

State of Texas  
Collin County  
Commissioners Court

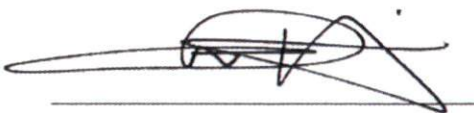
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Court Order  
2019-571-07-22

An order of the Collin County Commissioners Court approving an agreement.

The Collin County Commissioners Court hereby approves a pilot program agreement with SURVIVR PBC for virtual reality based training for law enforcement, as detailed in the attached documentation.

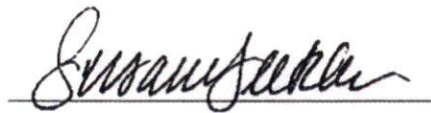
A motion was made, seconded, and carried by a majority of the court members in attendance during a regular session on Monday, July 22, 2019.



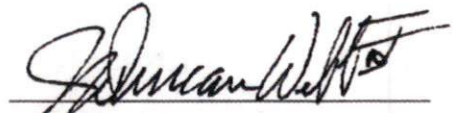
Chris Hill, County Judge



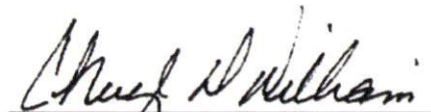
Darrell Hale, Commissioner, Pct 3



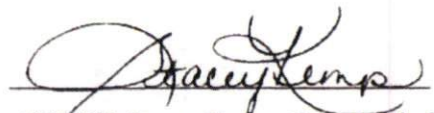
Susan Fletcher, Commissioner, Pct 1



Duncan Webb, Commissioner, Pct 4



Cheryl Williams, Commissioner, Pct 2



ATTEST: Stacey Kemp, County Clerk

## PILOT PROGRAM AGREEMENT

This Pilot Program Agreement (this "Agreement") is made and entered into as of July 25, 2019 (the "Effective Date"), by and between SURVIVR PBC, a Delaware public benefit corporation (the "Company"), and Collin County (the "Participant"). The Company and the Participant may be defined herein individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS the Company is developing a virtual reality training program designed to assist law enforcement and other similar parties in their training efforts (the "Program");

WHEREAS the Participant desires to help the Company test the Program and provide feedback and the Company desires the Participant to provide such assistance and feedback.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Program Details. The Company will lend to the Participant one (1) Program setup including the hardware and software necessary to run the Program (the "Equipment") for use in the Collin County Sheriff's Office. The Company will instruct the Participant on how to use the Program and Equipment and will provide technical support to the Participant in connection with the Program for the term of this Agreement. The Participant agrees to use the Program and Equipment in training exercises no less than at least one time per week (each a "Testing Session"). Testing Sessions shall take place at the Participant's principal address located at 4300 Community Avenue, McKinney, TX 75071, or as otherwise permitted by the Company.

2. Restrictions on Use. The Participant will not: (a) modify, alter, or improve the Program or Equipment in any way; (b) rent, lease, license, loan, resell, transfer, distribute or otherwise make the Program, the Equipment, or any related services available to any third party without the prior written consent of the Company; (c) reverse engineer the Program or the Equipment (or any component thereof), or decompile or disassemble any software or firmware components of the Program, or authorize a third party to do any of the foregoing; or (d) mortgage, pledge, or encumber the Program or the Equipment in any way.

3. Care of the Program and Equipment; Repair. The Participant will use the Program and the Equipment only as instructed by the Company. Upon delivery of the Equipment and the Program to the Participant, the Participant assumes and will bear the risk of all loss or damage caused to the Program or the Equipment, provided, however, that the Company will repair or replace at no cost to the Participant any defective parts of the Equipment or Program, except in connection with unauthorized use, use not in accordance with instructions provided by the Company, loss, damage, caused by the Participant. The Company will provide to the Participant any gas canisters required to operate the Equipment, provided, however, that the Participant notifies the Company when such replacements are required and the gas canisters are used as instructed. The Participant and any



users of the Equipment or Program must be observant, mindful, and cautious when using the Equipment or Program, as with any virtual reality technology. Every user must be supervised, and the Participant agrees to clear the space in which the Equipment and Program are used of any obstacles and to not stray too close to any walls or edges or other physical obstacles. Any user who experiences nausea, eye twitching, seizure, fatigue, or any other physical impediment should cease use of the Program and Equipment immediately.

#### 4. Compensation.

4.1. Fees. The Participant will not be required to make any payments to the Company in exchange for borrowing the Equipment and being provided access to the Program.

4.2. Feedback Required. In exchange for lending the Participant the Equipment and giving the Participant access to the Program, the Participant agrees to provide the Company with detailed, written feedback regarding all positives, negatives, questions, comments, concerns, and suggestions in connection with the Participant's use of the Program and Equipment (collectively, "Feedback"). Feedback shall be provided to the Company for each Testing Session. Participant agrees to provide Feedback using any form or template provided by the Company to the Participant, if any. The Participant agrees to: (a) use the Program and Equipment and use best efforts to cooperate with the Company in evaluating the Program and Equipment and providing Feedback; (b) if requested by the Company, work with the Company to identify and resolve any errors, problems, or defects in the Equipment or Product discovered by the Participant or the Company. All Feedback that the Participant provides to the Company hereunder shall belong exclusively to the Company.

4.3. Future Discounts. In appreciation of the Participants participation in and performance under this Agreement, the Company agrees to grant to the Participant exclusive discounted price tiers in the event the Participant purchases the Program and Equipment from the Company within two (2) years following the termination of this Agreement. The nature and amounts of such discounts will be at the sole discretion of the Company.

4.4. Limitation on the Company's Services. In the event the Participant considers purchasing goods or services similar to the Program and Equipment here or to any other goods and services offered by the Company, the Participant will have to comply with state purchasing law, e.g., the County Purchasing Act, Subchapter C, Chapter 262, Local Gov't Code, and Collin County purchasing policy, including conflict-of-interest rules such as those in Tex. Att'y Gen. Op. No. JM-0940 (1988). The Company will not participate, in any way, in the Participant's preparation of specifications, estimates, standards, descriptions, or any other part of a request for information, request for quote, request for proposal, or similar step in the consideration or purchase of any goods or services.

#### 5. Term; Termination.

5.1. Term. This Agreement shall commence on August 5, 2019 and shall terminate automatically and without notice on May 1, 2020 (the "Termination Date"). On February



1, 2020, the Parties shall begin a review process to determine whether the Program will extend past the Termination Date. In the event the Parties desire to extend the Program past the Termination Date, the Parties shall negotiate and execute separate purchase agreement with a determined pricing rate.

5.2. Termination. Either Party may terminate this Agreement with or without cause by providing the other Party with thirty (30) days' prior written notice of termination.

5.3. Return of Equipment; End of Access to Program. In the event this Agreement is terminated for any reason, the Participant shall promptly return all Equipment to the Company. The Participant shall be responsible for replacing or repairing any lost, damaged, or stolen Equipment.

5.4. Survival. The provisions of Sections 2, 3, 4.2, 4.3, 5.3, 6, 7, 8, and 9 shall survive termination of this Agreement for any reason.

## 6. Ownership; Confidential Information.

6.1. Ownership of Feedback. The Participant acknowledges and agrees that all Equipment, the Program, and all Feedback will be the sole and exclusive property of the Company. The Participant hereby irrevocably transfers and assigns to the Company and agrees to irrevocably assign and transfer to the Company all of the Participant's right, title, and interest in and to all Feedback, including any copyright or other intellectual property rights therein. At the Company's request and expense, the Participant agrees to execute documents and take such further acts as the Company may reasonably request to assist the Company to acquire, perfect, and maintain any intellectual property rights to the Feedback. The Participant hereby consents to the Company's use of Feedback in any manner whatsoever, including reports, advertising, development of the Program or Equipment, and other commercial activities.

Regardless of the Company's rights here, the Participant may approve or disapprove the use or publication, including by posting on a website or social media, of the name or any image of the logo or seal of the Participant or the Collin County Sheriff's Office or any photograph or video depicting a Participant's official, deputy, employee, representative, or guest that the Participant deems inappropriate, offensive, or inconsistent with the overall vision, mission, or values of the Participant or the Collin County Sheriff's Office or with any individual's interest in concealing or protecting his or her identity or image (e.g., undercover officers). The Company will immediately cease all disapproved uses or publications and turn over all such photographs, videos, recordings, or images to the Collin County Sheriff's Office or will delete or otherwise destroy them.

6.2. Ownership of Equipment and Program. The Participant acknowledges and agrees that the Company owns all Equipment and the Program, and that nothing contained herein shall affect such ownership and all associated rights, title, and interest, even if the Company incorporates any Feedback into subsequent developments or variations of the Equipment or Program. The Participant shall not earn or acquire any rights or licenses in the Equipment



or the Program on account of this Agreement or the Participant's performance under this Agreement.

6.3. Confidential Information. In connection with this Agreement, the Participant may receive confidential, proprietary, or non-public information from the Company, including but not limited to the Program, the Equipment, business plans, financial models and information, product designs and construction techniques, marketing techniques, source code, trade secrets, and any other such information that provides a unique economic advantage to the Company or that a reasonable person would consider confidential, proprietary, or non-public, whether or not disclosed by the Company in written, verbal, or other form (collectively, "Confidential Information.") The Participant agrees to hold all Confidential Information in confidence, and, unless consented to in writing by the Company in advance, will not disclose any Confidential Information to any third party. Notwithstanding the foregoing, Confidential Information will not include any information which: (i) is or becomes generally available to the public through no fault of the Participant; or (ii) was or becomes available to the Participant from a source with no obligation of confidentiality to the Company or any third party. In the event that the Participant is required by law to disclose any portion of the Confidential Information by court order or other similar legal request by a government body with competent jurisdiction over the Company, then the Participant shall provide the Company with written notice of such requirement so that the Company may seek an appropriate remedy or waive compliance with this Section 6.3. In the event that the Company does not seek an appropriate remedy or waive compliance with this Section 6.3, then the Participant to use best efforts to only disclose the portion of the Confidential Information that is legally required to be disclosed. Notwithstanding any other language in this Agreement, the Participant must meet its obligations under the Texas Public Information Act, Chapter 552, Government Code. The Participant will promptly provide the Company with a copy of any request under the Act, which may involve Confidential Information, so that the Company may protect its interests under a provision such as Section 552.305, Gov't Code. In any event, the Participant will not be responsible for attorney's fees, litigation costs, or any other type of cost associated with protecting the Company's interests in the context of a request under the Act.

## 7. Disclaimers.

7.1. Warranty Disclaimers. The Participant acknowledges that the Equipment and the Program are being provided "AS IS." THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

7.2. Acknowledgement of Pilot Program. Without limiting the generality of any of the foregoing, the Participant acknowledges and agrees that: (a) the Program and the Equipment are in the development state with initial functionality only; (b) the Program and



Equipment may not operate properly, be in final form or fully functional; (c) the Program and Equipment may contain errors, design flaws or other problems; (d) it may not be possible to make the Program or Equipment fully functional; (e) the information obtained using the Program or Equipment may not be accurate; and (f) the Company has the right to unilaterally abandon development of the Program or Equipment at any time and without any obligation or liability to the Participant.

7.3. No Warranty. The Company does not warrant that the services or benefits related to the Program or Equipment will be uninterrupted, reliable, accurate, available, or error free. The Participant acknowledges and agrees that it should not rely on the Program or the Equipment or related services for any reason, including but not limited training purposes. Use of the Program or Equipment by the Participant shall be at the Participant's sole risk and liability.

7.3. Third Party Components. The Participant acknowledges that certain services or components related to the Equipment or Program may be provided by a third party or dependent on third party providers or services. The Participant agrees that the Company shall not be responsible for any act or omission or the availability or quality of any such providers, components, or services.

8. Limitation on Liability; Indemnification. IN NO EVENT WILL THE COMPANY BE LIABLE TO THE PARTICIPANT OR ANY THIRD PARTY, INCLUDING ANY USERS, FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, PHYSICAL HARM OR DAMAGE TO PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE INSTALLATION OR USE OF OR INABILITY TO USE THE EQUIPMENT OR THE PROGRAM, OR FOR ANY ERROR OR DEFECT IN THE PRODUCT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE (COLLECTIVELY, "CLAIMS"). THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

THE COMPANY WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE PARTICIPANT AGAINST ALL LOSS, LIABILITY, OR EXPENSE (INCLUDING REASONABLE ATTORNEY AND WITNESS FEES AND EXPENSES) ARISING OUT OF ANY CLAIM BROUGHT BY A THIRD PARTY THAT ANY PART OF THE PROGRAM OR EQUIPMENT INFRINGES UPON INTELLECTUAL-PROPERTY RIGHTS OWNED OR CONTROLLED BY THE THIRD PARTY. IF A PART OF THE PROGRAM OR EQUIPMENT IS HELD OR BELIEVED BY THE COMPANY TO INFRINGE, THE COMPANY MAY IMMEDIATELY TERMINATE THIS AGREEMENT. THIS INDEMNITY IS SUBJECT TO THE CONDITIONS THAT THE COMPANY IS NOTIFIED OF THE CLAIM AND GIVEN THE OPPORTUNITY TO CONTROL THE DEFENSE AND SETTLEMENT. THIS



INDEMNIFICATION OBLIGATION WILL OPERATE AS EXPENSES OR LOSSES ACCRUE AND WILL SURVIVE AND APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

## 9. General Provisions

9.1. No Assignment. Neither party may assign this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other party. Any attempted assignment in breach of this Section 9.1 shall be null and of no effect.

9.2. Governing Law. This Agreement and any matters arising out of this Agreement will be governed by and construed in accordance with the laws of the State of Texas (excluding its body of law controlling conflicts of law).

9.3. Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such provision will be construed so as to be enforceable to the maximum extent permissible by law, and the remaining provisions of this Agreement will remain in full force and effect.

9.4. Waiver. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

9.5. Notices. All notices required to be in writing hereunder shall be delivered in person, by confirmed facsimile transmission or email, by overnight delivery service, or by registered or certified mail, return receipt requested, postage prepaid, and in every case shall be deemed delivered upon receipt. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party to the other in writing and in accordance with this Section 9.5.

9.6. Entire Agreement; Amendments. This Agreement contains the entire understanding of the Parties concerning the subject matter hereof and supersedes all prior agreements and understandings between the Parties with respect to such subject matter. No amendment, modification, or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and signed by the Parties. Any exhibit or schedule attached to this Agreement and signed by the Parties shall be incorporated into this Agreement by this reference.

9.7. Counterparts. This Agreement may be executed in any number of counterparts (including by facsimile or portable document format via email), all of which taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or email shall be as effective as delivery of a manually executed counterpart of this Agreement.

*[Signature page follows.]*



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date, and each of the undersigned, by signing below, represent that they have fully authority to bind their respective Parties.

**SURVIVR PBC**



By: Brian Hoang

Title: CEO

Address:

1900 Jay Ell Drive

Richardson, Texas 75081

Email: brian@survivr.com

**COLLIN COUNTY**



By: Chris Hill

Title: County Judge

Address:

2300 Bloomdale Road, Suite 4192

McKinney, Texas 75071

Email: chill@collincountytexas.gov

**COLLIN COUNTY SHERIFF'S OFFICE**



By: Jim Skinner

Title: Sheriff

Address:

4300 Community Avenue

McKinney, TX 75071

Email: sheriffs Skinner@collincountytexas.gov