

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT BETWEEN MONTGOMERY TECHNOLOGY INC. AND
THE FORT BEND COUNTY SHERIFF
FOR VIDEO VISITATION SERVICES JOB NUMBER MTS3100**

THIS AGREEMENT is made and entered into by and between the duly elected Fort Bend County Sheriff, (hereinafter "Sheriff"), and Montgomery Technology Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, the Sheriff may enter into contracts to expend commissary proceeds as recognized in TXOAG JC-0122 (1999); in accordance with section 351.0415 of the Local Government Code and without the requirements of the County Purchasing Act, chapter 262, subchapter C of the Local Government Code

WHEREAS, the Sheriff desires that Contractor provide video visitation equipment and services which will assist the Sheriff in protecting the well-being, health, safety, and security of the inmates and the facility;

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Term

This Agreement is effective as of September 1, 2016 and shall expire on August 31, 2017.

Section 2. Scope of Services

A. Visitation Services

1. Contractor shall provide a fully web-based system that allows video visitation between participating individuals and inmates located at the Fort Bend County Jail.
2. All video visitations shall be recorded and provided to the Sheriff on demand. Contractor shall retain copies of the recordings for a minimum of 30 days after

each session ends unless directed by Sheriff or his designee to retain a recording for a longer period of time.

3. Contractor shall provide all management services necessary to implement this Agreement; the establishment (if and to the extent required by the Contractor) and compliance with all tariffs and all rules, regulations, orders and policies of federal and state regulatory authorities applicable to the offsite visitation services provided by the Contractor; the establishment and maintenance of all billing and payment arrangements; the performance (alone or through others) of all validation, billing, out clearing and collection services and the handling of all billing and other inquires, fraud control, and all other services essential to the performance of the Contractor's obligations under this Agreement. Contractor reserves the right to control unbillables, bad debt and fraud.

B. Extended Services

1. Contractor shall provide technical support for the video visitation services to include software updates free of charge as new features or improvements are released.
2. Contractor shall provide labor one (1 – 16 hour) on-site visit every three (3) months. Warranty of stated equipment is provided in this Agreement. All quarterly trips will be scheduled with the facility two weeks in advance.
3. For each visit, Contractor will perform the following tasks:
 - a. Preventive Quarterly Maintenance: Checking the electronics for ground faults, loose connectors, power supply voltages, and wear and tear. Repairs and corrections will be made as necessary to equipment covered under this contract.
 - b. Corrective Quarterly Maintenance: The service representative will correct any problems related to the performance of the equipment covered under this contract. All parts/equipment warranted by this contract will be replaced as needed at no additional cost.
 - c. Preventive Yearly Maintenance (Once a Year): Cleaning of the air filters for all actively cooled equipment related to the equipment covered in the contract. Cleaning of the internal components of computers and video visitation units related to the equipment covered in the contract.
 - d. Cleaning of this equipment will be done either on the first monthly trip or last monthly trip depending on the initial first month equipment evaluation.
4. Contractor shall provide two (2) additional emergency service trips. These trips can be used at any point during the term of the Agreement. No reimbursement will be issued for unused emergency trips. Any service trips requested by County beyond the provided trips stated in this Agreement will be billed at a discounted rate of \$105 per hour plus travel time, mileage and expenses provided that these

expenses are agreed upon in the advance by the Parties and documented in a signed amendment to this Agreement.

5. Contractor will provide free phone technical support during normal business hours to all customers for equipment provided and installed by Contractor. After-hours technical support is provided at no charge to customers who have systems provided and installed by Contractor under warranty or who have a service contract with Contractor. When calling in for after-hours technical support, the Contractor will request the job number from the caller before providing technical support.

6. Exclusions

- a. This Agreement excludes remedy for damage or defect caused by abuse, acts of God, modifications not executed by Contractor, software changes or upgrades not required to address issues being experienced at this site, improper or insufficient maintenance, or improper operation.
- b. This Agreement also excludes any material costs related to the repair or replacement of the computer hardware involved as part of the system, including the four (4) NVRs and three (3) administrative computers. Contractor will, however, provide labor necessary to repair and/or replace these devices if needed.
- c. This Agreement excludes any material or labor necessary to support devices that are not part of the video visitation system, where this system is defined to be 174 video visitation stations, four (4) NVRs, three (3) administrative computers, along with all networking equipment and power equipment for the system.
- d. Sheriff has already purchased an initial inventory for use in servicing the equipment. By agreeing to this Agreement, Sheriff is authorizing Contractor to utilize this existing inventory in repairs until that inventory is depleted. Contractor will make use of this material until this inventory is depleted. Once this inventory is depleted, Contractor will provide any needed materials at no additional cost.

C. All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by the Sheriff.

Section 3. Personnel

A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its

own expense, adequate and sufficient personnel, in the opinion of the Sheriff, to perform the Scope of Services when and as required and without delays.

- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of the Sheriff, is incompetent or by his conduct becomes detrimental to the project shall, upon request of the Sheriff, immediately be removed from association with the project.

Section 4. Compensation and Payment

- A. Contractor is authorized to collect payment from participating parties for video visitation in the amount of \$0.33 per minute with no minimum call time and a maximum call time of 30 minutes. This service fee is the maximum charge allowed unless federal, state or local regulatory requirements or restrictions require that a lower amount be charged.
- B. Contractor's compensation for services described in Section One is based solely on Contractor's retention of the percentage of the gross revenue detailed in Section 4C. Gross revenue shall mean all revenue generated by every completed visit that is accepted by an end user and billed by the Contractor. Gross revenue on which monthly commission will be paid does not include: (i) taxes and tax related surcharges;(ii) credits; (iii) billing recovery fees; and (iv) any amount company collects for, or pays to, third parties, including, but not limited to payments in support of statutory or regulatory programs mandated by governmental or quasi- governmental authorities, such as the Federal Universal Service Fee, and any costs incurred by company in connection with such programs.
- C. Contractor shall retain fifty percent (50%) of the gross revenue billed or prepaid for all visitations covered by the Agreement. Contractor shall remit the remaining fifty percent (50%) for a calendar month to the Sheriff on or before the 30th day of the following calendar month in which the paid video sessions were held. Contractor's retention of payment shall not constitute acceptance or approval of Contractor's performance nor foreclose the right of Sheriff or Fort Bend County to recover excessive or illegal payments to the greatest extent allowed by law. All invoices and Contractor's performance are subject to review and audit by Sheriff by and through the Fort Bend County Auditor.
- D. Contractor shall provide both summary and detail reports on the use of video visitation services. The original reports and payment will be mailed or emailed directly to the Sheriff or his designee.

- E. Reports shall be provided in a format that acceptable to both Parties and contains the following minimum information:
 - 1. Total Visits (itemized by type to include but is not limited to Personal visits and Professional visits.)
 - 2. Total minutes of use (itemized by type to include but are not limited to Personal visits and Professional visits.)
 - 3. Gross revenue for visitations
 - 4. Commission related to the revenue for visitations
 - 5. Total usage revenue (itemized by type to include but is not limited to Personal visits and Professional visits.)
- F. Reports shall be available for all information collected and tracked by the software.
- G. All reports shall be accessible and downloadable by the Sheriff's designee at all times.

Section 5. Limit of Appropriation

Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the Compensation and Payment Section expressed in this Agreement identify the maximum payment that Contractor may become entitled to and the total maximum sum that the Sheriff may become liable to pay to Contractor which shall not under any conditions, circumstances, or interpretations thereof exceed the amounts identified herein.

Section 6. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

- A. Termination for Convenience: the Sheriff may terminate this Agreement at any time upon thirty (30) days written notice.

B. Termination for Default

1. The Sheriff may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - a. If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the Sheriff in writing;
 - b. If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to the Sheriff's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from the Sheriff specifying such breach or failure.
2. If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or Sheriff determines that the default was excusable, services may continue in accordance with the terms and conditions of this Agreement or the Parties may treat the termination as a termination for convenience as described in this Section.

- C. If this Agreement is terminated as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of the Sheriff upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 4 for work performed. Contractor shall promptly furnish all such data and material to the Sheriff on request.

Section 9. Inspection of Books and Records

Contractor will permit the Sheriff, or any duly authorized agent of the Sheriff, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. The Sheriff's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

- A. Prior to commencement of the Services, Contractor shall furnish the Sheriff with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to the Sheriff. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by the Sheriff. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
1. Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 2. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 3. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limits of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
 4. Professional Liability insurance with limits not less than \$1,000,000.
- B. The Sheriff and Fort Bend County shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of the Sheriff and Fort Bend County.
- C. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND THE SHERIFF AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

- A. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to the Sheriff. Any and all information of any form obtained by Contractor or its employees or agents from the Sheriff in the performance of this Agreement shall be deemed to be confidential information of the Sheriff ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- B. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to the Sheriff hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist the Sheriff in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise the Sheriff immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with the Sheriff in seeking injunctive or other equitable relief in the name of the Sheriff or Contractor against any such person. Contractor agrees that, except as directed by the Sheriff, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at the Sheriff's request, Contractor will promptly turn over to the Sheriff all documents,

papers, and other matter in Contractor's possession which embody Confidential Information.

- C. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to the Sheriff that is inadequately compensable in damages. Accordingly, the Sheriff may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of the Sheriff and are reasonable in scope and content.
- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Contractor expressly acknowledges that the Sheriff is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, the Sheriff will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to the Sheriff by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 13. Independent Contractor

- A. In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.
- B. Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of the Sheriff and shall not be entitled to any of the privileges or benefits of the Sheriff employment.

Section 14. Obligations of the Sheriff

- A. Sheriff shall reasonably protect the Equipment against willful abuse and promptly report any damage, service failure or hazardous conditions to the Contractor.
- B. Sheriff shall provide, at his expense, provide suitable space, accessible to the users and adequate power source to run the equipment.
- C. Sheriff shall permit reasonable access to its respective facilities without charge or prejudice to Contractor's employees or representatives. Contractor must comply with current Premise Provider policy regarding access to facilities.
- D. Sheriff represents and warrants that he has legal authority to enter into this agreement and to make all decisions concerning the providing of space and the installation and use of the equipment at the facility.
- E. Sheriff agrees that Contractor had no responsibility to advise Sheriff with respect to any applicable law, regulation, or guideline that may govern or control visitation recordation or monitoring by Contractor or compliance therewith. Contractor disclaims any responsibility to provide, and in fact has not provided, Sheriff with any legal advice concerning such applicable law, regulation, or guidance, or compliance therewith.
- F. Sheriff agrees that all visitation recordings contained in the video visitation system equipment provided by Contractor to Sheriff are the exclusive property of the Sheriff.

Section 15. Notices

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

The Sheriff: Fort Bend County Sheriff's Office
ATTN: Sheriff
1410 Williams Way Blvd.
Richmond, TX 77469

Contractor: Montgomery Technology, Inc.
Attn: Nathan Skipper
23 Old Stage Road
Greenville, Alabama 36037

- C. Notice is effective only if the party giving or making the Notice has complied with subsections 15 (A) and 15 (B) and if the addressee has received the Notice. A Notice is deemed received as follows:
1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
 2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 16. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by the Sheriff, Contractor shall furnish the Sheriff with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 17. Performance Warranty

- A. Contractor warrants to the Sheriff that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. Contractor warrants to the Sheriff that the Services will be free from material errors and will materially conform to all requirements and specifications needed for a fully web-based video visitation system.

Section 18. Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
- B. Neither party may delegate any performance under this Agreement.

- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 19. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the Sheriff's sovereign immunity.

Section 20. Successors and Assigns

The Sheriff and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 21. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 22. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 23. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of the Sheriff. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of the Sheriff, except where required to do so by law.

Section 24. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.


Section 25. Conflict

It is understood and agreed to by the parties that the entire Agreement of the parties is contained herein and that this Agreement supersedes all prior communications and

negotiations among the parties, oral or written, relating to the subject matter hereof as well as any previous Agreements presently in effect between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 1st day of Sept, 2016.

FORT BEND COUNTY SHERIFF



Troy E. Nehls
Fort Bend County Sheriff

MONTGOMERY TECHNOLOGY INC.



Authorized Agent- Signature

Nathan Skipper

Authorized Agent- Printed Name

VP of Sales

Title

Sept. 1st, 2016

Date

Recorded by Commissioners Court on:

Date

Laura Richard
Fort Bend County Clerk

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