this contract.
- Section 2:** Service Provider shall refrain from transferring or assigning this contract or from entering into any subcontract for the services under this contract without prior written approval from TJJJ.
- Section 3:** Service Provider shall not relocate the services provided under this contract from the location stated in the preamble without prior written approval from TJJJ and a certification that the location to which services are to be relocated is in compliance with Chapter 224, Local Government Code.

## **ARTICLE 12: VENUE**

In any legal action arising under this contract, the laws of the State of Texas shall apply and venue will be in Travis County, Texas.

## **ARTICLE 13: PROBLEM SOLVING IN THE ORDINARY COURSE OF BUSINESS**

- Section 1:** The parties to this contract shall use the procedures contained in this article for routine problem solving including claims for breach of contract. Should these procedures not resolve claims for breach of contract, the procedures contained in Article 15 shall be followed thereafter.
- Section 2:** Informal Resolution: Contract Service Providers and TJJJ 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, TJJJ staff are encouraged to utilize the following mechanism to resolve problems.

- Section 3:** Formal Resolution:
- a. Contract Service Providers or TJJD staff who wish to submit problems for resolution may do so in writing, including all relevant information and a recommended resolution.
  - b. The statement of problem will be submitted to the TJJD Program Evaluator unless the problem specifically involves the TJJD Program Evaluator, in which case, it will be submitted to the Quality Assurance Administrator.
  - c. Problems are resolved within ten working days; written responses will be sent to the individual or program that submitted it, TJJD Program Evaluator and Quality Assurance Administrator.

**Section 4:** **Appeal:** Service Provider desiring to appeal the decision may do so within ten days by writing all pertinent information relevant to the appeal to the Quality Assurance Administrator or Quality Assurance Manager if the problem wasn't resolved by the Quality Assurance Administrator. When appealed, the problem shall be resolved within 14 working days; responses will be sent to the individual or program who submitted it; TJJD Program Evaluator; Quality Assurance Administrator; and Quality Assurance Manager.

#### **ARTICLE 14: CLAIMS FOR BREACH OF CONTRACT**

**Section 1:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used, as further described herein, by the Texas Juvenile Justice Department and Service Provider to attempt to resolve any claim for breach of contract made by the Service Provider.

- a. Service Provider's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Government Code. To initiate the process, the Service Provider shall submit written notice, as required by Subchapter B, to the Executive Director. Said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the Texas Juvenile Justice Department and the Service Provider otherwise entitled to notice under the parties' contract. Compliance by the Service Provider with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Government Code.
- b. The contested case process provided in Chapter 2260, Subchapter C, of the Government Code is the Service Provider's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the Texas Juvenile Justice Department if the parties are unable to resolve their disputes under subparagraph A. of this paragraph.
- c. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by the Texas Juvenile Justice Department nor any other conduct of any representative of the Texas Juvenile Justice Department relating to the contract shall be considered a waiver of sovereign immunity to suit.

**Section 2:** The submission, processing and resolution of the Service Provider's claim is governed by the published rules adopted by the Texas Juvenile Justice Department pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

**Section 3:** Neither the occurrence of an event nor the pendency of a claim constitute grounds for the suspension of performance by the Service Provider, in whole or in part.

## **ARTICLE 15: NO THIRD PARTY BENEFICIARIES**

The terms of the Agreement are for the sole benefit of the parties to the Agreement and will not be construed to confer any rights on any other person.

## **ARTICLE 16: RIGHT TO AUDIT**

Service Provider understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, TJJD or any successor agency, to conduct an audit or investigation in connection with those funds. Service Provider further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. Service Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the service provider 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 TJJD and State of Texas requirements. Service Provider shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, 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 Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by TJJD, the State of Texas or their authorized representatives. Service Provider shall cooperate with auditors and other authorized TJJD and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by TJJD or the State of Texas. By example and not as an exclusion to other breaches or failures, Contractor's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize TJJD to immediately assess the liquidated damages for such failure. For purposes of this Section, the "State's property" includes, but is not limited to, "Work" as defined in the RFO. TJJD may require, at Contractor's sole cost and expense, independent audits by a qualified certified public accounting firm of Contractor's books and records or the State's property. The independent auditor shall provide TJJD with a copy of such audit at the same time it is provided to Contractor. TJJD retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Tex Government Code, the State Auditor may conduct an audit or investigation of the Service Provider or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by the Service Provider or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement 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. This Agreement may be amended unilaterally by TJJD to comply with any rules and procedures of the State Auditor in the implementation and enforcement of Section 2262.003. Under procedures provided by the State Auditor on September 5, 2003, in addition to the above, (1) the Service Provider understands that the acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds; (2) the Service Provider further agrees to cooperate fully with the State Auditor in the conduct of the audit or investigation, including providing all records requested; and (3) the Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

## **ARTICLE 17: PAYMENTS**

Prior to authorizing payment to Contractor, TJJJ shall evaluate Contractor's performance using the performance standards set forth in all documents constituting this Contract. Contractor shall provide invoices to TJJJ for Services performed. Invoices must be submitted not later than the 15th day of the month after the Services are completed. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct invoices. Subject to the foregoing, TJJJ must make all payments in accordance with the Texas Prompt Payment Act, Gov't Code, Chapter 2251. Payments under this Contract are subject to the availability of appropriated funds. Contractor acknowledges and agrees that payments for services provided under this Contract are contingent upon TJJJ's receipt of funds appropriated by the Texas Legislature. Contractor shall invoice Owner for work performed by vendor identification number, building, and purchase order number. Invoices must include the Contract number, the number of employees that worked on the job and the number of hours.

## **ARTICLE 18: ASSIGNMENTS**

Without the prior written consent of TJJJ, Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

## **ARTICLE 19: APPLICABLE LAW AND CONFORMING AMENDMENTS**

Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TJJJ reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TJJJ's or Contractor's compliance with all applicable State and federal laws, and regulations.

## **ARTICLE 20: AMENDMENTS**

Except as provided in this Contract, this Contract may be amended only upon written agreement between TJJJ and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void.

## **ARTICLE 21: DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES**

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

## **ARTICLE 22: EQUAL OPPORTUNITY**

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

### **ARTICLE 23: ANTITRUST**

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly any contents of the submitted proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

### **ARTICLE 24: NO CONFLICTS**

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

### **ARTICLE 25: FINANCIAL INTERESTS; GIFTS**

Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from TJJJ or any agency of the State of Texas for participation in preparation of specifications for this Contract. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.

### **ARTICLE 26: FELONY CRIMINAL CONVICTIONS**

Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TJJJ as to the facts and circumstances surrounding the conviction.

### **ARTICLE 27: FALSE STATEMENTS; BREACH OF REPRESENTATIONS**

By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its Proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and TJJJ may terminate or void this Contract for cause and pursue other remedies available to TJJJ under this Contract and applicable law.

### **ARTICLE 28: FORCE MAJEURE**

Except as otherwise provided, neither Contractor nor TJJJ nor any agency of the State of Texas, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

## **ARTICLE 29: DEBTS OR DELINQUENCIES TO STATE**

The Comptroller is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

## **ARTICLE 30: BUY TEXAS**

In accordance with Gov't Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

## **ARTICLE 31: RECORDS RETENTION**

Upon award, TJJD will provide a copy of the General Administrative Policy regarding the State of Texas Records Retention Schedule.

## **ARTICLE 32: ABANDONMENT OR DEFAULT**

If Contractor is found to be in default under any provision of this Contract, TJJD may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to TJJD including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TJJD resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the resolicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

## **ARTICLE 33: FUNDING OUT CLAUSE**

This contract is subject to cancellation, without penalty, either in whole or in part if funds are not appropriated by the Texas Legislature.

## **ARTICLE 34: MERGER**

This Contract contains the entire agreement between Contractor and TJJD and supersedes any prior understandings or oral or written agreements between TJJD and Contractor on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by TJJD and Contractor.

## **ARTICLE 35: RECYCLED/REMANUFACTURED/ENVIRONMENTALLY SENSITIVE PRODUCTS**

Texas State law requires that a purchasing preference be given to any product made from recycled material if the product meets written specifications as to quality and quantity. If a product proposed contains recycled material, please identify the item number and report the percent of all recycled material in the product and the percent of post-consumer material used in the product. "Post-consumer" means material that has been recycled after sale to a consumer as opposed to reuse of manufacturing waste material prior to sale. In addition, identify any products that meet the criteria of "environmentally sensitive."

## **ARTICLE 36: PROPRIETARY OR CONFIDENTIAL INFORMATION**

Responses may include proprietary or confidential information. TJJD will take reasonable precautions in protecting such information provided that it is clearly identified as proprietary or confidential on the page on which it appears.

## **ARTICLE 37: PUBLIC DISCLOSURE**

No public disclosures or news releases pertaining to this RFO/Contract shall be made without prior written approval of the TJJD.

## **ARTICLE 38: RIGHT OF OFFSET**

In the event the TJJD determines that Contractor owes money to the TJJD under any contract or purchase order, the TJJD, upon providing Contractor with written notice of its intent to offset, shall have the right to withhold monies due Contractor with respect to this Contract or purchase order or with respect to any contract or purchase order with the TJJD and apply such monies to the money due to the TJJD.

## **ARTICLE 39: FEDERAL, STATE, AND LOCAL REQUIREMENTS**

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

## **ARTICLE 40: COMPLIANCE WITH APPLICABLE RULES, REGULATIONS, POLICIES, PROCEDURES, AND LAWS**

- A. Contractor shall provide services to TJJD that are in compliance with all applicable local, state, and federal laws, rules and regulations now in effect or that become effective during the term hereof including but not limited to, Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age of Discrimination in Employment Act; the Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996; Code of Federal Regulations, Title 42, Part 2 (regarding information about drug and alcohol abuse offenders); Environmental Protection Agency (EPA) Rules and Regulations; Texas Code of Criminal Procedure; Texas Health and Safety Code, Chapters 85, 595, 611; Texas Administrative Code, Title 25, Chapter 403, Subchapter K (regarding offender identifying information); the Americans with Disabilities Act of 1990; the Civil Rights Act of 1991; Occupational Safety and Health Act (OSHA) of 1970; Section 231.006, Texas Family Code; Texas Government Code, Chapter 508, 783, 2254, 2259, and 2260; Local Government Code, Chapter 244; and any and all relevant federal and state financial cost principles and audit requirements; and any and all rules, policies and procedures established from time to time by the TJJD.
- B. When differences between applicable standards exist, the higher standard, as defined by the TJJD, will prevail.

## **ARTICLE 41: PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS**

Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify TJJD of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without TJJD's prior written approval.

Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

## **ARTICLE 42: NO LIABILITY UPON TERMINATION**

If this Contract is terminated for any reason, TJJD and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

## **ARTICLE 43: LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS**

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

## **ARTICLE 44: REDACTION CLAUSE**

**Redacted Electronic Copy:** Under House Bill 3430, 80th Texas Legislature, (transferring §2177.052, Tex. Gov't Code, to Chapter 322, Tex. Gov't Code and redesignating it as §322.020) and as per the following requirements, no later than two (2) business days after Awarded Vendor's receipt of notice from Texas Juvenile Justice Department of Awarded Vendor's tentative contract award, the Awarded Vendor (and no other vendors) must deliver to Texas Juvenile Justice Department two (2) electronic copies of its complete proposal. Awarded Vendor shall deliver these electronic copies to Texas Juvenile Justice Department via overnight delivery in compliance with all of the following requirements: Two (2) CDs, each containing a copy of Awarded Vendor's Proposal, in searchable pdf format, which has excised, blacked out, or otherwise redacted information from its Proposal that Awarded Vendor reasonably considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Awarded Vendor's Proposal, such as social security numbers). Each CD shall also contain an Appendix for Awarded Vendor's Proposal which provides a cross reference for the location of all information redacted by Awarded Vendor and a general description of the redacted information. These two (2) identical CDs should be entitled "For Public Release: Redacted Version of [Name of Awarded Vendor]'s Proposal and Exhibits: Texas Juvenile Justice Department's RFO No. 644-14-07243." The Texas Legislative Budget Board has now implemented this contracts database. For information regarding the LBB website, go to <http://www.statutes.legis.state.tx.us/SOTWDOcs/GV/hm/GV.322.htm#322.020> See the LBB website at [www.lbb.state.tx.us](http://www.lbb.state.tx.us) <<http://www.lbb.state.tx.us/>>. Texas Juvenile Justice Department shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than ten (10) days after date of contract award. In submitting a Proposal in response to this RFO, Vendors acknowledge that they understand and accept this requirement."

## ARTICLE 45: SPECIFICATIONS

The services performed shall be in accordance with the purchase specifications herein. 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. TJJD will decide the rate of progress of the work and the acceptable fulfillment of the service on the part of the Contractor.

## ARTICLE 46: ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY, STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. 2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

## ARTICLE 47: NOTICE

It is good practice to designate who receives formal notices and the acceptable manner for the delivery of such notice in a contract. Examples of notice provisions include:

**Delivery of Notices.** Any notice required or permitted to be given under this contract by one party to the other party shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the recipient's address set forth in this section or on the date of certified receipt if placed in the United States mail, postage pre-paid by registered or certified mail with return receipt requested, addressed to the receiving party at the address hereinafter specified.

**Contractor's Mailing Address.** The mailing address of the Contractor for all purposes under this contract and for all notices hereunder will be: Consolidated Telecom, Inc., 2445 Gateway Drive, Suite 120, Irving, Texas 75063, Attn: Jerome Jacobs

### **Texas Juvenile Justice Department Mailing Address**

The address for all purposes under this contract and for all notices hereunder shall be sent by registered or certified mail with return receipt to: Texas Juvenile Justice Department, P. O. Box 12757, Austin, Texas 78711, Attn: Patrick McReynolds.

## ARTICLE 48: SUBSTITUTIONS

Substitutions are not permitted without the written approval of the Texas Juvenile Justice Department.

## ARTICLE 49: TAXES

Purchases made for state uses are exempt from Texas State Sales Tax and Federal Excise Tax. An Excise Tax Exemption Certificate will be furnished upon written request to the Texas Juvenile Justice Department.

## **ARTICLE 50: PAST PERFORMANCE**

A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:

- A score of less than 90% in the Vendor Performance System,
- Currently under a Corrective Action Plan through the CPA,
- Having repeated negative Vendor Performance Reports for the same reason,
- Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). Contractor performance information is located on the CPA web site at:  
[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

TJJD may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), TJJD may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TJJD, and any negative findings, as determined by TJJD, may result in non-award to the Respondent.

## **ARTICLE 51: FEDERAL STATUTE incorporated by Reference**

Drug Free Workplace Act of 1988 41 USC 701

## **ARTICLE 52: SMOKING**

The Texas Juvenile Justice Department has a policy of being a smoke-free agency. The policy reflects our commitment to providing a healthy environment for all our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Contractor, by acceptance of this contract, agrees to abide by this policy when on the property of TJJD.

## **ARTICLE 53: IRS WITHHOLDING**

In accordance with Internal Revenue Code Section 3402(t) and the Tax Increase Prevention and Reconciliation Act of 2005, payments by certain governmental entities to service providers after December 31, 2011 may be subject to a 3% federal withholding requirement. The Internal Revenue Service (IRS) offers more detailed information regarding the 3% withholding requirement on their website. It is highly recommended that all Service Providers and potential Service Providers visit the website and review the information provided through the following link:

<http://www.irs.gov/Tax-Professionals/Tax-Code,-Regulations-and-Official-Guidance>

If TJJD determines that any payments due under this contract are subject to the 3% withholding requirement, TJJD shall withhold such amounts in accordance with the applicable statute. It is the Service Provider's sole responsibility to assert and establish to the satisfaction of TJJD the availability of any applicable exemption which may impact adherence to this state requirement.

## **ARTICLE 54: COMPLIANCE WITH PRISON RAPE ELIMINATION ACT (PREA)**

Contractor shall comply with the Final Rule of the Prison Rape Elimination Act (PREA) of June 20, 2012 (Federal Law 42 U.S.C. 15601) and with all applicable PREA standards and TJJD policies related to PREA to the extent required by law for the type of facility contemplated by this contract. Contractor shall make itself familiar with and at all times shall observe and comply with all PREA regulations which in any manner affect performance under this Contract. Contractor acknowledges that in addition to "self-monitoring requirement" TJJD will conduct announced or unannounced compliance monitoring visits including "on-site" monitoring. Contractor will be subject to a Department of Justice (DOJ) PREA Audit every three (3) years beginning August 20, 2013. Contractor shall be solely responsible for paying for a PREA Audit as required by its contract with TJJD. During the non-audit period, TJJD will perform an audit at no cost to Contractor to ensure continued compliance with the PREA. Failure to comply with PREA standards and related TJJD policies to the extent required by law for the type of facility contemplated by this contract may result in termination of the contract.

**For the Texas Juvenile Justice Department:**

 8-30-13  
Mike Griffiths, Executive Director Date

**For the Service Provider:**

 Jerome Jacobs vice-president 8-27-2013  
Signature Printed Name Title Date

**Approved as to form:**

 8/26/13  
TJJD Attorney Date