CONTRACT FOR
TXDPS REMOTE CRIMINAL RECORDS MANAGEMENT SYSTEM

I. PARTIES

This contract ("Contract" or "Agreement") is made and entered into by and between Southern Software, Inc. ("Contractor" or "Vendor") and the Department of Public Safety, an agency of the State of Texas, ("TXDPS"), pursuant to Request for Offer No. 405-IT10-0542. Contractor and TXDPS are collectively referred to in this Contract as the "Parties."

WHEREAS, on the basis of the written representations contained in Contractor's Offer, as well as Contractor's presentation, discussions with Contractor and Contractor's experience relating to the deliverables contemplated by this Contract, TXDPS desires to engage Contractor to provide the deliverables on the terms and conditions as stated herein;

WHEREAS, Contractor has represented to TXDPS that Contractor is a leader in and has extensive experience in providing the deliverables for this Contract;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Contractor and TXDPS hereby covenant and agree as follows:

II. TERMS AND CONDITIONS

1. Controlling Order of Contract

This Contract between TXDPS and Contractor consists of the documents listed below. In the event of any conflicts between the documents, the documents will control in the following order of precedence:

The following Contract documents:

- **i.** This Contract, including any appendices
- **ii.** TXDPS Request for Offers as posted, including all attachments or appendices, however Appendix J (Attached Contract) and Appendix K (Service Level Agreement) are deleted
- **iii.** Contractor's original Offer as submitted, including all appendices
- **iv.** Schedule and the Statements of Work, as defined in Section III herein
- **v.** TXDPS Purchase Order, including any Purchase Order Change Notices and excluding any pre-printed terms and conditions.

2. Contract Term

This contract shall become effective on the date it is signed by the last of the two parties to this contract. The initial term of this contract shall last for two (2) years after execution of this contract. TXDPS reserves the right to renew this Agreement, in whole or in part under the same terms and conditions, for up to six (6) years in increments of up to two (2) years each. In no case shall the full term of the contract including extensions exceed eight (8) years. TXDPS will exercise this option by providing written

notice to the Contractor prior to the expiration of this Agreement. Any renewal will only become effective after both Parties sign a document to renew this Agreement.

In addition to the rights granted to TXDPS above, TXDPS also has the right, at its own election, to extend the Contract for ninety (90) days beyond the expiration of any initial or renewal term. TXDPS will exercise this unilateral right by providing notice to the Contractor before the end of any initial or renewal term of the Contract without the necessity of the Contractor's approval or signature. Vendor shall warrant all deliverables under this contract to be free of defects as defined in Section 51.2.

3. Modification of Contract Terms and/or Amendments

The terms and conditions of the Contract shall govern all transactions by local law enforcement agencies (LEAs) under the Contract. The Contract may only be modified or amended upon mutual written agreement of TXDPS and Vendor.

LEAs shall not have the authority to modify the terms of the Contract; however, additional LEA terms and conditions which do not conflict with the Contract and are acceptable to Vendor may be added to the LEA Purchase Order. No additional term or condition added to a Purchase Order issued by the LEA may weaken any term or condition of the RRMS Contract. Pre-printed terms and conditions on any Purchase Order issued will have no force and effect. In the event of a conflict between a Purchase Order and the RRMS Contract, the RRMS Contract term or condition shall control.

4. Submitting TXDPS Invoices and Receiving Payment / Acceptance Process

TXDPS will pay Contractor on the basis of itemized invoices submitted to and approved by TXDPS, showing the actual deliverables provided and the attendant charge. Itemized invoices must clearly identify the project phase or title, deliverables delivered, the number of hours that each allocated employee worked and the date range of work performed for the associated charge. Chapter 2251 of the Texas Government Code shall govern payment and accrual of interest on any overdue payments.

Invoices must also include the TXDPS Purchase Order number, Contractor's Texas Identification Number System (TINS) number, Contractor's address, Contractor's contact person and Contractor's phone number. All invoices must be mailed to:

CRIME RECORDS SERVICE
TEXAS DEPARTMENT OF PUBLIC SAFETY
ATTENTION: Desiree Taylor
PO BOX 4087
AUSTIN, TX 78773

The State will not incur any penalty for late payment if the invoice was not mailed to the appropriate address identified herein.

If TXDPS, for any reason, including lack of supporting documentation, disputes any items in any invoices submitted by Contractor, TXDPS shall temporarily delete the disputed items and pay the remaining amount of the invoice. TXDPS will timely notify Contractor of the dispute and may request clarification and/or remedial action. If the dispute is resolved in the Contractor's favor, TXDPS will pay remaining portion of the original invoice in accordance with the Prompt Payment Act, Chapter 2251 of the Texas Government Code. If the dispute is resolved in TXDPS' favor, the Contractor shall resubmit an invoice reflecting all corrections. TXDPS will not be responsible for reimbursements due to travel and per diem expenses.

4.1 Vendor Invoices for Deliverables

TXDPS and/or LEA will only accept a properly prepared invoice as defined in Section 4 for payment after the acceptance for each deliverable as defined in the Section herein entitled "Final Operating Capability". Deliverables are defined as those services (excluding those services defined as reoccurring operational services in Section 4.2) or products procured through this Contract, including but not limited to:

- Implementation
- Migration
- Enhancements
- Modifications
- Product Upgrades

4.2 Vendor Invoices for Reoccurring Operational Service Expenses

TXDPS and/or LEA will accept a properly prepared invoice as defined in Section 4 for payment of reoccurring operational service expenses at the beginning of the service period. RRMS reoccurring operational service expenses include but are not limited to:

- Licensing Cost
- Hosting Services
- Other Annual expenses to maintain or support the RRMS

5. Compliance with Permitting and Purchasing Laws

Contractor must be in compliance with any and all applicable permitting and purchasing laws that Texas state agencies must address before conducting business with a vendor. Contractor agrees that payments under this Contract must be applied towards any of Contractor's debts to the State of Texas, including, but not limited to any child support or delinquent taxes, until paid in full.

6. Compliance with State, Federal, and Local Laws, Rules and Regulations

Contractor must comply with all applicable state, federal and local laws and ordinances in providing deliverables to TXDPS or the LEA under this Contract. Without limiting the generality of the foregoing, Contractor must be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. Contractor is responsible for both federal and state unemployment insurance coverage and standard

workers' compensation insurance coverage. Contractor must comply with all federal and state tax laws and withholding requirements. TXDPS or LEA will not be liable to Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. Contractor may be required to demonstrate compliance with such laws at the written request of TXDPS or LEA.

Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of Contractor shall be a minimum of 17 years of age and experienced in the type of work to be performed. Absent prior, written permission from TXDPS or LEAs, no visitors or relatives of Contractor's employees and subcontractors will be allowed on TXDPS or LEAs property unless they are bona fide employees or subcontractors of Contractor performing work under this Contract.

Contractor agrees that at all times its personnel must observe and comply with all laws, regulations and rules pertaining to state facilities, including but not limited to parking and security regulations. Additionally, Contractor personnel must agree to and comply with all relevant TXDPS or LEA policies that relate to the security of data and confidentiality of information.

In the event that any of Contractor's personnel has failed to comply with such laws, regulations or rules, TXDPS or LEA will have the right to require Contractor to remove such person from any involvement in this Contract.

7. Conflict of Law, Choice of Law, U.N. Convention on Contracts and Venue

This Contract shall be governed by the substantive and procedural laws of the State of Texas. The following shall not apply to this Contract: a) the conflicts of law principles and rules of Texas and any other jurisdiction; and b) the United Nations Convention on Contracts for the International Sale of Goods.

Except as provided by Chapter 2260 of the Texas Government Code and the State Office of Administrative Hearings' administrative rules, venue for any litigation or contract claims shall be in the State Office of Administrative Hearings or a court of competent jurisdiction in Travis County, Texas.

8. Force Majeure

Neither Contractor, LEA nor TXDPS shall be liable to the other for any delay in performance of, or failure to perform, any obligation contained herein caused by *force majeure*, provided the party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within such party's control; and provided, further, that any action or inaction by a subcontractor of a party shall not be considered to be outside the control of such party except to the extent the Parties may expressly agree otherwise in this Contract. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been corrected.

Force majeure is defined as those causes beyond the control of the party required to perform that are generally recognized under Texas law as a *force majeure* event, such as acts of God, acts of war, epidemic and court orders. Contractor shall immediately upon discovery notify the TXDPS PM and LEA PM in writing of any delays in the implementation schedule or the delivery of deliverables without regard to responsibility, fault or negligence.

9. Severability

If one or more provisions of this Contract, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final order/judgment of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of this Contract and the application of the provision to other parties or circumstances will remain valid and in full force and effect.

10. Survival

Any provisions of this Contract that impose continuing obligations on the Parties including, but not limited to the following, will survive the expiration or termination of this Contract for any reason:

a. The indemnity obligations,
b. Contractor's news release, advertisement and publicity restrictions,
c. Ownership rights,
d. Recordkeeping requirements and audit rights,
e. Warranty,
f. Confidentiality and security obligations, including the FBI CJIS Security Addendum as it now exists and as it may thereafter be amended,
g. And any other provisions of this Contract that impose continuing obligations on either of the Parties or that govern the rights and limitations of either of the Parties after the expiration or termination of this Contract.

11. Non-Waiver of Defaults

Any failure of TXDPS, at any time, to enforce or require the strict keeping and performance of any provision of this Contract will not constitute a waiver of such provision, and will not affect or impair same or the right of TXDPS at any time to avail itself of same. A waiver does not become effective unless TXDPS expressly agrees to such waiver in writing. Any acceptance, payment or use by TXDPS regarding any deliverable provided shall not constitute a waiver or otherwise impair or prejudice any right, power, privilege or remedy available to TXDPS to enforce its rights, as such rights, powers, privileges and remedies are specifically preserved.

12. No Liability for Employees and Officers

Each party to this Contract shall have no liability whatsoever for the actions or omissions of an individual employed by another party, regardless of where the individual's actions or omissions occurred. Each party is solely responsible for the actions and/or omissions of its employees and officers; however, such responsibility is only to the extent required by Texas law. Where injury or property damage result from

the joint or concurring negligence of the Parties, liability, if any, shall be shared by each party in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the Parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defenses available by law.

13. Legislative Action

TXDPS is a state agency whose authority is subject to the actions of the Texas Legislature and the United States Congress. If TXDPS and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void or substantially amended or that would terminate the appropriations for this Contract, TXDPS may immediately terminate this Contract without penalty to, or any liability whatsoever on the part of, TXDPS, the State of Texas and the United States. This Contract does not grant Contractor a franchise or any other vested property right.

Termination under this section is immediate, so TXDPS is not required to provide thirty (30) days notice under this section.

If funding for this Contract is reduced by law or the statutory amount of compensation authorized for the Vendor is reduced, TXDPS may, upon thirty (30) days written notice to the Vendor, reduce the deliverables in such manner and for such periods of time as TXDPS may elect.

14. Termination by Default

In the event that Contractor fails to carry out or comply with any of the requirements of this Contract with TXDPS or the LEA, TXDPS may notify Contractor of such failure or default in writing and demand that the failure or default be remedied within ten (10) days. In the event that Contractor fails to remedy such failure or default within the ten (10) day period, TXDPS will have the right to cancel this contract upon ten (10) days written notice.

The cancellation of this contract, under any circumstances whatsoever, will not affect or relieve Contractor from any liability that may have been incurred pursuant to this Contract, and such cancellation by TXDPS will not limit any other right or remedy available to TXDPS at law or in equity.

15. Termination for Cause or Convenience

This Contract may be terminated as follows:

- For Convenience: This Contract may be terminated, in whole or in part without penalty, by TXDPS, without cause by giving thirty (30) days written notice of such termination to Contractor.

- For Cause: This Contract may be terminated by TXDPS if Contractor fails to

perform as agreed or is otherwise in default, without the necessity of complying with the requirements in the section herein entitled "Termination by Default."

- For Lack of Funding: This project may be partially or fully funded through a state or federal grant award. Should funds become unavailable for any reason, this contract may be terminated, in whole or in part without penalty, by TXDPS immediately. Should grant funds become unavailable for any reason, this contract may be terminated, in whole or in part by TXDPS immediately, without any obligation to use non-grant funds allocated or appropriated to TXDPS.

- Termination for listing on Federal Excluded Party List, on the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Vendor List: TXDPS shall have the absolute right to terminate this Contract without recourse as follows: a) if Contractor becomes listed on the prohibited vendors list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; or b) if Contractor becomes suspended or debarred from doing business with federal government as listed in the Excluded Parties List (EPLS) maintained by the General Services Administration; or c) if the Contractor becomes listed on the State of Texas Debarred Vendor List. TXDPS will provide Contractor with written notice to terminate the contract, which termination will become effective immediately upon Contractor's receipt of the notice.

If Contractor is terminated for cause, TXDPS reserves the right to either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed.

16. Termination Liability (for Termination for Convenience)

In no event will termination for convenience by TXDPS give rise to any liability whatsoever on the part of TXDPS whether such claims of Contractor are for compensation for anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason. TXDPS' sole obligation hereunder is to pay Contractor for deliverables ordered and received prior to the date of termination, if TXDPS accepts such deliverables.

In the event of a termination of the Contract, TXDPS has the option to deduct any pre-paid fees (for recurring deliverables not provided or not provided in compliance with the Contract) from any payments due the Contractor. TXDPS has the right to offset any pre-paid fees payable to TXDPS, as specified above, against any payments due to Contractor. If insufficient payments are available to offset such pre-paid fees, then Contractor shall pay to TXDPS any remaining pre-paid fees within fifteen (15) calendar days following receipt of written notice of the amount due.

17. No Joint Enterprise
TXDPS is associated with Contractor only for the purposes and to the extent set forth herein, and with respect to the creation and delivery of deliverables hereunder, Contractor is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for TXDPS whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party.

18. Assignment by the Contractor
Contractor must not assign or transfer any interest in this Contract without the express, prior written consent of TXDPS.

19. Successors
This Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives and permitted assigns.

20. News Releases, Advertisements and Publicity
Contractor must not make any news releases, public announcements, or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the express, prior written approval of TXDPS, and then only in accordance with explicit written instructions from TXDPS.

Contractor must not use the name of the State of Texas or TXDPS in any advertisement, promotion or otherwise for any purpose regarding this Contract without the express prior written consent of TXDPS. TXDPS is not authorized to provide endorsements.

Notwithstanding the foregoing Contractor may make any disclosure required by law or regulation without the approval of TXDPS.

21. Employee Non-Solicitation
Contractor must not, during the term of this Contract and for a period of twelve (12) months thereafter, solicit for employment any person who is a TXDPS employee or was a TXDPS employee during the previous twelve (12) months with whom Contractor had substantial contact in the course of performing its obligations under this Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this section.

22. Contract Amendments
No modification or amendment to this Contract will become valid unless in writing and signed by both Parties. All correspondence regarding modifications or amendments to this Contract must be forwarded to TXDPS for prior review and approval. Only the

Executive Director of TXDPS or his/her designee will be authorized to sign changes or amendments.

23. Confidentiality and Security Requirements

23.1 General Confidentiality Requirements

All information provided by TXDPS to Contractor or created by Contractor in performing the obligations under this Contract is confidential and shall not be used by Contractor or disclosed to any person or entity, unless such use or disclosure is required for Contractor to perform work under this Contract.

The obligations of this section do not apply to information that Contractor can demonstrate: (i) is publicly available; (ii) Contractor received from a third party without restriction on disclosure and without breach of contract or other wrongful act; (iii) Contractor independently developed without regard to the TXDPS confidential information; or (iv) is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority, provided that Contractor must furnish prompt written notice of such required disclosure and shall reasonably cooperate with TXDPS at TXDPS' cost and expense, in any effort made by TXDPS to seek a protection order or other appropriate protection of its confidential information.

Contractor shall notify TXDPS of any unauthorized release of confidential information within two (2) days of when Contractor knows or should have known of such unauthorized release.

Contractor agrees to maintain all confidential information in confidence during the term of this Contract and after the expiration or earlier termination of this Contract.

If Contractor has any questions or doubts as to whether particular material or information is confidential information, Contractor shall obtain the prior written approval of TXDPS prior to using, disclosing or releasing such information.

Contractor acknowledges that TXDPS' confidential information is unique and valuable, and that TXDPS may have no adequate remedy at law if Contractor does not comply with its confidentiality obligations under this Contract. Therefore, TXDPS shall have the right, in addition to any other rights it may have, to seek in any Travis County court of competent jurisdiction temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of Contractor if Contractor fails to perform any of its confidentiality obligations under this Contract.

Contractor shall immediately return to TXDPS all confidential information when this Contract terminates, at such earlier time as when the confidential information is no longer required for the performance of this Contract or when TXDPS requests that such confidential information be returned.

Information, documentation and other material in connection with this Contract, including Contractor's Offer, may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code.

The FBI and TXDPS have computer security requirements. Contractor's and subcontractor's employees working on this project must sign appropriate agreements and abide by these security requirements, upon TXDPS' request.

23.2 Sensitive Personal Information

To the extent this subsection does not conflict with the subsection herein entitled "General Confidentiality Requirements," Contractor must comply with both subsections. To the extent this subsection conflicts with the subsection herein entitled "General Confidentiality Requirements," this subsection entitled "Sensitive Personal Information" controls.

"Sensitive personal information" is defined as follows:

(1) An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
   a. Social security number;
   b. Driver's license number or government-issued identification number; or
   c. Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or

(2) Information that identifies an individual and relates to:
   a. The physical or mental health or condition of the individual;
   b. The provision of health care to the individual; or
   c. Payment for the provision of health care to the individual.

Sensitive personal information does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

"Breach of system security" is defined as follows": Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information Contractor maintains under this contract, including data that is encrypted if the Contractor's employee or agent accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the Contractor for the purposes of performing under this Contract is not a breach of system security unless the employee or agent of the Contractor uses or discloses the sensitive personal information in an unauthorized manner.

Contractor shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect and safeguard from unlawful use or disclosure

any sensitive personal information collected or maintained by Contractor under this contract.

Contractor shall notify TXDPS and the affected people of any breach of system security immediately after discovering the breach or receiving notification of the breach, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. However, Contractor must delay providing notice to the affected people at TXDPS' request if TXDPS determines that the notification will impede a criminal investigation. The notification to the affected people shall be made as soon as TXDPS determines that it will not compromise any criminal investigation.

Contractor must give notice as follows, at Contractor's expense:

(1) Written notice;

(2) Electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001;

(3) Notice as follows:

a. If Contractor demonstrates that the cost of providing notice would exceed $250,000, the number of affected people exceeds 500,000, or the Contractor does not have sufficient contact information for the affected people, Contractor may give notice as follows:

i. Electronic mail, if the Contractor has an electronic mail address for the affected people;

ii. Conspicuous posting of the notice on the Contractor's website;

iii. Notice published in or broadcast on major statewide media; or

b. If Contractor maintains its own notification procedures (as part of an information security policy for the treatment of sensitive personal information) that comply with the timing requirements for notice under this subsection entitled "Sensitive Personal Information," Contractor may provide notice in accordance with that policy.

If this subsection requires Contractor to notify at one time more than 10,000 people of a breach of system security, the Contractor shall also notify, without unreasonable delay, all each consumer reporting agency, as defined by 15 U.S.C. Section 1681a, that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices.

23.3 Breach of System Security Audit

TXDPS will retain sole discretion for determining whether the sensitive personal information was reasonably believed to have been acquired by an unauthorized person.

23.4 Vendor Consequences for Breach of System Security

In the event of a breach of system security, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person, TXDPS is authorized to assess liquidated damages in the amount of $1,024 per day for up to sixty (60) days against Contractor. This amount is a reasonable estimate of the damages TXDPS will suffer as a result of such breach and is enforceable. Contractor shall not be

responsible and liquidated damages may not be assessed due to a breach of system security caused entirely by someone other than Contractor, Contractor's subcontractor, or Contractor's agent. Any liquidated damages assessed under this contract may, at TXDPS' option, be deducted from any payments due the Contractor. TXDPS has the right to offset any liquidated damages payable to TXDPS, as specified above, against any payments due to Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor shall pay to TXDPS any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

23.5 Termination of Contract for Breach of System Security

The contract may be terminated by TXDPS if Vendor fails to perform as agreed or is otherwise in default if it was determined the **Vendor** was responsible for a breach of system security and failed to comply with Section 23.1 and 23.2.

23.6 Contract Performance Reporting

TXDPS submits Vendor Performance Forms (VPF) for any purchase over $25,000. If it was determined the Vendor was responsible for the breach of system security, the VPF for this contract may be submitted with an unsatisfactory performance evaluation.

24. Right to Audit and Inspect

24.1 Inspect Services and All Other Deliverables

TXDPS has the right to inspect and test all services and all other deliverables listed in this Contract, to the extent practicable at all times and places during the term of this Contract. TXDPS shall perform inspections and tests in a manner that will not unduly delay the work.

If TXDPS performs inspections or tests on the premises of Contractor or a subcontractor, Contractor shall furnish, and shall require subcontractor(s) to furnish, at no increase to this Contract's price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

If any of the deliverables do not conform to this Contract's requirements, TXDPS may require Contractor to provide the deliverables again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to all other legal and equitable remedies.

24.2 Audit

TXDPS reserves the right to audit Contractor's records and documents regarding compliance with this Contract. Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the Parties have complied with the applicable laws. The Contractor understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The

Contractor will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with State Auditor's Office is included in any subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this contract.

Except as stated otherwise in the section herein entitled "Confidentiality and Security Requirements" or in the CJIS Documents, Contractor must keep all records and documents regarding this Contract for the term of this contract and for four (4) years after the termination of this Contract.

In the event such an audit by TXDPS reveals any errors by TXDPS or the Contractor, the Contractor shall refund TXDPS the full amount of such overpayments within thirty (30) days of such audit findings, or TXDPS at its option reserves the right to deduct such amounts owing TXDPS from any payments due Contractor.

25. Ownership of Hardware, Data and Images

Any hardware delivered by Contractor in the performance of its obligations (if applicable) under this Contract shall be the exclusive property of the Contractor.

TXDPS, Customer or the contributing LEA of the records owns all data and images that are recorded, transmitted, housed or stored through the RRMS. All data and images recorded, transmitted housed or stored (including any converted historical data) by or through the RRMS **MUST** be returned electronically in a format acceptable to the Customer or contributing LEA should the contract expire, be terminated, cancelled, or not renewed for any reason.

26. Time is of the Essence

Time is of the essence for delivering the deliverables as set forth in this Contract.

27. Chapter 2260, Texas Government Code

To the extent Chapter 2260 of the Texas Government Code applies to the contract claim at issue, Contractor must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and the applicable TXDPS administrative rules to attempt to resolve all contract claims arising under this Contract.

28. Antitrust

Contractor hereby assigns to TXDPS any and all claims for overcharges associated with this Contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, *et seq.* (1973), and the antitrust laws of the State of Texas, Texas Business and Commerce Code Section 15.01, *et seq.* (1967).

29. Indemnity

CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD TXDPS AND THE STATE OF TEXAS (INCLUDING ITS DIRECTORS, EMPLOYEES, AGENTS AND THEIR

SUCCESSORS) HARMLESS FROM AND AGAINST ANY OF THE FOLLOWING THAT ARISE OUT OF OR RESULT FROM CONTRACTOR'S NEGLIGENCE (ANY AND ALL), FAULT, ACT, FAILURE TO ACT, OMISSION, BREACH OF THIS CONTRACT OR VIOLATION OF ANY STATE OR FEDERAL LAW AND/OR REGULATION, AS WELL AS ANY VIOLATION OF ANY MATTER MADE THE BASIS OF A TREATY AND/OR CONVENTION AND/OR AGREEMENT BETWEEN THE UNITED STATES AND ANOTHER NATION: CLAIMS; LAWSUITS; DAMAGES; LIABILITIES; PENALTIES; TAXES; FINES; INTEREST; EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, INVESTIGATION COSTS AND ALL DIRECT OR INDIRECT COSTS OR EXPENSES INCURRED IN DEFENDING AGAINST ANY CLAIM, LAWSUIT OR OTHER PROCEEDING, INCLUDING THOSE EXPENSES INCURRED IN ANY NEGOTIATION, SETTLEMENT OR ALTERNATIVE DISPUTE RESOLUTION); ANY AND ALL DAMAGES, HOWEVER CHARACTERIZED, SUCH AS DIRECT, GENERAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS, LOSS OF BUSINESS, LOSS OF USE OR LOSS OF DATA) ARISING OUT OF OR IN CONNECTION WITH OR RELATED TO THIS CONTRACT OR THE RIGHTS PROVIDED THEREIN.

IN ANY AND ALL CLAIMS AGAINST TXDPS AND THE STATE OF TEXAS (INCLUDING ITS DIRECTORS, EMPLOYEES, AGENTS AND THEIR SUCCESSORS), BY ANY EMPLOYEE OF THE CONTRACTOR OR ANY EMPLOYEE OF ITS SUBCONTRACTOR(S), THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT WILL NOT BE LIMITED IN ANY WAY BY THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY OF ITS SUBCONTRACTOR(S) UNDER WORKER'S DISABILITY COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

CONTRACTOR'S OBLIGATIONS IN THIS SECTION INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS, LAWSUITS, DAMAGES, ETC. BASED ON A CLAIM THAT ANY PIECE OF EQUIPMENT, GOODS, SOFTWARE, DOCUMENTATION, SERVICES OR OTHER DELIVERABLES SUPPLIED BY CONTRACTOR OR ITS SUBCONTRACTORS, OR THE USE, DISPLAY, OPERATION OR REPRODUCTION THEREOF, INFRINGES ANY UNITED STATES OR FOREIGN PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL OR PROPRIETARY RIGHT OF ANY PERSON OR ENTITY. SHOULD THE PIECE OF EQUIPMENT, GOODS, SOFTWARE, ETC. BECOME, OR IN THE CONTRACTOR'S OPINION BE LIKELY TO BECOME, THE SUBJECT OF A CLAIM OF INFRINGEMENT, THE CONTRACTOR, AT ITS OWN EXPENSE, MUST: 1) PROCURE FOR TXDPS THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, GOODS, ETC.; OR 2) IF SUCH OPTION IS NOT REASONABLY AVAILABLE TO CONTRACTOR, CONTRACTOR MUST REPLACE OR MODIFY THE SAME WITH EQUIPMENT, SOFTWARE, GOODS, ETC. OF EQUIVALENT FUNCTION AND PERFORMANCE SO THAT IT BECOMES NON-INFRINGING.

THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS CONTRACT.

30. Buy Texas Clause
Pursuant to Section 2155.4441 of the Texas Government Code, Contractor shall buy Texas products and materials for use in creating and delivering the services authorized in this Contract when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

31. Family Law Code
Under Section 231.006, Family Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

32. Commencement of Work
Any work performed before final execution of this Contract must be at Contractor's risk and will not be reimbursed.

33. Rolling Estoppel
TXDPS will be conclusively deemed to have fulfilled its obligations under this Contract, unless TXDPS receives a deficiency report from Contractor within five (5) business days of the occurrence of the alleged deficiencies and Contractor identifies specific deficiencies in TXDPS' fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have impacted the specific performance requirement of Contractor. Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract or the project cost, if Contractor knew of that problem and failed to include it in the applicable report. The deficiency report must be sent to the TXDPS Project Manager ("TXDPS PM").

In the event Contractor identifies a situation wherein TXDPS is impairing Contractor's ability to perform for any reason, Contractor's deficiency report must contain Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the TXDPS PM can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

34. Substitutions
Substitutions are not permitted without the written approval of *TXDPS or LEA*.

35. Vendor Background Checks
Contractor must have its project personnel submit to a TXDPS fingerprint-based criminal history background investigation, if required by TXDPS. To facilitate this criminal history background investigation, each person must be required to complete a Vendor Background Information form, which will be provided by TXDPS. Contractor is

responsible for any costs associated with obtaining any fingerprints for the criminal history background investigation.

If TXDPS requires a fingerprint-based criminal history background investigation, Contractor must not allow personnel to work on the project that have not submitted to and successfully completed a TXDPS fingerprint-based criminal history background investigation.

36. Subcontractors

Contractor must assume full responsibility for all deliverables under the Contract. TXDPS will consider Contractor to be the sole point of Contact with regard to contractual matters, including payment of any and all charges under the contract. If any part of the deliverables are planned to be subcontracted, Contractor must include a list of subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.

Contractor must not delegate any duties under the Contract to a subcontractor unless TXDPS has given written consent to the delegation. TXDPS will have the right to approve all subcontractors and to require Contractor to replace any subcontractor found, in the opinion of TXDPS, either initially or based on performance, to be unacceptable. TXDPS reserves the right to receive copies of and review all subcontracts. The management of any subcontractor will be the sole responsibility of Contractor, and failure by a subcontractor to perform will be deemed to be failure of Contractor. Contractor must make all payments to subcontractors and suppliers. TXDPS will not release Contractor from having to perform any obligations under the Contract, notwithstanding the fact that a subcontractor may have been engaged by Contractor to perform those obligations.

All subcontracts shall include all applicable provisions contained in this Contract and any provisions required by law.

37. Sales and Use Tax

TXDPS, as an agency of the State of Texas, qualifies for exemption from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. Contractor may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the Texas Comptroller of Public Accounts.

38. Notices

Any notice required or permitted under this Contract shall be directed to the respective Parties at the addresses shown below and shall be deemed received: (1) when delivered in hand and a receipt granted; (2) three days after it is deposited in the United States mail by certified mail, return receipt requested; or (3) when received if sent by confirmed facsimile:

If to TXDPS:
Texas Department of Public Safety
5805 North Lamar Blvd.
Austin, Texas 78752
ATTN: Desiree Taylor
Facsimile: (512) 424-5911

With a copy to:
Texas Department of Public Safety
5805 North Lamar Blvd., MSC 0130
Austin, Texas 78752
ATTN: Chief of Finance, Cheryl MacBride
Facsimile: (512) 424-2816

If to Contractor:

Southern Software, Inc.
150 Perry Drive
Southern Pines, NC 28387
Facsimile: (910) 695-0251

Either of the Parties may change its address or designated individual(s) to receive notices by giving the other party written notice as provided above, specifying the new address and/or individual and the date upon which it shall become effective.

39. Complaints and Contract Claims
In addition to other remedies contained in this Contract, Contractor may direct their written complaints, as well as any contract claims, to the following office:

Texas Department of Public Safety
ATTN: Chief of Finance
5805 North Lamar Blvd., MSC 0130
Austin, Texas 78752
Telephone: (512) 424-2062
Fax: (512) 424-5950
E-mail: cheryl.macbride@txdps.state.tx.us

40. Standards for Information Technology
Contractor must consider and accommodate statewide standards for information technology. These statewide standards are located at http://www.dir.state.tx.us/standards.

41. Personnel
Contractor warrants that all persons assigned to the project are employees or subcontractors of Contractor, and are fully qualified to perform the work required herein.

Replacement of personnel, if approved by TXDPS, must be with personnel of equal or greater ability and qualifications. TXDPS will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.

Contractor must assign all personnel identified in its Offer to complete all of their planned and assigned responsibilities in connection with performance of the obligations of Contractor under this Contract. TXDPS will have the right to approve the assignment and replacement by Contractor of all personnel assigned to provide deliverables or to provide on-site representation of Contractor.

Before assigning a replacement individual for any of the personnel commitments identified in Contractor's Offer, Contractor must notify TXDPS of the proposed assignment, must introduce the individual to the appropriate representatives of TXDPS, must provide a transfer of knowledge validation and must provide to TXDPS a resume and any other information about the individual reasonably requested by TXDPS. TXDPS reserves the right to interview the individual before granting approval.

42. Replacement of Personnel at TXDPS' Request

TXDPS reserves the right to require Contractor to replace Contractor personnel whom TXDPS judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of TXDPS or the State of Texas. Before a written request is issued, authorized representatives of TXDPS and Contractor will discuss the circumstances. Upon receipt of a written request from an authorized representative of TXDPS, Contractor must be required to proceed with the replacement. The replacement request must include the desired replacement date and the reason for the request. Contractor must use its best efforts to effect the replacement in a manner that does not degrade deliverable quality. Contractor must also provide TXDPS with evidence of a sufficient transfer of knowledge to the proposed replacement.

This provision will not be deemed to give TXDPS the right to require Contractor to terminate any Contractor employee's employment. Rather, this provision is intended to give TXDPS only the right to require that Contractor discontinue using an employee in the performance of deliverables for TXDPS.

43. Unauthorized Removal of Personnel

It is critical to the overall success of the project that Contractor not remove or reassign, without TXDPS' prior written approval (which approval will not be unreasonably withheld), any of the assigned personnel until such time as the personnel have completed all of their planned and assigned responsibilities in connection with performance of Contractor's obligations under the Contract. Without prior written approval from TXDPS, personnel will only be changed in the event of death, personal injury or debilitating illness or termination of employment with Contractor. The unauthorized removal of personnel by Contractor will be considered by TXDPS as a material breach of the Contract and grounds for termination.

44. DRUG-FREE WORK PLACE

The Contractor covenants and agrees that it will comply with the provisions of the Drug Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug free work; and the final rule government wide requirements for Drug-Free Workplace (Grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR PART 280, Subpart F) to implement the provisions of the Drug Free workplace Act of 1988 is incorporated by reference and the Contractor covenants and agrees to comply with the provisions thereof, including any admendments to the final rule that may hereafter be issued.

45. Public Safety Commission Approval

The following TXDPS contracts and commitments must be submitted to the Texas Public Safety Commission or the Commission's designee ("Commission") for review prior to execution, pursuant to Sections 411.003 and 411.004 of the Texas Government Code:

1) Any contract or commitment in the amount of $1,000,000 or more;
2) Any change order, individually or in combination with other change orders, that increases the original contract or commitment by fifty percent or more, as long as the dollar amount of the change order(s) is $100,00 or more; or
3) Any change order, individually or in combination with other change orders, that increases the original contract or commitment by $500,000 or more.

46. Interpretation Against the Drafter

Regardless of which party drafted the Contract or the language at issue, any ambiguities in the Contract or the language at issue will not be interpreted against the drafting party.

47. Non-incorporation Clause

This contract embodies the entire agreement between the Parties regarding the project described in this Contract, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties or restrictions between the Parties regarding the project described in this Contract other than those specifically set forth herein.

48. Multiple Contracts

This Contract may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. In making proof of this Contract, it shall not be necessary to produce or account for more than one such counterpart.

49. Headings

The headings, captions and arrangements used in this Contract are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor to affect the meaning thereof.

50. Licenses and Permits

This section entitled "Licenses and Permits" only applies to intellectual property which is not developed under this Contract and to which TXDPS does not already have a right to use, display and reproduce.

Contractor is not authorized to include such intellectual property in any deliverables, unless Contractor receives the written authorization from TXDPS project manager to do so.

50.1 Third Party Intellectual Property

Vendor shall pay all license fees and/or royalties and assume all costs incident to the use or possession in the performance of the deliverables or the incorporation into the deliverables of any third party intellectual property.

If Vendor incorporates any proprietary third party intellectual property into the deliverables, Vendor shall obtain and furnish with such intellectual property the following: (i) documentation on the use of such intellectual property, (ii) a perpetual, irrevocable license (which may be nontransferable, nonexclusive, or both) to reproduce, publish, display and otherwise use, or modify such intellectual property and associated user documentation, and (iii) a perpetual, irrevocable license (which may be nontransferable, nonexclusive, or both) to authorize others to reproduce, publish, display and otherwise use, or modify such intellectual property for TXDPS purposes. Vendor will facilitate the transfer of third party licenses to TXDPS upon terms and conditions acceptable to TXDPS. For those third party products that require license renewal, TXDPS has the option to arrange licensing directly from the suppliers.

50.2 Vendor's Intellectual Property

This Contract shall supersede all terms of any "shrink-wrap" or "click wrap" license included in any package, media or electronic version of the intellectual property and any such intellectual property shall be licensed or provided under the terms of this Contract.

In consideration of payment in full of the applicable purchase price for the applicable deliverable, Vendor hereby grants to TXDPS a perpetual, irrevocable, paid-up, nonexclusive and enterprise-wide license to allow TXDPS and the TXDPS designees to use, and display, the intellectual property. Vendor reserves all rights to the intellectual property that have not been expressly granted to TXDPS.

51. Warranties

51.1 Third Party Warranties

If, under this Contract, the Contractor procures any materials or products for TXDPS, the Contractor must assign or otherwise transfer to TXDPS, or afford TXDPS the benefits of, any manufacturer's warranty for such materials or products.

51.2 Contractor Warranties

Contractor warrants that all deliverables will be free from defect in materials and workmanship, and that all deliverables will comply with the TXDPS specifications, for a period of one (1) year. The warranty period will begin upon acceptance by TXDPS of each deliverable provided in accordance with the provisions of this Contract. If software is included as a deliverable under this Contract, all software releases and upgrades released during the warranty period must be provided to TXDPS at no cost.

The Contractor/subcontractor(s) make the following representations and warranties, including without limitation, the following:

The Contractor/subcontractor(s) must create and deliver all deliverables in accordance with the highest professional standards in the industry.

The Contractor/subcontractor(s) must use adequate numbers of qualified individuals with suitable training, education, experience, and skill to create and deliver the deliverables.

The Contractor/subcontractor(s) must maintain all equipment and software for which it has maintenance responsibilities in good operating condition and must undertake all repairs and preventive maintenance in accordance with the manufacturers' recommendations.

The Contractor/subcontractor(s) must use its best efforts to use efficiently all resources or services necessary to provide the deliverables that are required under this Contract.

The Contractor/subcontractor(s) must use its best efforts to create and deliver the deliverables in the most cost-effective manner consistent with the required level of quality and performance.

The Contractor/subcontractor(s) must create and deliver the deliverables in a manner that does not infringe the proprietary rights of any third party.

The Contractor/subcontractor(s) must create and deliver the deliverables in a manner that complies with all applicable laws and regulations.

The Contractor has duly authorized the execution, delivery, and performance of this contract.

The Contractor/subcontractor(s) has not provided any gifts, payments, or other inducements to any officer, employee or agent of TXDPS.

The Contractor/subcontractor(s) must use its best efforts to ensure that no viruses or similar items are coded or introduced into any systems used to create or to deliver the deliverables.

The Contractor/subcontractor(s) must not insert or activate any disabling code into any systems used to create or to deliver the deliverables without TXDPS express prior written approval.

The Contractor/subcontractor(s) will not infringe any intellectual property right of any third party. In the course of performing work under this Contract, Contractor/subcontractor(s) will not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

The Contractor/subcontractor(s) will not use or incorporate any open source software into any of the deliverables under this Contract without the written approval from the TXDPS PM.

52. Liquidated Damages

TXDPS reserves the right to assess liquidated damages at an amount equal to $400.50 per-day for each calendar day beyond the expected date of Final Operating Capability for each deliverable. The Parties acknowledge that the harm that will be caused to TXDPS by such a delay is difficult to estimate; however, the amount of liquidated damages listed herein is a reasonable estimate and is enforceable. Contractor shall not be responsible and liquidated damages may not be assessed due to any delay caused by schedule amendments requested by TXDPS, delays as the result of activity that is the responsibility of the TXDPS project team as long as Contractor timely files its deficiency report as required by the Section herein entitled "Rolling Estoppel" or delays that TXDPS deems were outside the control of the Contractor. Assessments incurred under this provision may, at TXDPS' option, be deducted from any payment due the Contractor. The burden of proof that the delay is attributable to TXDPS rests with Contractor. TXDPS has the right to offset any liquidated damages payable to TXDPS, as specified above, against any payments due to Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor shall pay to TXDPS any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

III. ACCEPTANCE OF DELIVERABLES AND PROJECT UPDATES

1 Schedule

Contractor must provide the TXDPS PM or LEA PM with a deliverable schedule that includes date expectations for completion of each deliverable provided, along with the itemized cost for each deliverable. Schedule must include any TXDPS or LEA responsibilities or expectations that could adversely affect the completion of any deliverable. TXDPS PM or LEA PM must approve the schedule prior to Contractor beginning any billable work. Work performed before approval of the schedule will be at vendor's risk and will not be reimbursed.

2 Inspections and Tests

All aspects of this Contract will be subject to inspection and test by TXDPS or LEA. Tests will be performed on each documented deliverable if applicable and will require joint signoff by Vendor and TXDPS or LEA personnel. The testing will verify successful implementation of each deliverable. The test schedule and test plan will be developed jointly by the TXDPS or LEA and the Contractor.

All costs shall be borne by the Contractor in the event any deliverable tested fails to meet or exceed all conditions and requirements of the specifications. Latent defects may result in revocation of acceptance. A written acceptance form that describes the deliverable, the previously agreed-to acceptance criteria, with space for sign-off by both the TXDPS PM or LEA PM and Contractor will be provided.

If a deliverable provided is rejected, the reasons for rejection must be documented. TXDPS or LEA may only be able to tell the Contractor that the deliverable provided does not work. TXDPS or LEA is relying on the expertise of the Contractor to develop a

compliant deliverable and to fix noncompliant deliverables. The lack of a signature on the acceptance form does not constitute rejection and cannot be used by the Contractor as a default acceptance. The TXDPS PM or LEA PM will maintain all signed acceptance forms.

3 Project Status Updates

TXDPS or LEA will require the Contractor provide, on a weekly basis or other mutually agreed upon schedule, a project status update. It will be at the sole discretion of TXDPS or LEA to approve the method of weekly status updates. The Contractor must keep TXDPS or LEA advised at all times of the status of the project. All delays whether foreseen or unforeseen in delivery or implementation must be provided to the TXDPS PM or LEA PM in writing within five (5) business days of determination of delay. Contractor must include the following in its delay documentation: a) a date, b) the reason for delay, c) the Party who is at fault regarding the delay and d) a reasonable expectation for resolution. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes TXDPS or LEA to purchase deliverables elsewhere and charge full increase in costs, if any, to the Contractor, in addition to any other legal or equitable remedy.

4 Final Operating Capability

Final Operating Capability (FOC) is defined as the successful completion and final acceptance by TXDPS or LEA of any deliverable. TXDPS or LEA expects that every deliverable will meet expectations outlined in the RFO and the agreed upon SOWs for this RFO. After each deliverable provided complies with the requirements of Final Operating Capability, the Contractor may submit an invoice for such. Vendor will be responsible for providing TXDPS PM with a Project Completion Acceptance Form for acceptance by signature. RRMS product must attain FOC in one hundred and eighty (180) days or less from the date the PO is received.

5 Product Upgrades

Product upgrades or new version releases for RMS Software and services, JMS Software and services or CAD Software and services must be installed or placed into service at a time agreeable to both TXDPS (and/or the LEA) and the Contractor including any necessary training, documentation or manual updates; however, the installation, implementation, training and document updates must occur no later than 60 calendar days immediately following the first day the software or service is available for purchase. Product upgrades and new version releases are required to maintain prior software(s) or service(s) interface functionality including but not limited to: data extraction, data export, data import.

IV. SERVICE LEVELS FOR WARRANTY

Warranty work shall be performed solely by Contractor. Due to the nature of the system, all hardware (as applicable to this contract), hardware installations (as applicable to this contract), software, software enhancements and programming services warranty work must follow requirements provided in the RFO. Vendor must resolve System down time within two (2) hours of first report for those issues deemed

critical in nature within its control. Contractor must provide 24/7 toll-free help desk for reporting issues. Contractor must resolve all other issues within twenty-four (24) hours of report for issues not deemed critical in nature by the TXDPS PM or the LEA PM.

IN WITNESS WHEREOF, the Parties to this Contract have signed and delivered this Contract.

Southern Software, Inc.:
(Company name)

By: Jennifer J Meggs

Date: 2/22/11

Texas Department of Public Safety:

By: Stan Cmelu

Date: 3/4/11

ATTACHMENT A

TXDPS RRMS SERVICE LEVEL AGREEMENT
USER SUPPORT

REMOTE CRIMINAL RECORDS SYSTEM MANAGEMENT (RRMS) SERVICE LEVEL AGREEMENT

The purpose of this Service Level Agreement (SLA) is to ensure that the proper elements are in place to provide RRMS stakeholders with optimal level of system performance. This SLA defines the terms, conditions, requirements, responsibilities and obligations of the Texas Department of Public Safety (TXDPS), local law enforcement agencies and users as well as the Vendor.

This SLA has been made by and between Southern Software, Inc. (hereinafter referred to as "Vendor") with a place of business at 150 Perry Drive, Southern Pines, North Carolina 28387 and the Texas Department of Public Safety with a place of business at 5805 Lamar, Austin, TX 78752 hereinafter referred to as "TXDPS").

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof is used in any part of this SLA, it shall have the meaning herein set forth.

APPLICATION SOFTWARE
A computer program which is intended to be executed on the RRMS purchased from the VENDOR.

COMMUNICATION
The process employed for information transmission or telecommunication including such elements as routers, switches, internet service providers (ISP), protocols, virtual private network (VPN), etc. used in the .

CONTRACT
Set of documents as defined in the RRMS CONTRACT Section II(1) TERMS AND CONDITIONS.

CUSTOMER
Authorized local and state law enforcement agencies are the primary RRMS CUSTOMERS.

DOCUMENTATION
All material to be delivered by the VENDOR either in hard copy format or made available through the RRMS. This includes but is not limited to DOCUMENTATION listed in the RRMS RFO Section 8.9.2 DOCUMENTATION.

DOWNTIME
The period of time when the RRMS is NOT available (including outages, unscheduled events for remedial maintenance, Failures, etc) to the CUSTOMERS or USERS.

FAILURE

Undesirable SYSTEM PERFORMANCE resulting in DOWNTIME.

FAILURE RATE
The frequency of time when the RRMS is NOT available to the CUSTOMERS or USERS

HARDWARE
The physical components used in the SYSTEM PERFORMANCE of the RRMS.

HOSTING SERVICES
Computer-based services utilized in making available the RRMS to authorized CUSTOMERS and USERS.

INDEX SEARCH
A search initiated by the RRMS USER using unique fields such as SSN, DL, SID, TYC, FBI, TDCJ, Case no., etc.

INTERNET SERVICE PROVIDER (ISP)
The CUSTOMER'S or USER'S company which provides access to the Internet (also known as Internet Access Providers).

OPERATIONAL USE TIME
The time during which the RRMS is in actual operation and serving the intended CUSTOMERS and USERS at optimal level of performance.

POWER UPTIME
Period of time when the RRMS is available to CUSTOMERS and USERS for any purposes excluding training and testing.

PREVENTIVE MAINTENANCE
Any task not considered remedial and is routinely performed as part of a regularly scheduled program of Maintenance, designed to keep the RRMS in proper operating condition. The primary goal of maintenance is to avoid or mitigate the consequences of failure of the RRMS.

PRINCIPAL PERIOD OF MAINTENANCE
The PRINCIPAL PERIOD OF MAINTENANCE COVERAGE is Monday through Friday during the hours of 8:00 a.m. to 5:00 p.m. excluding state or federal holidays.

RECORDS
All data, images, or information owned and contributed by the CUSTOMER and stored by the RRMS.

REMEDIAL MAINTENANCE
Maintenance performed by the VENDOR which results from RRMS FAILURE and which is performed on an unscheduled basis.

RESPONSE TIME
The quantity of time in which the RRMS takes to react and return a response to a USER'S ISP. RESPONSE TIME is the interval between the instant at which the USER at a workstation enters a request for a response and the instant at which the first character of the response is received by the CUSTOMER/USER'S ISP. RESPONSE TIME is must be real time or near real time.

RRMS
The entire collection of real or abstract information technology which execute the SYSTEM PERFORMANCE requirements of this CONTRACT ***excluding*** CUSTOMER'S or USER'S HARDWARE, SOFTWARE, or access methodology.

SOFTWARE
The computer programs or collection of computer programs, middleware, applications, procedures, environments, Operating Systems, utilities, platforms, tools, drivers, interfaces, web services, graphical user interface (GUI), etc. used in the SYSTEM PERFORMANCE of the RRMS.

SOFTWARE ENGINEER
VENDOR personnel with in-depth expertise who provide technical support in each area of SOFTWARE functionality, including the Operating System, and all application SOFTWARE.

SOFTWARE VERSION RELEASES
Modifications to the SOFTWARE which resulted from extensive changes, substantial revision or version upgrade; thoroughly tested, debugged and ready for production or live release.

SPECIAL MAINTENANCE
Services performed by the VENDOR outside the scope of specified PREVENTIVE MAINTENANCE, REMEDIAL MAINTENANCE, OR SOFTWARE Support services.

SYSTEM PERFORMANCE
The process of effectively fulfilling the intended purpose or tasks.

USER
CUSTOMER'S authorized staff that access or use the RRMS.

VENDOR
TXDPS RRMS Certified Provider

2. Maintenance

Maintenance regarding CUSTOMER'S or USER'S HARDWARE, CUSTOMER'S or USER'S SOFTWARE, CUSTOMER'S or USER'S Network or CUSTOMER'S or USER'S access methodology is the responsibility of the CUSTOMER and is outside the

scope of this Contract. VENDOR must provide notice to CUSTOMER'S and USER'S at a minimum of three (3) business days prior to scheduled maintenance including length of anticipated DOWNTIME plus the description or purpose of scheduled maintenance. VENDOR must provide notice to CUSTOMERS and USERS prior to un-scheduled Maintenance where possible including length of anticipated DOWNTIME plus the description or purpose of un-scheduled maintenance.

2.1 Preventive Maintenance

VENDOR agrees to provide preventive maintenance services in order to maintain the RRMS in good condition and working order on a mutually agreeable scheduled basis. The preventive maintenance schedule is to be based on VENDOR'S and CUSTOMER'S mutual agreement of the particular service required for each system component, it being understood that this schedule shall be oriented around periods when the system is expected to have the lightest use and outside of the PRINCIPAL PERIOD OF MAINTENANCE.

2.2 Remedial Maintenance

VENDOR agrees to provide REMEDIAL MAINTENANCE to the RRMS on a twenty-four (24) hour per day, seven (7) day per week basis, with a response time of no more than two (2) hours each issue deemed critical in nature.

2.2.1. During the term of this AGREEMENT, CUSTOMER may, by providing thirty (30) days prior written notice, select any alternative period of maintenance coverage as a modification to this AGREEMENT whether or not such alternative represents an increase or decrease in service.

2.3. Special Maintenance Services

The following maintenance services are outside the scope of PREVENTIVE MAINTENANCE and REMEDIAL MAINTENANCE as described above and shall be considered SPECIAL MAINTENANCE service items:

- Repair of defects in the system resulting from causes beyond the control of CUSTOMER and/or VENDOR, such as acts of God;

- Repair of defects in the HARDWARE, SOFTWARE, Network, or any other component of the RRMS.

VENDOR agrees to perform SPECIAL MAINTENANCE during periods when the system is expected to have the lightest use and outside of the PRINCIPAL PERIOD OF MAINTENANCE whenever possible.

3. RRMS Production Control

VENDOR must schedule production management such as batch processing, job scheduling, automated import/exports, etc at a minimum of once every twenty-four (24) hours, seven (7) days per week and three hundred sixty-five (365) days per year. The production control schedule must be mutually agreed upon by both the VENDOR and

CUSTOMER and must be oriented around periods when the system is expected to have the lightest use.

4. RRMS Hardware

Title to all RRMS HARDWARE and parts provided by the VENDOR shall remain with the VENDOR. Parts replaced and removed from the RRMS HARDWARE provided by the VENDOR are the property of VENDOR. All CUSTOMER data and/or images resident on replaced HARDWARE or parts MUST be permanently erased, removed, reformatted or deleted from all HARDWARE or parts removed by the VENDOR.

5. RRMS Support

VENDOR shall support all RRMS SOFTWARE licensed to CUSTOMERS for use during the term of the RRMS CONTRACT. VENDOR agrees to provide CUSTOMER support for the RRMS twenty-four (24) hours, seven (7) days per week and three hundred sixty-five (365) days per year Monday through Friday 7:00 a.m. (C.D.T/C.S.T) to 6:00 p.m. (C.D.T/C.S.T) excluding state or federal holidays, through a VENDOR provided toll-free telephone, facsimile, or e-mail. . VENDOR must identify a problem escalation plan which must be included in the DOCUMENTATION.

VENDOR must staff the CUSTOMER Support telephone center with adequate number of personnel to meet the service level goal of answering 90% of the calls within three (3) minutes. VENDOR agrees to maintain sufficient representatives on their CUSTOMER service call center staff who are fluent in Spanish.

RRMS Support consists of identifying, verifying, reporting, and resolving problems associated with RRMS SOFTWARE licensed to CUSTOMER in order to maintain optimal RRMS SYSTEM PERFORMANCE at a level equal to the requirements.

5.1. RRMS CUSTOMER and USER Support ***includes*** responsibilities such as:

- RRMS Product sales
- New CUSTOMER electronic based training (new procurements only – this Contract excludes Vendor reimbursement for costs incurred during onsite training)
- RRMS configuration
- RECORD contribution methodologies or practices
- RRMS navigation
- Data query or export procedures
- Search criteria, best practices, parameters, etc.
- Troubleshooting for RRMS HARDWARE, SOFTWARE, Network, etc.

5.2. RRMS CUSTOMER and USER Support ***excludes*** responsibilities such as:

- RECORD content

- RECORD quality
- RECORD interpretation
- USER administration (including new accounts, password creation or resets)
- Non-RRMS SOFTWARE owned, purchased, installed, developed or utilized by the CUSTOMER or the CUSTOMER'S HARDWARE
- CUSTOMER/USER'S ISP or other internal method of access

6. Software Updates

VENDOR shall provide periodic RRMS SOFTWARE updates that shall incorporate (i) corrections of any defects, and (ii) at the sole discretion of VENDOR, enhancements to the RRMS SOFTWARE.

6.1. RRMS SOFTWARE updates released by VENDOR shall be installed by VENDOR during periods when the RRMS is expected to have the lightest use and outside of the PRINCIPAL PERIOD OF MAINTENANCE at no charge to CUSTOMER.

6.2. Updates to DOCUMENTATION or manuals resulting from RRMS SOFTWARE updates shall be provided or made available on demand to CUSTOMERS and USERS free of charge.

7. RRMS System Performance

7.1. Basic Requirements

VENDOR agrees to maintain optimal RRMS SYSTEM PERFORMANCE twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year at a rate of 99.5% (hereafter referred to as the "RATE") as calculated by SLA Section 6.2 Rate Calculation. VENDORS are cautioned to quickly resolve the source or sources of Failure. Inability to meet or exceed the RATE in any eighteen (18) month period will result the following actions:

- First event – verbal warning
- Second event – written warning added to the Contract file
- Third event – Contract termination and Vendor Performance reported as "Poor"

7.2. Rate Calculation

VENDORS will measure the RATE of SYSTEM PERFORMANCE for the RRMS by the amount of DOWNTIME during a calendar month. This metric gauges the SYSTEM PERFORMANCE as a percentage of available hours tracked to the quarter of an hour (rounded). The RATE of SYSTEM PERFORMANCE will be measured and monitored for the RRMS as follows:

7.2.1. Available hours equal total number of hours in a month (24 hours x number of days in the month) minus the actual amount of time spent to the quarter of an hour for scheduled maintenance for the hosted application.

7.2.2. DOWNTIME is the total number of hours (to the quarter hour-rounded) during which the RRMS is not in OPERATIONAL USE TIME.

7.2.2.1. Peak Period is defined as Mon-Fri, 7 a.m. to 10 p.m

7.2.2.2. Non-Peak Period is defined as Mon-Fri, 10 p.m. to 7 a.m. and Weekends (Sat/Sun)

7.2.3. SYSTEM PERFORMANCE RATE equals available hours minus DOWNTIME divided by available hours.

Period	Timeframe	Uptime Commitment (measured monthly)
Peak	Week Days (Mon-Fri, 7 a.m. to 10 p.m.)	99.5%
Non-Peak	Week Nights (Mon-Fri, 10 p.m. to 7 a.m.) and Weekends (Sat/Sun)	97.5%

7.3. Response Time

Vendors will maintain a real-time or near real-time RESPONSE TIME for INDEX SEARCHES not to exceed a maximum of twelve (12) seconds per INDEX SEARCHE. RESPONSE TIME will be reported as the average of the total RESPONSE TIME for the total quantity of INDEX SEARCHES submitted by CUSTOMERS and USERS. Time period used in calculating the RATE will be used to calculate the RESPONSE TIME average.

EXAMPLE FOR THE MONTH OF JANUARY:
Total INDEX SEARCHES = 510
Total RESPONSE TIME = 6,108 seconds
6,108 ÷ 510 = 11.98 seconds

7.4. Reports

VENDOR will report both SYSTEM PERFORMANCE RATE and average RESPONSE TIME of the RRMS no later than the tenth (10th) calendar day of each month to TXDPS and all local CUSTOMERS for the previous month. Reports may be made available through the RRMS or distributed to CUSTOMERS Contact.

8. Data Backups

VENDOR must perform backups on all RRMS RECORDS once every twenty-four (24) hours, seven (7) days per week and three hundred sixty-five (365) days per year to facilitate data and RRMS System restoration in the event of any FAILURES, including but not limited to HARDWARE. The data backup schedule must be mutually agreed

upon by both the Vendor and CUSTOMER and must be oriented around periods when the RRMS is expected to have the lightest use.

9. Contact Persons

VENDOR shall designate a person or persons as the primary point of contact for the CUSTOMER. The CUSTOMER shall designate a person or persons as the primary point of contact for the VENDOR. VENDOR must identify detailed contact information in the event of an outage or an emergency plus an escalation plan.