

**ADDENDUM TO
OD SECURITY NORTH AMERICA
EXTENDED SERVICE CONTRACT ADDITIONAL
SERVICE TERMS AND CONDITIONS**

THIS ADDENDUM to the OD Security North America Extended Service Contract Additional Service Terms and Conditions is made entered into on this 7th day of October, 2016, by and between **Santa Fe County** (hereinafter the "County" or "Client"), a political subdivision of the State of New Mexico, and **OD Security North America** (hereinafter referred to "ODSNA"), whose principal address is 707 Texas Avenue, Suite 215-D, College Station, Texas 77840.

WHEREAS, pursuant to Section 13-1-126, NMSA 1978, the Santa Fe County Purchasing Manager has made a sole determination with regard to the maintenance services provided by ODSNA for the SOTER RS Full Body Security Scanning System located at the County Corrections Department; and

WHEREAS, ODSNA has offered the County an Extended Service Contract with Additional Service Terms and Conditions which contains certain terms and conditions which must be modified in order for the County to enter into the Agreement; and

WHEREAS, the parties agree as follows:

1. The terms and conditions of the ODSNA Extended Service Contract Additional Service Terms and Conditions and this Addendum (collectively referred to as "Agreement") shall be the sole and exclusive statement of the agreement ODSNA and the County. ODSNA and the County agree that by this Addendum the ODSNA Additional Service Terms and Conditions are modified as follows:
2. The provision titled **PAYMENT** is deleted in its entirety and replaced with the following:

PAYMENT. The annual payment to ODSNA under this Agreement shall not exceed \$9,750.00, exclusive of New Mexico gross receipts tax. The annual payment shall be invoiced and payable quarterly to ODSNA (\$2,437.50 per quarter). Within 30 days of the Client's receipt of an invoice from ODSNA, the Client shall tender payment. In the event the Client fails to tender payment within 30 days of receipt of the invoice, the Client shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full. Payment under this Agreement shall not foreclose the right of the Client to recover excessive or illegal payment.

3. In the provision titled **DEFAULT**, the phrase “including cost and expense of collection and reasonable attorney’s fees” is deleted.
4. In the provision title **ACCESS TO EQUIPMENT** the third sentence is deleted in its entirety.
5. The provision beginning with “This is a commercial service transaction” is deleted in its entirety and replaced with:

LIABILITY. Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its violation of terms, conditions, requirements or performance of duties under this Agreement. By entering into this Agreement the County and its public employees as defined in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq., do not waive sovereign immunity; do not waive any defense; and do not waive any limitation of liability pursuant to law.

INDEMNIFICATION. ODSNA shall defend, indemnify, and hold harmless the County and its elected officials, agents and employees, from and against any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses resulting from or directly or indirectly arising out of ODSNA’s negligent performance or non-performance of its obligations under this Agreement, including but not limited to ODSNA’s breach of any representation or warranty made herein.

NEW MEXICO TORT CLAIMS ACT. Any liability incurred by the County in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by Santa Fe County or its public employees at common law or under the New Mexico Tort Claims Act.

6. The provision titled **TERMINATION** is deleted in its entirety.
7. The provision titled **ENFORCEABLE IN TEXAS – VENUE** is deleted in its entirety and replaced with:

GOVERNING LAW. This Agreement shall be governed by the laws of the State of New Mexico without regard to its choice of law rules.

7. The following provisions are inserted into and incorporated into the ODSNA Additional Service Terms and Conditions:

TERM. The term of this Agreement shall commence on the date of last signature by the parties and terminate three years from such date, unless earlier terminated pursuant to **APPROPRIATIONS AND AUTHORIZATIONS** or **TERMINATION** below.

APPROPRIATIONS AND AUTHORIZATIONS. This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of Santa Fe County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to ODSNA. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse ODSNA for expenditures made after the date of termination. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by ODSNA in any way or forum, including a lawsuit.

AMENDMENT. Any amendment to the terms and conditions of this Agreement shall be by written amendment agreed to by the parties.

TERMINATION.

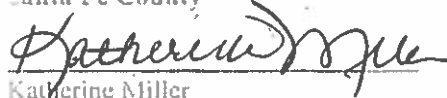
A. Termination for Convenience of the Client. The Client may, in its discretion, terminate this Agreement at any time for any reason by giving ODSNA written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from ODSNA's receipt of the notice. The Client shall pay ODSNA for acceptable services performed before the effective date of termination but shall not be liable for payment for any services performed after the effective date of termination. Client shall not be entitled to refund of any prepaid fees if Client terminates for convenience pursuant to this provision.

AGENT FOR SERVICE OF PROCESS. ODSNA hereby irrevocably appoints Registered Agent, Inc., 530-B Harkle Road, Ste 100 Santa Fe, New Mexico 87505 as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. ODSNA acknowledges and agrees that service upon its designated agent shall have the same effect as though ODSNA were actually and personally served within the state of New Mexico.

IN WITNESS WHEREOF, the parties have duly executed this Addendum to the ODSNA Extended Service Contract Additional Service Terms and Conditions as of the date of last signature below.

Addendum to OD Security North America
Extended Service Contract Additional
Service Terms and Conditions
SFC Agreement No. 2017-0087-CORR/KQ

Santa Fe County



Katherine Miller
Santa Fe County Manager

Date 10.7.16

Approved as to form:



Gregory S. Shaffer
Santa Fe County Attorney

Date 9-29-16

Finance Department:



Carole H. Jaramillo
Finance Director

Date 9/29/16

OD Security North America



(authorized signature and title)

John Shannon
President

Date 10/4/16

OD Security North America
Extended Service Contract

Client:

Santa Fe County Adult Correctional Facility
28 Camino Justicia
Santa Fe, NM 87508

For the period commencing 2016 and continuing for 3 year(s) and thereafter, pursuant to the "Additional Terms and Conditions" section. OD Security North America ("ODSNA") will provide "EXTENDED SERVICE COVER - SOFTWARE SUPPORT/PREVENTATIVE MAINTENANCE/REPAIR" as designated in Section II, Coverage Section.

1. **Software Support** terms will include maintenance releases and updates when available, remote technical support provided customer has remote access software, or other means available to resolve software issues.
2. **Preventive Maintenance** terms will include cleaning of equipment as required, reviewing equipment to assure performance in accordance with our manufacturer's standards, providing documentation of service, and calibration and testing of equipment performance as required.
3. **Repair Service** terms will include service and travel for general repair services performed onsite to maintain the SOTER RS.
4. **Hardware/Parts Support** terms will include hardware products manufactured by ODSNA for the SOTER RS.

I. Equipment List:

ITEM	MODEL NUMBER	EQUIPMENT/DESCRIPTION	SERIAL NUMBER
1	230A00201	SOTER RS Full Body Security Scanning System	1484001

II. Coverage Section:

SOFTWARE SUPPORT:

ODSNA will provide software upgrade, updates, on-line helpdesk support, telephone support, support services & template updates when applicable.

PREVENTIVE MAINTENANCE:

ODSNA will provide the following Quarterly Preventative Maintenance Services for the SOTER RS.

REPAIR SERVICES:

ODSNA will provide all general repair and maintenance services to maintain the SOTER RS.

HARDWARE/PARTS SUPPORT:

ODSNA will provide parts required to maintain the SOTER RS to our Manufacturing Specifications.

III. Charges: The 3 year maintenance agreement charge of \$29,250.00 shall be payable quarterly to ODSNA, in quarterly Installments of \$2,437.50 (plus applicable taxes). Charges to be invoiced quarterly in advance.

IV. Limitation of Liability – Exclusion of Service Cover: THE WARRANTIES IN THIS SECTION ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE AND OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF ODSNA WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE OR OTHERWISE. ODSNA NEITHER ASSUMES NOR HAS AUTHORIZED ANY PERSON TO ASSUME FOR IT ANY OTHER WARRANTY OR LIABILITY IN CONNECTION WITH THE EQUIPMENT. This Service Agreement does not apply to defects or performance deficiencies arising from (1) accident, (2) abuse, (3) misuse, (4) operation of your Equipment outside of its environmental electrical, or performance specifications, conditions, capabilities or standards, (5) power fluctuations or failure, (6) vandalism or any other damage or unauthorized alteration of your Equipment or its operating software, (7) its use in combination with incompatible products, (8) fires, floods and other natural causes, (9) damage or any other impairment of your Equipment resulting from causes or conditions not associated with ordinary storage, handling, installation, maintenance, service or use or maintenance or service by any party other than other by us or our authorized representatives, (10) parts or accessories not provided by us or, (11) any acts, omissions, causes or events beyond our control.

OD Security North America
Extended Service Contract

IV. Acceptances

Facility Santa Fe County

Katherine Miller
Name: *Katherine Miller* Date: *10.7.16*
Title: *SF County Manager*

OD Security North America

[Signature]
Name: *JOHN HAWKINS* Date: *10/4/16*
Title: *PRESIDENT*

Approved as to form
Santa Fe County Attorney
By: *[Signature]* Date: *9-28-16*

Robert J. Miller
9/29/16

SFCADF - ADDITIONAL SERVICE TERMS AND CONDITIONS

CONTROLLING PROVISIONS - These terms and conditions shall govern the transaction described on the face hereof and shall amend any terms and conditions of Client's order to the extent that a conflict exists. In the absence of a written acceptance of these terms and conditions by the Client, an acceptance of any service covered by the order shall constitute an acceptance of these terms and conditions. The full understanding of the parties as embraced herein and no waiver, alteration or modification of these provisions or any terms of the order shall be valid unless made in writing and signed by an officer or other authorized representative of ODSNA.

ACCEPTANCE - Service Agreements are not binding unless accepted by the Authorized Representative of ODSNA as acknowledged by signature on service contract. This condition shall not apply when this document is incorporated in an equipment sales agreement.

PRICES - The prices shown on the face hereof are firm for a period of thirty (30) days commencing with the presentment date on the face of the Agreement. This condition shall not apply when this document is incorporated in an equipment sales agreement. The pricing shown on the face hereof is subject to an annual five (5) percent increase due to inflation index.

TAXES - ODSNA shall add to all charges sums equal to any taxes, however designated or levied or based on the charges made for services rendered or parts supplied pursuant to this Agreement. This section shall not apply to organizations that are tax-exempt and provide proper supporting documentation with this Agreement.

PAYMENT - Terms are net ten (10) days from date of invoice, unless otherwise agreed upon. A finance charge of 1.1/2% per month, not to exceed the maximum rates allowed by law, shall be made on any portion of Client's outstanding balance, which is not paid within thirty (30) days from the date of invoice. If Client shall fail to pay any amount when due, ODSNA may without notice to Client suspend all services provided in this Agreement.

THIRD PARTY MANAGEMENT - In the event you have contracted with a third party service management organization, asset management company, maintenance management company, technology management company, maintenance insurance organization or the like ("Third Party Organization") for the purpose of centralized billing and management of service provided to you, we agree per your request to route invoices for payment of services rendered by us to such Third Party Organization and accept payment from them on your behalf. Notwithstanding the above, you agree that the services provided by us are pursuant to the terms and conditions set forth in this document and that you guarantee the payment of all monies due or that may become due under this Agreement in spite of any collateral obligations you may have with such Third Party Organization or any payment you have made to the Third Party Organization. We have no contractual relationship for the services rendered to you except as set forth herein. To the extent that the parts and services we provided are not covered by your arrangement with the Third Party Organization, you agree to promptly pay for such parts and services on your own account.

DEFAULT - Your default under this Agreement or a default by you or any entity managed or controlled by you or by any principal, agent, Third Party Organization or other entity of yours under any other order or contract with us, regardless of when the order or contract was entered into, will, at our sole option, if the default is not cured within ten days after written notice of the default, constitute a default of this Agreement and all other orders and contracts between you and us. In such an event, we may at our option (1) commence collection activities for all sums due hereunder, including cost and expenses of collection and reasonable attorney's fees, (2) withhold performance under any or all of the other orders and contracts between us until a reasonable time after all defaults have been cured, (3) declare all sums, due and to become due, to be immediately due and payable under any or all the other orders and contracts between us, and/or (4) do anything else which the Law permits.

EXCLUSIONS - Service is contingent upon proper use of all Equipment and observance of all operational instructions and does not cover, among other things, labor and replacement parts required because of accident, acts of God, neglect, misuse, abuse, failure of electrical power, air-conditioning, humidity control, transportation and unusual physical or electrical stress. The following are specifically excluded from this Agreement: Electrical work external to the Equipment or maintenance of accessories, alterations, attachments or other devices furnished or not furnished by ODSNA unless specifically noted. Equipment which has been modified, altered, added to, improperly repaired, installed or reinstalled by other than ODSNA personnel without ODSNA's prior written approval or Equipment used in violation of our manufacturer's instructions or causes resulting from other than ordinary use.

ACCESS TO EQUIPMENT - ODSNA shall have full, free and safe access to the Equipment on each scheduled inspection or emergency service visit. ODSNA shall also have access to and use of any machine, service, attachment, features or other equipment necessary to perform the necessary service contemplated herein at no charge to ODSNA. Should ODSNA be denied access to the Equipment by the Client at the agreed upon time, a charge equal to the appropriate hourly rate will be accepted by the Client for "waiting time".

EXCUSABLE DELAY - ODSNA agrees to perform all services in good faith, but ODSNA has no responsibility or liability for loss or damage by reason including, but not limited to, delays by suppliers in providing components, parts or service, for acts of God, fire, flood, war, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any governmental act, regulation or request, shortage of labor, materials or manufacturing facilities, or any other cause or causes beyond Seller's control.

LIMITATION OF LIABILITY - IN NO EVENT WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE SHALL THE SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES of any kind including, but not limited to, loss of business, profit, revenue or goodwill arising from any failure or matter arising under this Agreement, nor shall any claim or recovery of any kind be greater in amount than the purchase price of the annual Service Agreement to which such claim or recovery is made.

NOTICE - All written notices, described as such herein, required to be given by either party under this Agreement shall be addressed to the other party at the address shown at the top of page 1, or such other address as either party may have designated by written notice to the other. Such notices shall be deemed to have been given on the date such notice is mailed to the other party.

ASSIGNMENT/MERGER - This Agreement shall not be assignable by the Client or by operation of law to any third party without the prior written consent of ODSNA. This Agreement supersedes and all such prior Agreements, understandings or arrangements made between the parties and relating to the subject matter hereof.

EQUIPMENT LOCATION - If the Client changes the location of the Equipment so as to increase ODSNA's cost, ODSNA reserves the right at its discretion to cancel this Agreement upon ten (10) days notice to Client or to increase the amount of charges herein provided.

MODIFICATIONS - If the Equipment has been modified altered or added to in violation of Paragraph 6 herein so as to increase ODSNA's cost, ODSNA reserves the right to cancel this Agreement upon ten (10) days' notice to Buyer or to increase the amount of charges herein provided.

COMPONENT EXCHANGE - ODSNA may, at its sole discretion, exchange or modify components. Only those components, which have not been altered by the user in such a fashion as to destroy their intrinsic value, will be considered suitable for exchange or modification.

CONFIDENTIAL INFORMATION - Each party will treat the other party's written, proprietary business information as confidential for a period of 3 years from the date of receipt by the receiving party as long as it is marked as confidential and/or proprietary prior to its disclosure and is not otherwise available to the receiving party from a lawful source. We and our service contractor will treat patient information as confidential.

All stenographic, clerical or other errors are subject to corrections.

INSURANCE - ODSNA at its sole cost and expense, will procure and maintain Insurance from a licensed insurance carrier or carriers having a minimum limit and coverage of comprehensive general liability insurance with a limit of \$1,000,000.00 coverage for bodily injury and property damage; worker's compensation coverage.

TERMINATION - The Terms of this agreement are as printed on all pages included. The commencement date of the contract shall be the date upon which the counter-signature is affixed. The expiration date of this agreement shall be according to the terms beginning after the date upon which the counter-signature is affixed. This agreement may be terminated with cause at any time by either party, in writing. Such termination notice shall describe the cause of termination and shall allow the notified party sixty (60) days to correct such stated cause for termination. Notwithstanding, termination effective date will be 60 days from date Client's account is paid in full. Client also agrees to purchase any and all special ordered products ordered for facility by ODSNA.

EXTENSION TERMS - This agreement may be extended by mutual written consent for an additional one- (1) year terms at any time prior to the expiration date as described in the terms. The pricing shown on the face hereto is subject to an annual five (5) percent increase due to inflation index. Service Contract price changes will be done, as required, to correct prices published in error.

PARTS - ODSNA based on availability will provide parts according to the terms of this agreement. We supply parts on an exchange basis. Replacement parts become our property and will be promptly removed from your site. Parts we supply may be remanufactured or refurbished following prior use.

ENFORCEABLE IN TEXAS - VENUE. This Agreement shall be governed by the laws of the State of Texas, whether the dispute be arbitrated or settled by court or other legal action or proceeding, and all disputes and differences arising hereunder are enforceable in and all sums of money which may become due and payable hereunder are payable in Texas.