



**County of Spotsylvania**  
**Procurement Division**  
8800 Courthouse Road (P.O. Box 215)  
Spotsylvania, VA 22553  
Ph. 540/507-7586 Fax 540/582-6304

# PURCHASE ORDER

PURSUANT TO  
VIRGINIA CODE §2.2-4343.1,  
SPOTSYLVANIA COUNTY DOES NOT  
DISCRIMINATE AGAINST FAITH-  
BASED ORGANIZATIONS

**P.O. NUMBER 17086**

P.O. number must appear on all related correspondence, shipping papers, and invoices:

**To: Securus Technologies**  
**30 Lake Center Exec Park**  
**401 Rt 73 N, Suite 105**  
**Marlton, NJ 08053**

**Ship To: Spotsylvania County Information Services**  
**9104 Courthouse Road**  
**Spotsylvania, VA 22553**

Attn: Reggie McDaniel

Attn: Bobbie Magee

		SHIP VIA	F.O.B. POINT	TERMS	
June 15, 2017			Destination	Net 30 Days	
QTY	UNIT	DESCRIPTION		UNIT PRICE	TOTAL
3	Years	Annual maintenance for XCAD, XRMS, XMobile and Interface Software as per Software License, Maintenance and Support Agreement for between Securus Technologies and Spotsylvania County.			
		Year 1: July 1, 2017 through June 30, 2018		\$103,159.00	\$103,159.00
		Year 2: July 1, 2018 through June 30, 2019		\$106,253.00	\$106,253.00
		Year 3: July 1, 2019 through June 20, 2020		\$109,440.00	\$109,440.00
		10% Discount for three (3) year bundle		(\$31,886.00)	(\$31,886.00)
		Contract documents consist of:			
		1. Spotsylvania County Purchase Order #17086 dated June 15, 2017 and Spotsylvania County Purchase Order General Terms and Conditions dated August 9, 2016; Sole Source Procurement;			
		2. Securus Technologies Software License, Maintenance and Support Agreement with Spotsylvania County.			
				TOTAL	\$286,966.00

If there are any questions concerning this purchase order, please contact Ms. Donna Beasley – Spotsylvania County Procurement Division. Ph. 540/507-7586; Fax: 540/582-6304

1. Please send one copy of your invoice.
2. In accordance with the prices, terms, delivery method, and specifications, including warranties, pursuant to any IFB and bid documents, or referenced Terms & Conditions delineated above.
3. Delivery constitutes acceptance of all terms and conditions.
4. Please notify us immediately if you are unable to ship as specified.
5. Send all invoices to:  
Spotsylvania County Information Services  
P O Box 865  
Spotsylvania, VA 22553
6. Pursuant to Virginia Code §2.2-4311.1, seller warrants that during the performance of this contract, it will not employ unauthorized alien workers, as defined by the Immigration Reform and Control Act of 1986.

**FOR OFFICIAL USE ONLY**

**Requisitioning Department: Information Services**

Requisitioner: Bobbie Magee

Mark B. Taylor  
County Administrator

  
Deputy County Attorney

This standard Purchase Order form has been previously APPROVED AS TO FORM by the Office of the Spotsylvania County Attorney for small purchases. Any deviations from the County's customary form must be reviewed and approved by the County Attorney.



## SPOTSYLVANIA COUNTY PURCHASE ORDER GENERAL TERMS AND CONDITIONS

1. All prices unless otherwise specified are F.O.B. Destination with transportation charges prepaid.
2. If shipment is made by freight or express and charges added to invoice, the original bill of lading properly receipted shall accompany invoice. All charges must be prepaid.
3. Deliveries against this order must be free of excise, transportation, or state sales taxes. State sales and use tax certificate of exemption form will be issued upon request.
4. Purchase Order number shall be shown by Contractor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence.
5. Invoice terms are Net 30 days.
6. The CONTRACTOR providing services to the County under this Purchase Order Agreement represents and warrants to the County that it is:
  - A. Conforming to the provisions of the Civil Rights Act of 1964, as amended, as well as the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the Virginia Public Procurement Act, and where applicable, to the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended.
  - B. Not employing illegal alien workers or otherwise violating the provisions of the Immigration Reform and Control Act of 1986 and Virginia Code § 2.2-4311.1;
  - C. Complying with federal, state and local laws and regulations applicable to the performance of the goods and services procured, the work performed pursuant to the Agreement shall conform to all professional principles generally accepted as standards of the industry in the Commonwealth, the CONTRACTOR'S work performed shall be free of defects, and any new materials and equipment furnished under this Agreement shall be of good quality and in working condition; and
  - D. In full compliance with the Virginia Conflict of Interest Act.
7. CONTRACTOR'S performing work for the County shall maintain at a minimum, the following insurance coverage, if the work is performed by any type of corporation, partnership, or licensed business. An Automobile liability policy may be under a personal policy for a sole proprietor.

### MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED:

- A. Worker's Compensation – Statutory requirements and benefits
- B. Employers Liability - \$100,000
- C. Commercial General Liability - \$1,000,000 Combined Single Limit Bodily Injury and Property Damage Each Occurrence. These coverages are to include Products/Completed Operations, Personal & Advertising Injury, and Independent Contractor's Liability
- D. Automobile Liability \$500,000.
- E. Professional Liability, if required, under Professional Services.

The County, Board of Supervisors and employees, shall be named as additional insured on Auto and General liability Policies. The County reserves the right to require the Contractor to provide evidence of required insurance coverage.

8. During the performance of this Agreement, CONTRACTOR agrees that:
  - A. It will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor; that it will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and that it will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor that such Contractor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement; and
  - B. It will include the provisions of the foregoing paragraph in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each sub-CONTRACTOR or CONTRACTOR.

9. During the performance of this Agreement, the CONTRACTOR agrees to:
- A. Provide a drug-free workplace for the CONTRACTOR'S employees; and comply with the Federal Drug Free Workplace Act.
  - B. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the CONTRACTOR'S workplace and specifying the actions that will be taken against employees for violations of such prohibition;
  - C. State in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR that the CONTRACTOR maintains a drug-free workplace; and
  - D. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each SUBCONTRACTOR or CONTRACTOR.
  - E. For the purposes of this section, "drug-free workplace" means any site at which the performance of work is done in connection with this contract awarded to the CONTRACTOR, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
10. The parties agree that this Agreement is governed by and shall be interpreted in accordance with the laws of the Commonwealth of Virginia, and that proper venue, in the event of litigation concerning this matter, shall be in the Circuit Court of Spotsylvania County, Virginia. The parties agree that any litigation involving this Agreement shall be brought only in such court. In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, each party shall pay their own attorney's fees, costs and expenses.
11. Pursuant to Section 2.2-4354 of the Code of Virginia, (1950, as amended), the CONTRACTOR covenants and agrees to:
- A. Within seven (7) days after receipt of any amounts paid to the CONTRACTOR under the Agreement, (i) pay any subcontractor for its proportionate share of the total payment received from the COUNTY attributable to the work under the Contract performed by such subcontractor, or (ii) notify the COUNTY and the subcontractor, in writing, of its intention to withhold all or part of the subcontractor's payment and the reason therefore;
  - B. Provide its federal employer identification number or social security number, as applicable, before any payment is made to the CONTRACTOR under the Agreement;
  - C. Pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the CONTRACTOR on all amounts owed by the CONTRACTOR that remain unpaid after seven (7) days following receipt by the CONTRACTOR of payment from the COUNTY for work performed by the subcontractor under the Agreement; and
  - D. Include in its contracts with any and all subcontractors the requirements of 1, 2, and 3 above.
12. CONTRACTOR shall indemnify, defend and hold harmless the COUNTY and its representatives from any and all claims, suits and actions for injury or damage sustained by any person or property from any act or omission by CONTRACTOR and/or its CONTRACTORS or employees, or anyone else for whom CONTRACTOR is or may be responsible. This section shall survive the termination of this Agreement.
13. Spotsylvania County reserves its rights of ownership to all material given to the Contractor by Spotsylvania County and to all background information, documents, and documentation developed by the Contractor in performing any Contract resulting from this procurement.
14. Spotsylvania County shall have the right to terminate at Spotsylvania County's convenience, with or without cause, any contract resulting from this Purchase Order by specifying the date of termination in a written notice. In this event, the Contractor shall be entitled to just and equitable compensation for any authorized satisfactory work done or any items/materials accepted by Spotsylvania County.
15. CONTRACTOR acknowledges that the Spotsylvania County Procurement Policy is applicable to this Agreement. The Spotsylvania County Procurement Policy governing this Agreement may be accessed at:  
<http://www.spotsylvania.va.us/content/20925/20963/21966/20995/23291/default.aspx>



**Software License, Maintenance and Support Agreement**

**This Software License, Maintenance and Support Agreement** (this "M&S Agreement") is by and between Securus Technologies, Inc. ("Provider") and Spotsylvania County ("Customer") and includes the Spotsylvania County Purchase Order Terms and Conditions included with the Purchase Order. This M&S Agreement shall be effective as of the last date signed by either party (the "Effective Date").

**1. DEFINITIONS**

**Authorized Copies:** The only authorized copies of the Licensed Software and Licensed Documentation are the copies of each application software package defined in this paragraph. They are the following:

- the single copy of the Licensed Software and the related Licensed Documentation delivered by Provider under this M&S Agreement; and
- copies of each application of the Licensed Software as reasonably needed to support Customer's operations including copies for training systems.

**Correction** means the repair or replacement of source or object or executable code versions of the Licensed Software to remedy an Error. A Correction may be in the form of a patch to the Licensed Software.

**Customer Liaison:** A Customer I.S. employee assigned to act as liaison between Customer and Provider for the duration of M&S Agreement and the Customer Support Manager assigned by Provider to Customer.

**Enhancement** means technical or functional additions to the Licensed Software to improve software functionality or operations.

**Error** means a malfunction in the Software which degrades the use of the Licensed Software.

**First Available Use means the date that all of the following has occurred: 1). full installation of the Licensed Software, 2) all associated configuration and training has occurred, 3), all associated interfaces have been delivered and completed to the Customer, 4), the Licensed Software functionally operates within the Customer's production environment.**

**Helpdesk** means the helpdesk used by Provider to manage customer telephone calls and e-mails regarding the Licensed Software.

**Licensed Standard Software:** Provider's XGEN Software.

**Licensed Custom Software:** Provider's Licensed Standard Software plus any modifications made to the Licensed Standard software by Provider at the time of sale on behalf of the Customer and agreed to by the Customer and Provider.

**Licensed Software:** The Licensed Standard Software and Licensed Custom Software provided under this M&S Agreement.

**Licensed Documentation:** User Manuals, including the current specifications for the Licensed Software and other written instructions relating to the Licensed Software.

**Licensed Products:** The Licensed Software, Object Code, the related Licensed Documentation, and the Authorized Copies of the foregoing.

**New Products:** A product line change that is based upon a technology change, software rewrite or completely new software.

**Priority Level 1** means that Customer's Licensed Software System is down and unable to function.

**Priority Level 2** means that Customer's Licensed Software System is operational but with limitations, for which Corrections or Workarounds are required.

**Priority Level 3** means that Customer's Licensed Software System is operational and functional, but assistance is needed.

**Priority Level 4** means routine questions and consultation, while Customer's Licensed Software System remains operational and functional.

**Upgrades:** Any enhanced and/or improved versions of Licensed Software provided under this M&S Agreement and released after execution of this M&S Agreement. Upgrades include all published revisions to the documentation and new releases of the Licensed Software that are not designated by Provider as New Products.

**User Group** means a group of Provider customers using all or some of the Licensed Software formed to share knowledge and experiences regarding the Licensed Software.

**Workaround** means a change in the procedures followed or data supplied to avoid an Error without significantly impairing performance of the Licensed Software.

**Object Code:** Machine language code produced by a translator program, such as an assembler, interpreter, or compiler. Instructions in object code can be executed by a Central Processing Unit (CPU).

## **2. TERM**

The obligations of the parties shall begin on the Effective Date, but the initial term shall begin upon First Available Use and shall continue for 36 months thereafter (the "Initial Term"). Upon written notice of renewal at least ninety (90) days before the end of the then current term, this Agreement shall be renewed for successive periods of twelve (12) months (each a "Renewal Term"). The Initial Term, together with any Renewal Term(s) shall be referred to as the "Term." Notwithstanding anything to the contrary, the terms and conditions of this Agreement shall continue to apply for so long as we continue to provide the application to you after the expiration or earlier termination of this Agreement.

## **3. SCOPE OF WORK**

Either Provider or Customer may initiate a Change Order Request in writing, specifying the description of the proposed change. The signatures of both Provider and Customer on the Change Order Request will confirm formal approval or rejection of the request and result in a Change Order. Provider will not begin work on the Change Order without such formal written approval. Change Orders, once signed by Customer, will generate an invoice for additional services rendered.

## **4. SOFTWARE LICENSE**

Provider hereby grants and Customer accepts, upon terms and conditions set forth in this M&S Agreement, a non-transferable and non-exclusive license to use the Licensed Products noted in Attachment 1.1, provided Customer is not in default of any provisions of this M&S Agreement. Customer acknowledges that the Licensed Products are a valuable trade secret of Provider, and accordingly, this M&S Agreement

establishes a confidential relationship between Provider and Customer and the Licensed Product shall not be shared by Customer to any third party without Provider's prior written approval. Unless otherwise required by law or order of any government agency having competent jurisdiction, Customer shall not copy or otherwise reproduce in any way, in whole or in part, the Licensed Software or Licensed Documentation furnished by Provider without the prior express written consent of Provider. Nor shall the Customer sell, transfer, or otherwise make available in any way to any other person, in whole or in part, the program documentation furnished by Provider. Customer is permitted to make copies of the Licensed Software or Licensed Documentation for exclusive internal use only as follows: Customer is permitted to retain such copies of each application of the Licensed Software as reasonably needed to support Customer's operations, including copies for redundancy, emergency fail-over and training systems. Customer, or anyone wishing to obtain access to the Licensed Products through Customer, must obtain written permission of Provider and, in that event, shall be bound by this Paragraph 4 and shall not copy, distribute, disseminate or otherwise disclose to any other third party the Licensed Software or Licensed Documentation in whole or in part, at any time or in any form or media. The restriction on making copies and distributing the Licensed Software or Licensed Documentation includes, without limitation, the following:

- Program libraries, either source or object code
- Operation control language
- Test data, sample fields, or file lay outs
- Program Listings
- Licensed Documentation
- Data Layout
- Third party system connections
- Databaseschema
- Data Dictionary
- Database
- Interface files
- ODBC connections

Customer shall not (i) permit any parent, subsidiary, affiliated entity, or third party to use the Licensed Software, (ii) assign, sublicense, lease, encumber, or otherwise transfer or attempt to transfer the License Software or any portion thereof, (iii) process or permit to be processed any data of any other party with the Licensed Software, (iv) alter, maintain, enhance, disassemble, decompile, reverse engineer or otherwise modify the Licensed Software or allow any third party to do so, (v) connect the Licensed Software to any products that Provider did not furnish or approve in writing, or (vi) ship, transfer, or export the Licensed Software into any country, or use the Licensed Software in any manner prohibited by the export laws of the United States. Provider is not liable with regard to any Licensed Software that Customer uses in a prohibited manner.

5. Provider shall invoice Customer for the amounts due under this M&S Agreement and Customer agrees to pay each invoice within thirty (30) days of receiving a properly submitted invoice. If Customer is tax exempt, Customer shall provide Provider with a copy of its tax exemption certificate on or before execution of this M&S Agreement. Beyond all other remedies that Provider would have, Provider will not be required to provide any maintenance on the Licensed Software until such properly submitted invoice is paid.

## **6. CONTROL**

Customer shall have exclusive supervision, management, and control of the use of the Licensed Software.

## **7. SOFTWARE MAINTENANCE**

The following technical and functional services/improvements will be provided by Provider to Customer, for no charge beyond the regular maintenance, support, and hosting fee, to maintain and improve Licensed Software operations:

- (a) Upgrades;
- (b) Corrections contained in Upgrades;
- (c) Enhancements contained in Upgrades; and
- (d) Workarounds.
- (e) Ensuring functional compliance with State and Federal laws and statutes.

All Upgrades, Corrections, Enhancements and Workarounds provided to Customer shall be owned by Provider and shall become part of the Licensed Software and shall be subject to the terms and conditions of the M&S Agreement, including without limitation the provisions thereof regarding ownership and confidentiality. Subject to the terms of the M&S Agreement, Provider shall have the right to use all or any part of each Upgrade, Correction, Enhancement and Workaround for any work or services done for, or provided to, any other customer of Provider.

Upgrades, Corrections, Workarounds and Enhancements will be communicated to Customer in a single e-mail communication to person(s) to be designated by Customer. The communication will include detailed information about the Upgrade, Correction, Workaround and Enhancement and provide any training, to be performed by Provider, as necessary for Customer's continued use the Software. Duplication, distribution and installation of the change is the responsibility of Customer; however, Provider will be available to provide assistance in the installation of the Upgrade(s) if requested by Customer.

## **8. SOFTWARE SUPPORT**

- A. Hours. Provider will provide unlimited telephone and email support from 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, on regular Customer business days (i.e., excluding weekends and following holidays).

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

- B. System Support. Provider will provide support services for the Licensed Software as follows:

- (a) Corrections to Errors which would not otherwise be addressed by scheduled Upgrades; and
- (b) Enhancements to the Licensed Software requested by Customer to the extent such Enhancements are (i) agreed upon by the Provider User Group, (ii) included within the scope of Upgrades as determined by Provider, and (iii) part of the standard product release for the Licensed Software.

- (c) Provider shall provide support for previous releases for a minimum period of six (6) months following the general availability of a new release or software update, unless otherwise mutually agreed to, in writing, by Provider and Customer. Customer shall install or have Provider install, software Upgrades, corrections, or enhancements within a one (1) year period to ensure full support from Provider, unless mutually agreed to by both parties in writing. Provider will install and upgrade the Licensed Software on the server and the Customer shall be responsible for installing any necessary software on the clients.
- C. On Site Support. As requested by Customer, and upon reasonable notice and approval by Provider, Provider shall provide onsite services to Customer. Customer shall compensate Provider, on a time and materials basis, plus expenses, as agreed upon by Customer and Provider, prior to services being performed at \$150.00 per hour.
- D. Support Services do not include any of the following:
- (1) custom programming services;
  - (2) on-site support, including installation of hardware or software;
  - (3) support of any software not covered under the Software Application;
  - (4) training;
  - (5) out-of-pocket and reasonable expenses, including hardware and related supplies.

## **9. MAINTENANCE AND SUPPORT SERVICES**

- A. Licensed Software Maintenance. During the term of this M&S Agreement, Provider shall provide Customer with the maintenance and repair of any valid Error or malfunction that may be discovered in Provider's unaltered current Licensed Software and Upgrades that may be released and made generally available by Provider from time to time. Customer will have to keep the Licensed Software on Provider specified network environment, computer server and operating systems. Installation of additional hardware beyond what is specified in the system purchase agreement, server maintenance, network problem solving and all issues other than the maintenance services for the Licensed Software performed after the initial system set up, configuration and installation are considered outside of the scope of services under this Agreement and will be billed at the hourly rates specified in Addendum C- 2 provided such expenses are agreed upon in writing by Customer prior to any expense or charge accruing.
- B. Outage Report; Technical Support. If either of the following occurs: (a) Customer experiences a System outage or malfunction or (b) the System or Licensed Software requires maintenance (each, a "System Event"), then Customer will promptly report the System Event to Provider's Technical Support Department ("Technical Support"). Provider will provide Customer with commercially reasonable notice, when practicable, before any Technical Support outage.
- (1) Telephone or Internet Support. Unless otherwise specified and agreed to in writing, telephone and internet assistance will be available during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday Eastern Standard Time, excluding the following nationally recognized holidays:
- New Year's Day
  - Memorial Day
  - Independence Day
  - Labor Day
  - Thanksgiving Day
  - Day after Thanksgiving
  - Christmas Day
- (2) On-call Emergency Support. In addition to regular 8:00 a.m. to 5:00 p.m. EST telephone and internet support, on-call emergency telephone and/or internet service for after hour support to Priority Level 1 and Priority Level 2 issues will be provided.



(3) On-Site Assistance. To the extent that a problem associated with the Licensed Software has been identified as a failure of performance of the Licensed Software provided under this M&S Agreement and is not able to be resolved in accordance with the terms shown above, Provider may provide on-site assistance by one or more Provider service technicians as requested by Customer. Customer shall reimburse Provider for all reasonable out-of-pocket expenses associated with the provision of on-site assistance under the terms of this paragraph at the rates noted in Addendum C-2, provided such expenses are agreed upon in writing by Customer prior to any expense or charge accruing.

C. Priority Classifications. Upon receipt of your report of a System Event, Technical Support will classify the System Event as one of the following five priority levels:

Priority Level	Priority of System Event
"Priority 1"	<u>Critical Situation System Down</u> : Licensed Software is non-responsive on the production server resulting in Customer being unable to login or use the Licensed Software from any workstation. A single workstation outage does not constitute a down system. In addition, Customer should eliminate other possible factors that could result in down system before placing a call to Provider. Other factors are defined as, but not limited to, a power outage, server hardware failure, operating system failure and network failure.
"Priority 2"	<u>High</u> : A critical component of the Licensed Software is severely restricted in its use by all users, but maintaining minimal functionality. Customer has significant loss or degradation of service. Generating an error for few users on occasion
"Priority 3"	<u>Medium</u> : A non-critical software component is malfunctioning, causing moderate business impact. Licensed Software is impaired but maintaining majority of functionality. Customer suffering only minor loss of service and operations can continue without significant impact.
"Priority 4"	<u>Low</u> : A non-critical software component is malfunctioning, causing minimal impact, or a non-critical request, such as a report not running properly under one condition or "how to" questions.

D. Response Times. After receipt of notice and classification of a System Event according to the above priority levels, Provider will respond to the System Event within the following time periods:

Priority Level	Initial Response Goal	Correction Response Goal	If Development Required/Final Correction - Goal	Eligible Hours
Priority 1	1 hours	within 4 hours	written timeline within 48 hours that Customer has to agree on	24 hours a day, 7 days a week*
Priority 2	4 hours	Initial correction or work-around within 2 business days	Within next build cycle	24 hours a day, 7 days a week

Priority 3	8 hours	Initial correction or work-around within 5 business days	Next Release / 60 business days	8am-5pm EST, except as set forth above
Priority 4	5 business days	Scheduled	Scheduled Release	8am-5pm EST as set

		Release / 90 business days	/ 90 business days	forth above
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\* Provider will work with Customer 24/7 to resolve critical problems provided that Customer has technical personnel available as set forth under Section 5.F below to work during those same hours.

Upgrades. Provider will provide Upgrades and generally released enhancements to the Licensed Software when they are made generally available and released to the public. They will be provided at no additional charge during the Term of this M&S Agreement. Provider will install all the Upgrades on the server. Advanced Payments. In the event that Customer has pre-paid the fees for Support Services in advance of the affected year, and Customer elects to cancel such support by providing thirty (30) Day's written notice prior to expiration of maintenance of the previous year, Provider agrees to refund Customer the pro rata balance of any such advance payments made by Customer minus a 15% service fee.

- E. Excluded Service. Provider support services do not include maintenance or support of hardware, network, operating systems or third party software. Maintenance and support services shall be provided with respect to the Licensed Software operating on the computer equipment of Customer on which it was installed, and with the same operating system as of the time of initial installation, unless otherwise agreed to in writing by Provider. The maintenance and support services described herein do not include correction of software failures due to causes beyond the control of Provider, such as, but not limited to, acts of God, catastrophe, fault or negligence of Customer, operator error, installation of the Licensed Software on other than a Provider approved hardware or software operating system, manipulation of the object or source code (unless approved by Provider in writing prior to such manipulation), installation of third party applications on any hardware supporting Licensed Software, prior to acceptance of the agreement between the parties, and improper use or misuse of the System or any part thereof. Any such excluded service, whether on-site or off-site, will be provided at the request of Customer at Provider's sole option and on a time and materials basis at Provider's then current rates provided such expenses are agreed upon in writing by Customer prior to any expense or charge accruing.
- F. Support of Old Software. Customer shall install Upgrades and any bug fixes provided by Provider in a timely manner. Provider shall provide support for previous releases for a minimum period of six (6) months and maximum of one year following the general availability of a new release or software update, unless otherwise mutually agreed to, in writing, by Provider and Customer. Customer shall install or have Provider install, software Upgrades, corrections, or enhancements within a one (1) year period to ensure full support from Provider, unless mutually agreed to by both parties in writing. Certain Upgrades could require that Customer upgrade hardware or system software in order for Customer to benefit from the provided update. Such upgrades of third party hardware or software shall be at Customer's sole responsibility, and Provider will not be responsible for supporting Licensed Software in the event necessary hardware or software upgrades have not been implemented. Provider will notify Customer of all Upgrades, patches and bug fixes necessary to keep the respective applications current. If Customer fails to perform required patches and fixes, prior to installation of Provider upgrades, any failure of the Licensed Software attributable to Customer's failure to install such patches and fixes will be the responsibility of Customer.
- G. Obligations of Customer.
- (1) Customer shall provide Provider technicians with access to the Licensed Software CJIS certified VPN or by other similar means for error correction. Customer will also permit Provider access to personnel via telephone in order to counsel and advise Customer on the use and maintenance of the Licensed Software during the hours specified in this Agreement.
  - (2) To facilitate the problem-solving process, Customer agrees to assist Provider in its efforts to duplicate the software problem by providing a written problem report using either Provider Help Desk software or by completing and faxing/emailing to Provider's support desk the report form (see attached).

Provider will install and upgrade the Licensed Software on the server and the Customer shall be responsible for installing any necessary software on the clients. Customer shall be responsible for System Software updates

(Operating System and Others), third party system updates, and hardware updates and fixes in a timely manner. Customer is responsible for providing all network and server security.

- (3) Customer is responsible for administration of its system. This responsibility includes, but is not limited to, performing periodic maintenance on system hardware, the operating system, and creating daily backup copies of all Customer data files. Customer is responsible for validation of the restorability of backup files. Additional administration duties include maintaining system security profiles and customer-managed configurations of the operating system database.
- (4) Customer is responsible for designating in writing to Provider a qualified System Administrator, as well as a back-up System Administrator, who will function as Provider's primary and secondary contacts for any maintenance to be provided under this Agreement. The System Administrators must be trained in the administration of hardware, operating system and database, and trained by the Provider in administration of the Licensed Software. At least one System Administrator must be available at all times; however, after-hours availability is required only when and if Customer is requesting after-hours support from Provider. The designated individuals shall be Provider's sole contacts for all matters involving technical assistance under this Agreement. Customer may designate a new System Administrator or back-up System Administrator by providing written notice to Provider. Requests for support services received from anyone other than a System Administrator on file with Provider will be verified by Provider with System Administrator before being worked.
- (5) A representative of Customer's IT department must also be present when any onsite support is provided. Customer agrees that if such representative is not present when the Provider representative arrives on site at a time and location previously agreed upon by the Provider and Customer, the Provider representative shall so notify an appropriate representative of Customer, if feasible, and if Customer's IT representative does not arrive within a reasonable time, no work will be performed. Customer will reimburse Provider for actual reasonable out-of-pocket costs incurred with having to reschedule onsite visits occasioned by Customer's failure to provide personnel for onsite support in accordance with the prior agreement of the parties.

#### **10. LIMITED WARRANTY AND DISCLAIMER**

- A. Provider represents and warrants that: (i) the Licensed Software maintenance services will be performed in a professional and workmanlike manner by qualified personnel; (ii) it has the authority to enter into this M&S Agreement with Customer; and (iii) to Provider's knowledge, Provider Licensed Products do not, at the time of delivery to Customer, include malicious code with the purpose of adversely affecting the operation, security or integrity of a system.
- A. EXCEPT AS OTHERWISE PROVIDED IN THE M&S AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PROVIDER LICENSED PRODUCTS AS PROVIDED BY PROVIDER ARE PROVIDED AND LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PROVIDER DOES NOT GUARANTEE THAT THE USE OF THE PROVIDER LICENSED PRODUCTS WILL NOT BE INTERRUPTED OR ERROR FREE.

#### **11. PROPERTY RIGHTS**

##### ***A. Acknowledgement of No Enhancement Rights***

Customer is licensing Commercial Off-the-Shelf (COTS) Software. Any materials, Upgrades, modifications or enhancements to the Licensed Software(s), whether or not developed specifically for the Customer at Customer's expense, are deemed Upgrades to the COTS product and shall not be deemed to create a new program or create any ownership rights by the Customer in the materials, Upgrades, enhancements or the Licensed Software.

##### ***B. Confidential Information***



Provider acknowledges that Customer is a public body subject to the provisions of the Virginia Freedom of Information Act ("VFOIA"), Virginia Code Ann. § 2.2-3700, et seq., and any documents or records not properly and individually exempted by Provider as confidential or proprietary are subject to disclosure pursuant to a valid VFOIA request. Customer will use its best efforts to safeguard and maintain the confidentiality of Provider's confidential information and to not disclose such to third parties during the term of this M&S Agreement and for a period of two years thereafter, subject to the confidentiality provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that are applicable to the Customer, which confidentiality shall survive termination of this M&S Agreement and extend indefinitely. Provider shall safeguard and maintain the confidentiality of any confidential information Provider may receive from Customer and shall not disclose such to third parties. Provider's duty to maintain the confidentiality of Customer's confidential information shall survive the termination of the M&S Agreement. In addition, in the event that either party is required to disclose Confidential Information by law or order of a Government Agency, it will be subject to provisions of Paragraph 7.C. below.

**C. *Disclosures Required by Law.***

In the event that any information the Provider has properly marked on each page as Confidential Information, and any Customer information in Provider's possession is required to be disclosed by Law or order of any Government Authority having jurisdiction over the receiving party (including as necessary for a party to assert a claim in a court of competent jurisdiction), before any such disclosure the receiving party will use best efforts to provide notice to the disclosing party reasonably sufficient to allow the disclosing party the opportunity to apply for a protective order or other restriction regarding such disclosure. In the event such Confidential Information is disclosed in such circumstances, such Confidential Information shall continue to constitute Confidential Information in all other circumstances pursuant to this Agreement.

- D. Provider warrants that it has the right to license, sell, or otherwise transfer to the Customer the right to possess and use the software as set forth in this M&C Agreement. Provider will indemnify and hold the Customer harmless for any claim of intellectual property infringement arising from or related to Customer's possession or use of the software that is the subject of this M&S Agreement including payment of all attorney's fees, costs, expenses, and judgments.

**12. PROFESSIONAL RESPONSIBILITY**

Customer acknowledges that any professional duty owed to Customer and its authorized users in terms of healthcare services or any other ancillary service by which a professional duty may attach is owed solely by the professional providing such services and shall not be, in any case, by owed by the Provider. Customer acknowledges that provider has no responsibility for the Customer's (or any of the Customer's authorized users) use of the information provided through the Licensed Products. The information provided in the Licensed Products is intended as a supplement to, and not a substitute for, the knowledge, expertise, and judgment of professional personnel.

Provider disclaims liability for the use of any information provided by, or results obtained from, the Licensed Products used by professional personnel. Provider, its affiliates and licensors, are not liable for actions of Customer or its authorized users, which may result in any liability due to malpractice, failure to warn or any other theory of liability that is based upon a standard of professional conduct. Customer expressly agrees (on behalf of itself and its authorized users) that Provider provides no medical or other professional advice in connection with this Agreement, the Licensed Products and the information contained therein. Customer expressly acknowledges (on behalf of itself and its authorized users) that a licensed professional is solely responsible for independently reaching any medical or other professional judgment, and for any resulting diagnosis, treatments and other professional advice, notwithstanding any use of the Licensed Products by such professional. The absence of a warning for a given drug or drug combination should not be construed to indicate that the drug or drug combination is safe, appropriate, or effective in any given patient.

### **13. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS M&S AGREEMENT, EXCEPT FOR LIABILITY FOR DEATH, PERSONAL INJURY, DAMAGE TO TANGIBLE PROPERTY AND INTELLECTUAL PROPERTY INFRINGEMENT, PROVIDER SHALL HAVE NO LIABILITY FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR INCOME, LOST OR CORRUPTED DATA, OR LOSS OF USE OR OTHER BENEFITS, IF NOT DUE TO PROVIDER'S NEGLIGENCE, BREACH OF CONTRACT, OR OTHER FAULT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PROVIDER'S AGGREGATE LIABILITY TO CUSTOMER RELATING TO OR ARISING OUT OF THIS M&S AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT RECEIVED DURING THE TWELVE (12) MONTH PERIOD BEFORE THE DATE THE CLAIM AROSE.

#### 14. FORCE MAJEURE

Neither party to this Agreement shall be liable nor deemed in default for any delay or failure in performance under this Agreement during such period of delay or failure resulting from acts of nature or God, civil or military authority, acts of the public enemy, terrorism, war, fires, explosions, earthquakes, hurricanes, floods, vandalism, labor strikes, epidemics, embargo, wide-spread Internet service outages, telecommunications disruptions, or any cause beyond the reasonable control of the party affected thereby. Each party shall utilize good faith efforts to perform its obligations under this M&S Agreement in the event of any such occurrence. Force Majeure does not include the financial difficulties of a party.

#### 15. NO THIRD PARTY BENEFICIARIES

The parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this M&S Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained herein shall operate only between the parties and shall inure solely to their benefit. The provisions of this M&S Agreement are intended to assist only the parties in determining and performing their obligations hereunder, and the parties intend and expressly agree that they alone shall have any legal or equitable right to seek to enforce this M&S Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this M&S Agreement, or to bring an action for the breach of this M&S Agreement.

<b>CUSTOMER:</b> Spotsylvania County By: _____ Name: _____ Title: _____ Date: _____	<b>PROVIDER:</b> Securus Technologies, Inc. By: <u>Robert Pickens</u> Name: Robert Pickens Title: President Date: <u>5-30-17</u>
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APPROVED AS TO FORM:

RE E. G. H.  
DEPUTY COUNTY ATTORNEY

**Attachment 1.1**  
**Licensed Software**

- XCAD
- XRMS
- XMobile
- XCAD Data Export interface
- QueTel evidence interface
- FireHouse interface
- VCIN/NCIC Standalone



## **Final Pricing**

### **3 Year Discounted Pricing - \$286,966**

#### **for the period covering July 1, 2017 – June 30, 2020**

The price does not include hardware (scanners, tablets, etc.) or network infrastructure (LAN/WAN equipment, wireless); the desired scope of automation and level of integration with the existing network environment will be determined during the development of a detailed Statement of Work.

Following the 3 year term, software M&S Fees will be for a period of twelve (12) months renewable annually at Customer's option. M&S amounts will be subject to and limited to an annual increase of 3 %. Annual M&S amounts will be subject to change in the event that products, interfaces, agencies and licenses are added or in the event that material changes to the proposed configuration are requested by Customer.

Addendum C-2  
**Standard Service Pricing**

<b>Standard Services</b>	<b>Rate</b>	<b>Measurement</b>
Installation & Configuration	\$150	per hour
Business Analyst / SME	\$1,200	per day
Admin Training	\$1,500	per day
End User Training	\$1,500	per day
Train the Trainer	\$1,500	per day
Go Live Support	\$600	per day per person
Custom Programming	\$175	per hour