



# Texas Department of Public Safety Purchase Order

Purchase Order Number

405-16-P008165

SHOW THIS NUMBER ON ALL  
PACKAGES, INVOICES AND  
SHIPPING DOCUMENTS.

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Vendor Number: 00005893  
1043320515900 | MORPHOTRUST USA

296 CONCORD RD  
Suite 300  
USA  
BILLERICA, MA 01821-6618

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Texas Department of Public Safety  
Driver License  
5805 North Lamar Blvd  
Austin, TX 78752-4431  
US  
Email: [eprocurementshipping@dps.texas.gov](mailto:eprocurementshipping@dps.texas.gov)  
(512) 424-2000

State Sales Tax Exemption Certificate: The undersigned claims an exemption from taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

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Texas Department of Public Safety  
Finance - Accounts Payable - MSC 0130  
PO Box 4087  
Austin, TX 78773-0130  
US  
Email: [apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov)  
(512) 424-2060

Solicitation (Bid) No.:	Payment Terms:
	Shipping Terms:
	Delivery Calendar Day(s) A.R.O.: 0

Item # 1

This purchase order number #405-16-P008165 is in addition to the existing purchase order numbers #405-15-P001733 issued to your company for this product and/or service. The number noted on this purchase order must be reflected on all invoices and correspondence regarding this product and/or service. All other terms and conditions remain unchanged.

This PO is to change show the change of our vendor's name from L-1 secure credentialing to the new company name of MorphoTrust. It recieved full CRB approval on 8/31/2015. 5 year contract term ends 09/31/2016. This contract may be renewed in one (1) year or more in increments for up to ten (10) years. Optional Renewal Period: 09/01/2016 through 08/31/2026.

Item # 2  
 Class-Item 080-10

For monthly production of Driver licenses, Identification cards, and employee cards FY16 (September 01, 2015 through August 31, 2016).

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 2,781,871.00	LOT	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 2,781,871.00

S H I P P I N G	Texas Department of Public Safety Administration Division 5805 North Lamar Blvd Austin, TX 78752-4431 US Email: eprocurementshipping@dps.texas.gov (512) 424-2000
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Item # 3  
 Class-Item 080-10

For monthly production of PSB license cards FY16 (September 01, 2015 through August 31, 2016).

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 40,435.00	LOT	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 40,435.00

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Item # 4  
 Class-Item 080-10

For monthly production of Concealed Handgun license cards FY16 (September 01, 2015 through August 31, 2016).

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 51,241.61	LOT	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 51,241.61

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Item # 5  
 Class-Item 080-10

Amendment # 9 to upgrade the TXDPS DL/ID card layout to add Commercial Learner Permit (CLP)

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 55,063.00	LOT	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 55,063.00

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Item # 6  
 Class-Item 080-10

Amendment # 10 to upgrade of the Texas DPS Card preprint materials, designs and security features to comply with AAMVA 2013 requirements.

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 119,042.00	LOT	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 119,042.00

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TAX: \$ 0.00  
 FREIGHT: \$ 0.00  
 TOTAL: \$ 3,047,652.61

APPROVED

By: William Myers  
 Phone#: (512) 424-6455  
 BUYER

# **CONTRACT**

**405-C6-1001**

**IMAGE COLLECTION  
AND  
CARD PRODUCTION**

**FOR**

**THE STATE OF TEXAS**

**CONTRACT FOR IMAGE COLLECTION AND CARD PRODUCTION**  
**RFP#405-C6-1001**

## **Terms and Conditions**

### **8.1 Declarations**

THIS CONTRACT ("Contract") is entered into by and between Digimarc ID Systems, L.L.C. ("Contractor") and the Texas Department of Public Safety ("TXDPS"), an agency of the State of Texas. Contractor and TXDPS are collectively referred to in this Contract as the "Parties," and each party is singularly referred to in this Contract as a "Party."

WHEREAS, TXDPS seeks to develop and implement a replacement for the existing Digital Driver License System for use by TXDPS and entities as designated by TXDPS;

WHEREAS, TXDPS requires the assistance of one or more private sector vendors to develop and implement such system;

WHEREAS, Contractor responded to a competitive solicitation by TXDPS for the development and implementation of such system, hereinafter referred to as the "Image Collection and Card Production System" or "ICCP," and TXDPS, after reviewing other submissions and conducting negotiations with Contractor, has elected to award a contract to Contractor based on Contractor's response to that solicitation;

WHEREAS, TXDPS is relying upon the technical and business expertise of Contractor with respect to the development and implementation of the ICCP that is the subject of this Contract;

WHEREAS, on the basis of the representations contained in Contractor's Proposal, presentations, other printed material, correspondence, discussions, and the reliance upon the expertise of Contractor relating to the Deliverables and services contemplated by this Contract, TXDPS desires to engage Contractor to provide the Deliverables and services on the terms and conditions as stated herein;

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

### **8.2 Expenses**

Costs incurred by Contractor for participation in the discussion phase and contract negotiations are the sole responsibility of Contractor.

TXDPS will neither pay nor reimburse Contractor for any costs related to travel or living expenses in association with this Contract.

### **8.3 Hardware and Software**

TXDPS reserves the right to use currently owned hardware and off-the-shelf software as a substitute for those listed in this Agreement with the understanding that any Contractor performance guarantees, as stated in this Agreement, only apply to hardware and/or software procured through the Contractor or approved in writing by the Contractor. TXDPS shall benefit from any cost savings by reducing the Cost Schedule by the dollar amount itemized for any such software or hardware that TXDPS uses from currently-owned inventory or that TXDPS procures from a separate source.

TXDPS reserves the right to procure hardware and off-the-shelf software from a separate source in cases where TXDPS can benefit. TXDPS also agrees that doing so may limit or negate the involvement of a HUB in the proposed solution, as stated in the section herein entitled "Historically Underutilized Business (HUB)".

The Contractor shall approve all software and hardware not purchased through the Contractor for the purpose of this project, initially and for the replacements, to ensure all project requirements are satisfied. If the Contractor approves the hardware and software not purchased through the contractor, performance guarantees, as stated in this Agreement shall apply.

Once TXDPS decides to procure the hardware or the off-the shelf software from a source other than the Contractor, TXDPS must give written notice to the Contractor according to the section entitled herein "Notices". The notice will only list the hardware or the software that TXDPS wants to procure. Upon receipt of the Notice, the Contractor must provide one (1) of the following to TXDPS within three (3) Business Days, according to the section entitled herein "Notices": 1) written approval for TXDPS to procure the hardware or the software from a separate source; or 2) a lower price for the hardware or the software at issue; or 3) notice that the listed hardware or the software will not satisfy all of the project requirements. The Contractor must act in good faith and must not unreasonably withhold approval. The Contractor will only receive one (1) opportunity to provide a lower price, and TXDPS will not provide the Contractor with the price offered from a separate source or the name of the separate source.

### **8.4 Hours of Delivery**

Delivery shall be made during normal working hours (8:00 AM CDT to 5:00 PM CDT) on TXDPS Business Days only, unless Contractor obtains written approval for an alternate delivery schedule from the TXDPS DLR Project Manager or her/his designee.

### **8.5 Criminal Justice Information System Security Policy and Addendum**

Contractor/Subcontractor(s) are required to execute the Criminal Justice Information System (CJIS) Security Addendum as part of this Contract. Contractor/Subcontractor(s) must ensure that their employees adhere to the CJIS Security Policy and the CJIS Security Addendum, as they currently exist and as thereafter amended. Employees who

fail to comply with the CJIS Security Policy and the CJIS Security Addendum will not be permitted to perform work under this Contract.

The CJIS Security Addendum and the CJIS Security Policy are attached hereto as Exhibit C. All exhibits are attached hereto and incorporated herein for all purposes as if set forth herein at length.

#### **8.6 Antitrust Laws**

Contractor hereby assigns to TXDPS, any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973) and which arise under the antitrust laws of the State of Texas, Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Ann. Sec. 15.01, et seq. (1987).

#### **8.7 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. These laws are intended to help the State collect delinquent debt and tax, while encouraging those who would do business with the State to remain in good standing under the law on an ongoing basis. The following provision of law must be satisfied prior to acceptance of a proposal and award of a contract:

“Before a state agency signs a contract under which the state agency must pay a person for providing goods or services of any kind, the state agency must contact the Texas Comptroller of Public Accounts (Comptroller) to verify whether the Comptroller is currently prohibited from issuing a warrant to the person under Section 403.055, Texas Government Code. If the Comptroller is currently prohibited from issuing a warrant to persons under this section, the state agency may not sign unless they agree to a contract clause that payments under the contract must be applied towards their debt or delinquent taxes until paid in full.”

Any questions regarding compliance with permitting and purchasing laws can be addressed by contacting the Texas Comptroller of Public Accounts at [tax.help@cpa.state.tx.us](mailto:tax.help@cpa.state.tx.us) or 1-800-531-5441.

#### **8.8 Compliance with State, Federal, and Local Laws**

Contractor must comply with all applicable state, federal, and local laws and ordinances in providing services to TXDPS 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 will not be liable to Contractor or its employees or Subcontractors 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.

Contractor shall provide all labor and equipment necessary to furnish the Deliverables and to perform the services 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, no visitors or relatives of Contractor's employees and Subcontractors will be allowed on state property unless they are bona fide employees or Subcontractors of Contractor performing work under this Contract.

### **8.9 Creation of Rights**

This Contract does not create any rights in any person or entity other than TXDPS, the state of Texas and Contractor.

### **8.10 Conflict of Law**

To the extent any clause in this Contract conflicts with the applicable Texas and/or United States law(s) or regulation(s), such clause is void and unenforceable. By executing a Contract which contains the conflicting clause(s), TXDPS makes no representations or warranties regarding the enforceability of such clause(s) and TXDPS does not waive the applicable Texas and/or United States law(s) or regulation(s) which conflict with the clause(s).

### **8.11 Commencement of Work**

Contractor must not commence any billable work prior to the execution of a contract with TXDPS. Work performed before final execution of a contract must be at Contractor's risk and will not be reimbursed.

### **8.12 Time of the Essence**

Time is of the essence in the rendering of services associated with Project Plan as mutually agreed to and set forth in the Statement of Work.

### **8.13 Default**

In the event that Contractor fails to carry out or comply with any of the obligations or requirements of this Contract with TXDPS, TXDPS may notify Contractor of such failure or default in writing and demand that the failure or default be remedied within ten (10) days; and 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 obligation or liability that may have been incurred or will be 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.

#### **8.14 Termination for Cause or Convenience**

This Contract may be terminated as follows:

1. For Convenience: This Contract may be terminated, without penalty, by TXDPS, without cause by giving thirty (30) days written notice of such termination to Contractor.
2. For Cause: This Contract may be terminated by TXDPS if Contractor fails to perform as agreed or is otherwise in default, without complying with the requirements in the Section herein entitled "Default." If Contractor defaults on the Contract, TXDPS reserves the right to cancel this Contract without notice and 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.

Without limiting the generality of the foregoing, if Contractor fails to maintain equipment at an average level of effectiveness of at least 98%, TXDPS reserves the right to terminate the Contract upon ninety (90) days written notice to Contractor.

The equipment's average level of effectiveness is a percentage figure determined by dividing the total number of clock hours the system is available for use in a one (1) shift, five (5) days per week operation by such clock time plus equipment or software failure downtime.

Equipment or software failure downtime will be measured by those intervals when the equipment is not available for use because of hardware or software failure, and must begin with the time that Contractor is notified of the failure, and will end at the time the equipment is returned to TXDPS in proper operating condition.

In the event of a termination of the Contract, TXDPS may, at its discretion, request Contractor to assist TXDPS in transitioning the ICCP to an alternative service provider or to TXDPS in accordance with section 5.10.20 of the Statement of Work and Appendix F to the Statement of Work (Termination Transition Plan).

#### **8.15 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

and services ordered and received prior to the date of termination as long as the Deliverables and services are accepted by TXDPS.

### **8.16 Liquidated Damages**

Unless stated otherwise in this Contract, liquidated damages will be addressed as follows:

Contractor understands and agrees that the Implementation of the Image Collection and Card Production System is critical to TXDPS, that time is of the essence for the Implementation deadline, and that damages for failure to meet the agreed to Implementation deadline are difficult to calculate. Implementation means the ICCP is delivered to TXDPS and complies with all of the specifications in this Contract. Therefore, in the event of delay in meeting the Implementation deadline, TXDPS shall be entitled to liquidated damages in the amount of \$1,000 for each day the Implementation deadline is delayed.

The following language applies to the imposition of liquidated damages authorized in this Section as well as in other sections of these Terms and Conditions.

TXDPS may not impose liquidated damages for any delay caused by TXDPS, as long as Contractor timely complies with the section below entitled "Rolling Estoppel."

TXDPS may not impose liquidated damages for any delay caused by third parties; however, the burden of proof that the delay is not attributable to Contractor 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.

Additional liquidated damages are addressed in the Sections herein entitled "Equipment Delivery," "Software Delivery," "Acceptance Testing" and "Card Production Orders."

### **8.17 Rolling Estoppel**

Subject to the Section entitled "Availability of TXDPS Manpower," TXDPS assumes the obligation for the resources that must be provided by TXDPS, as indicated in the Contract. TXDPS will be conclusively deemed to have fulfilled its obligations, unless it receives a deficiency report from Contractor within five (5) calendar days of when Contractor knew or should have known 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 or should have known of that problem and failed to include it in the applicable report. The

deficiency report must be sent to the TXDPS DLR Project Manager on the form entitled "Rolling Estoppel," which form is attached as Appendix E to the Statement of Work.

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 shall be in sufficient detail so that the TXDPS DLR Project Manager can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion. If the problem is one that allows Contractor (within the terms of this Contract) to ask for changes in the project timetable, the standards of performance, the project cost or all of these elements, the Issue and Change Management Process as defined in the Statement of Work shall be used.

### **8.18 Force Majeure**

Neither Contractor 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, but not limited, to the following:

- fire,
- acts of God,
- threatened acts of terrorism and/or actual acts of terrorism,
- pestilence,
- threat of epidemic and/or actual epidemic,
- strike,
- labor dispute,
- war,
- court order

The affected Party shall immediately, upon discovery of such force majeure event, notify the other Party's Project Manager in writing of any delays in the implementation schedule or provision of services without regard to responsibility, fault or negligence. Such notice shall be on the form entitled "Force Majeure," which form is attached as Appendix D to the Statement of Work.

## **8.19 Intellectual Property Rights**

Driver License Information and Documents means: any data or information collected by TXDPS from DL/ID/EI/CH/PS applicants, photographs, signatures, thumbprints, fingerprints, negatives, documents, drawings, the final card designs, DL cards, ID cards, CH licenses, EI cards and PS cards prepared or created by Contractor in the performance of its obligations under this Contract, including any research, reports, studies or data created for TXDPS or the State of Texas and any unique business processes of creating and issuing a Texas driver license or any other Texas card that may enable another to forge or create an unauthorized Texas driver license or card. Driver License Information and Documents do not include any pre-existing proprietary information or documents owned by Contractor or any third-party, such as Pre-Existing Application Software or pre-existing security features for cards. The Driver License Information and Documents are confidential and must not be disclosed by Contractor to any third party.

This section survives the termination of this Contract. Driver License Information and Documents prepared or created by Contractor under this Contract are "work-made-for-hire" as that term is understood under the copyright law of the United States, Title 17, U.S.C. §§101 et seq. so that all copyright and other property interests (including, but not limited to, patents, patent applications, trademarks, trademark application, etc.) in the Driver License Information and Documents must vest at the time of their creation in the State of Texas and neither the Contractor nor the Subcontractor(s) will have copyright or any other property interest in Driver License Information and Documents prepared or created under this Contract. If, for any reason, the Driver Information and Documents prepared or created by Contractor under this Contract are not held to be a "work-made-for-hire" within the meaning of the copyright laws of the United States, Contractor does hereby sell, assign, and transfer to the State of Texas, its successors and assigns all rights, title, and interest in the Driver License Information and Documents prepared or created by Contractor under this Contract.

Within five (5) calendar days of the completion, termination or cancellation of this Contract, Contractor shall deliver all Driver License Information and Documents to TXDPS in a form acceptable to TXDPS.

TXDPS does not own source code or object code associated with Pre-Existing Application Software, Third-Party Software, Open Source Software, Custom-Developed Application Software or Customized Pre-Existing Application Software. However, before sharing any Custom-Developed Application Software or Customized Pre-Existing Application Software with any third party, Contractor must comply with the following requirements: a) Contractor must not disclose or reveal TXDPS' or the State of Texas' identity; and b) Contractor must remove the following information prior to allowing any third-party to see or access such Custom-Developed Application Software or Customized Pre-Existing Application Software: unique business processes of creating and issuing a Texas driver license or any other Texas card that may enable another to forge or create an unauthorized Texas driver license or card.

With regard to work performed by Contractor's Subcontractor(s) under this Contract, Contractor must require that all agreements with Subcontractor(s) provide for the irrevocable assignment to the State of Texas of all Driver License Information and Documents, and all intellectual property rights thereto, prepared or created by Subcontractor(s) for this Contract.

Contractor must not create software that only Contractor could modify.

**Categories of Software:**

1. Custom-Developed Application Software: Any required software functionality, test tools, interface stubs and drivers, and configuration build procedures including all documentation, manuals, and protocols which are not covered by Pre-Existing Application Software products that Contractor will code or unit test. This Custom-Developed Application Software must be developed in accordance with modular design practices and must not infringe on another's copyright or other rights.
2. Customized Pre-Existing Application Software: The customized portion of Pre-Existing Application Software and the customized portions of the Open Source Software that Contractor must modify to satisfy required system functionality. The Customized Pre-Existing Application Software does not include any Pre-Existing Application Software.
3. Pre-Existing Application Software: Software that Contractor will select, recommend, and/or transfer from corporate inventories which appropriately satisfy required system functionality without modification.
4. Third-Party Software: Commercially-available software that is required to provide necessary system functionality. Contractor must submit to TXDPS sufficient information and documentation on the software items to determine if the proposed items meet the required system functionality.
5. Open Source Software: Source code of a program, which is made available to the development community at large and is usually subject to certain restrictions.

**8.20 Intellectual Property/Source Code**

This section survives the termination of this Contract.

**8.20.1 Types of Intellectual Property**

The software products being delivered pursuant to this Contract as Custom-Developed Application Software, as Customized Pre-Existing Application Software, as Pre-Existing Application Software, as Third-Party Software and as

Open Source Software will be detailed, defined and described in a schedule to be delivered by Contractor to TXDPS within thirty (30) days of the actual date of the TXDPS Letter of Acceptance. Following the date of the TXDPS Letter of Acceptance, Contractor will update the schedule within thirty (30) days of Contractor's incorporation of any additional Custom-Developed Application Software, Customized Pre-Existing Application Software, Pre-Existing Application Software, Third-Party Software or Open Source Software into the TXDPS deployed system. However, upon the occurrence of a triggering event for the release of source code from escrow, Contractor must provide such schedule to TXDPS within five (5) days of such triggering event. To the extent that there are any license terms that accompany any Third-Party Software or Open Source Software, these licenses must be delivered at the same time as the scheduling of the identified Software for any occurrence of a triggering event for the release of source code from escrow.

#### **8.20.2 Source Code**

Within thirty (30) days of the execution of this Contract, Contractor must deliver all Pre-Existing Application Software and Third-Party Software (if such third-party agrees) as machine readable files, linkable or executable modules, and installed and operating copies of the programs and all other Materials (defined below in the context of non-Pre-Existing Application Software and non-Third-Party Software, but the listed items apply to Pre-Existing Application Software and Third-Party Software for the purposes of this paragraph) applicable to Pre-Existing Application Software and Third-Party Software to the escrow agent, pursuant to the escrow agreement referenced herein (baseline software configuration must not be created such that only Contractor could change).

Upon delivery and/or installation of any part of the Image Collection and Card Production System, Contractor must deliver the following in machine readable form, hereinafter referred to as the "Materials" to the TXDPS Assistant Chief for Information Management Service or his/her designee or functional replacement:

1. Custom-Developed Application Software, Customized Pre-Existing Application Software and Open Source Software as machine readable source files, linkable or executable modules, and installed and operating copies of the programs (baseline software configuration must not be created such that only Contractor could change);
2. The tools required for the modification and compilation of the Custom-Developed Application Software, Customized Pre-Existing Application Software programs, and Open Source Software;
3. The source code for all Custom-Developed Application Software and Customized Pre-Existing Application Software developed under this Contract with all needed support resources needed to edit, compile, and

link these programs on the central processors, including, but not limited to, Computer Aided Software Engineering (CASE) tools, compilers, editors, and function libraries used in the development of the programs; and

4. All documentation concerning protocol for Custom-Developed Application Software, Customized Pre-Existing Application Software and Open Source Software, source code, commented listings, descriptions of software structure, database utilization, and instructions necessary to convert the source code into an operational system.

#### **8.20.3 Updates to Delivered Materials**

Prior to the date of the TXDPS Letter of Acceptance of the Image Collection and Card Production System, Contractor will provide TXDPS with replacements to the Materials as described in the Section titled, Source Code.

Following the date of the TXDPS Letter of Acceptance of the Image Collection and Card Production System, as long as TXDPS is under the conditions as dictated by the Statement of Work and/or the Termination Transition Plan, Contractor will update the Materials with replacements to the Materials in machine readable form in conjunction with any update which is incorporated into the TXDPS deployed system by Contractor.

#### **8.20.4 Restrictions of Open Source Software**

Use of Open Source Software may only be used to the extent that its use does not cause derivative works to be considered open source or place liability on TXDPS.

#### **8.20.5 Escrow of Source Code**

The Parties shall execute a source code escrow agreement in form and substance acceptable to TXDPS for the source code and documentation. The source code escrow agreement is attached hereto as Exhibit D. This provision does not apply to Contractor's and Subcontractor's shrink-wrap commercial off-the-shelf products. To the extent available from third parties, Contractor will pass through such rights.

At a minimum, the source code escrow agreement shall include the following as release conditions or triggering events: (i) material breach by Contractor which has not been cured in conformance with the Section herein entitled "Default"; (ii) five (5) days after termination for cause pursuant to the Section herein entitled "Termination for Cause or Convenience;" (iii) Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or (iv) Contractor has wound up or liquidated

its business voluntarily or otherwise and TXDPS has compelling reasons to believe that such events will cause Contractor to fail to meet its obligations under this Contract in the foreseeable future. TXDPS shall have the right at all times during and after the term of this Contract to inspect, at reasonable times and upon reasonable notice to Contractor and the escrow agent, the source code and Materials held in escrow to ensure that the source code and Materials shall at all times be in a form sufficient to allow the source code to be understandable and usable by a trained computer programmer of reasonable skill who is generally familiar with software and source code that is functionally similar to, though not necessarily identical to, those licensed to the TXDPS by this Contract. TXDPS may conduct such inspections itself or through a designee working on its behalf, provided such designee shall be required to execute and deliver to TXDPS and Contractor a nondisclosure agreement as a condition of such access.

#### **8.20.6 Verification**

TXDPS has the right to verify the completeness and accuracy of all Materials delivered to TXDPS or held in escrow.

#### **8.20.7 Certification**

For every copy of the Materials that is delivered to TXDPS or held in escrow, initially or as a replacement, Contractor will supply a letter of certification regarding the completeness and accuracy of the Materials.

#### **8.20.8 Software Versions**

TXDPS has the right to maintain copies of all software versions of Materials provided by Contractor to TXDPS.

#### **8.20.9 Backups**

TXDPS has the right to make backups of the Materials.

#### **8.20.10 Licensing**

##### **Third-Party Software**

Upon the occurrence of a triggering event for the release of source code from escrow, Contractor will facilitate the transfer of Third-Party Software licenses to TXDPS according to the following requirements: 1) upon TXDPS' request, 2) without additional cost, and 3) upon terms and conditions acceptable to TXDPS, provided that Contractor will not be required to make any payments to licensors of such software, or any other parties, to continue such third party licenses. However, during the term of the Termination Transition Plan, Contractor shall maintain its license to

use such Third-Party Software for TXDPS and the State of Texas, unless TXDPS requests otherwise.

### **Open Source Software**

Upon the occurrence of a triggering event for the release of source code from escrow, Contractor will facilitate the transfer of licenses for open source software to TXDPS, upon TXDPS' request, upon terms and conditions acceptable to TXDPS. However, during the term of the Termination Transition Plan, Contractor shall maintain its license to use such Open Source Software for TXDPS and the State of Texas, unless TXDPS requests otherwise.

### **Custom-Developed Application Software and Customized Pre-Existing Application Software**

Contractor does hereby grant to TXDPS and the State of Texas a perpetual, paid-up, irrevocable, worldwide, non-exclusive license to use any Custom-Developed Application Software and Customized Pre-Existing Application Software, as well as any Materials regarding such software, developed under this Contract for TXDPS' and the State of Texas' internal use. TXDPS' and the State of Texas' right to use such Custom-Developed Application Software and Customized Pre-Existing Application Software, as well as any Materials regarding such software, includes the right to do the following with such Custom-Developed Application Software and Customized Pre-Existing Application Software, as well as any Materials regarding such software, through the services of TXDPS' and/or the State of Texas' own employees or of independent contractors: modify, manipulate, maintain, enhance, use, copy, display and create derivative works. Contractor shall own any such derivative works; however, Contractor hereby grants to TXDPS and the State of Texas a license to such derivative works that is as extensive as the license granted herein for the following, even if the derivative works are not developed "under this Contract:" Custom-Developed Application Software and Customized Pre-Existing Application Software, as well as any Materials regarding such software, developed under this Contract.

This Contract shall supersede all terms of any "shrinkwrap" or "clickwrap" license included in any package, media or electronic version of the Custom-Developed Application Software and Customized Pre-Existing Application Software, as well as any Materials regarding such software that is not also Third-Party Software.

### **Pre-Existing Application Software**

Contractor does hereby grant to TXDPS and the State of Texas a paid-up, irrevocable (during the time frame allowed for such replacement as described herein), worldwide, non-exclusive license to use such Pre-Existing Application Software, as well as any Materials regarding such software and any derivative works created by or for TXDPS pursuant to this license, and to modify, manipulate, maintain, enhance, copy, display and create derivative works thereof, as necessary. Contractor shall own any such derivative works. However, TXDPS can not gain access to the source code and Materials for the Pre-Existing Application Software, unless there is a triggering event for the release of such source code and Materials. Upon the occurrence of a triggering event for the release of source code and Materials from escrow, TXDPS agrees that it shall only utilize the source code and Materials for Pre-Existing Application Software and any derivative works thereof until such time that a new vendor or entity can replace the system installed by Contractor under this Contract and successfully produce acceptable volumes of the cards, utilizing commercially reasonable efforts to obtain such replacement and to produce acceptable volumes of the cards in a timely manner. Thereafter the source code and any Materials released from escrow, and any copies or derivative works thereof, must be promptly returned to Contractor or its successor or assigns. However, TXDPS is only obligated to promptly return such source code, Materials and copies or derivative works thereof to any successor or assign if Contractor provides TXDPS with the correct contact information for such successor or assign. Moreover, in the event that any interim vendor or entity shall have to utilize Contractor's released source code or Materials and copies or derivative works thereof, TXDPS agrees that such vendor or entity, as a condition precedent to having access to such source code and Materials or copies or derivative works thereof, must sign the Confidentiality and Non-Disclosure agreement (Exhibit B to this Contract).

This Contract shall supersede all terms of any "shrinkwrap" or "clickwrap" license included in any package, media or electronic version of the Pre-Existing Application Software, as well as any Materials regarding such software that is not also Third-Party Software.

#### **8.21 Right to Reproduce Documentation**

TXDPS will have the right to reproduce at no charge, but at TXDPS' cost for reproduction, for use by state employees or the State's representatives, any documentation for software owned by Contractor or any of its Subcontractors that is used

to perform services under the Contract. To the extent it is not legally prohibited from doing so by the terms of the applicable license, Contractor grants TXDPS the right to reproduce at no charge, but at TXDPS' cost for reproduction, any documentation for software owned by third parties, but used by Contractor or any of its Subcontractors to perform services under the Contract. This includes all manuals, publications, and documents provided under the requirements of this Contract. TXDPS is also free to reproduce, without royalty, necessary material selectively extracted from publications provided with the products (including equipment, commercial software and other items) acquired in connection with this Contract for incorporation into TXDPS published manuals which are for exclusive use with State-authorized systems. Any proprietary statement that is contained in any document will be copied if that document is used. If Contractor is legally prohibited from granting such rights to TXDPS with respect to any particular software that will be used by Contractor or any of its Subcontractors to perform services under the Contract, Contractor's proposal must so state in express terms.

### **8.22 Equipment Delivery**

At or immediately following the award of this Contract, Contractor and TXDPS must establish a mutually acceptable delivery schedule for all equipment to be provided by Contractor. That schedule must be incorporated in and become part of the Contract. If Contractor does not deliver the ICS equipment and install the card production equipment, ready for use, on or before the agreed upon delivery date, TXDPS may, at its option, require payment of liquidated damages on the same basis as specified in the Section herein entitled "Liquidated Damages" as if applied for Contractor's failure to meet the Implementation deadline, until such equipment is delivered and/or installed and ready to use.

If the delay is more than thirty (30) calendar days, TXDPS may, by written notice to Contractor, terminate the right of Contractor to deliver and install such equipment, and may obtain substitute equipment. In this event, Contractor must remain liable for liquidated damages, in the amounts specified above, until substitute equipment is delivered and installed, and ready for use.

### **8.23 Software Delivery**

If TXDPS is unable to use the equipment on the Implementation deadline, because Contractor failed to deliver and/or install software required for its operation, and Contractor does not furnish and/or install substitute software which TXDPS accepts and agrees would render the equipment usable, TXDPS may, at its option, require payment of liquidated damages on the same basis as specified in the Section herein entitled "Liquidated Damages" as if applied for Contractor's failure to meet the Implementation deadline, until TXDPS accepts the equipment or until Contractor provides the software which would render the equipment usable. This provision applies equally to commercial software.

## **8.24 Acceptance Testing**

### **8.24.1 Image Collection System (ICS)**

If the TXDPS acceptance test procedures disclose operational or performance deficiencies in the ICS, TXDPS may at its option require payment of liquidated damages on the same basis as specified in the Section herein entitled "Liquidated Damages" as if applied for Contractor's failure to meet the Implementation deadline, beginning on the date of notification to the Contractor. TXDPS must prepare a list of deficiencies in compliance with the requirements of the Contract within ten (10) days of the test and forward the list to Contractor. Contractor must within thirty (30) days of receipt of notification correct all deficiencies and provide notice to TXDPS that the ICS is available for re-testing. Upon completion of an unsuccessful second acceptance test, Contractor will have an additional thirty (30) days to correct all deficiencies. If the third acceptance test fails, TXDPS at its own option may elect one (1) of the following:

1. Negotiate a settlement of the issues; or
2. Reject the system, in which case TXDPS will have all legal and equitable remedies.

The liquidated damages provided for in this section must continue until, at the option of TXDPS, the system is accepted, a negotiated settlement is reached, or the system is rejected. Costs incurred as a result of TXDPS exercising this option may be deducted from any payment due Contractor.

### **8.24.2 Card Production System (CPS)**

If the TXDPS acceptance test procedures disclose operational or performance deficiencies in the CPS, TXDPS may at its option require payment of liquidated damages on the same basis as specified in the Section herein entitled "Liquidated Damages" as if applied for Contractor's failure to meet the Implementation deadline, beginning on the date of notification to Contractor. TXDPS must prepare a list of deficiencies within ten (10) days of the test and forward the list to Contractor. Contractor must, within thirty (30) days of receipt of notification, correct all deficiencies and provide notice to TXDPS that the CPS is available for re-testing. Upon completion of an unsuccessful second acceptance test, Contractor will have an additional thirty (30) days to correct all deficiencies. If the third acceptance test fails, TXDPS at its own option may elect one (1) of the following:

1. Negotiate a settlement of the issues; or
2. Reject the system, in which case TXDPS will have all legal and equitable remedies.

The liquidated damages provided for in this section must continue until, at the option of TXDPS, the system is accepted, a negotiated settlement is reached, or the system is rejected. Costs incurred as a result of TXDPS exercising this option may be deducted from any payment due Contractor.

#### **8.24.3 Image Verification System (IVS)**

If the TXDPS acceptance test procedures disclose operational or performance deficiencies in the IVS, TXDPS may at its option require payment of liquidated damages on the same basis as specified in the Section herein entitled "Liquidated Damages" as if applied for Contractor's failure to meet the Implementation deadline, beginning on the date of notification to Contractor. TXDPS must prepare a list of deficiencies within ten (10) days of the test and forward the list to Contractor. Contractor must, within thirty (30) days of receipt of notification, correct all deficiencies and provide notice to TXDPS that the IVS is available for re-testing. Upon completion of an unsuccessful second acceptance test, Contractor will have an additional thirty (30) days to correct all deficiencies. If the third acceptance test fails, TXDPS at its own option may elect one (1) of the following:

1. Negotiate a settlement of the issues; or
2. Reject the system, in which case TXDPS will have all legal and equitable remedies.

The liquidated damages provided for in this section must continue until, at the option of TXDPS, the system is accepted, a negotiated settlement is reached, or the system is rejected. Costs incurred as a result of TXDPS exercising this option may be deducted from any payment due Contractor.

#### **8.24.4 CH/PS Scanning System**

If the TXDPS acceptance test procedures disclose operational or performance deficiencies in the CH/PS Scanning System, TXDPS may at its option require payment of liquidated damages on the same basis as specified in the Section herein entitled "Liquidated Damages" as if applied for Contractor's failure to meet the Implementation deadline, beginning on the date of notification to Contractor. TXDPS must prepare a list of deficiencies within ten (10) days of the test and forward the list to Contractor. Contractor must, within thirty (30) days of receipt of notification, correct all deficiencies and provide notice to TXDPS that the CH/PS Scanning System is available for re-testing. Upon completion of an unsuccessful second acceptance test, Contractor will have an additional thirty (30) days to correct all deficiencies. If the third acceptance test fails, TXDPS at its own option may elect one (1) of the following:

1. Negotiate a settlement of the issues; or

2. Reject the system, in which case TXDPS will have all legal and equitable remedies.

The liquidated damages provided for in this section must continue until, at the option of TXDPS, the system is accepted, a negotiated settlement is reached, or the system is rejected. Costs incurred as a result of TXDPS exercising this option may be deducted from any payment due Contractor.

### **8.25 Submitting Invoices and Receiving Payments/Acceptance Process**

Contractor shall submit invoices on a monthly basis for any payments due. TXDPS will pay Contractor on the basis of itemized invoices submitted to and approved by TXDPS, showing the actual services performed and/or goods provided, the TXDPS Purchase Order number, the Contractor's vendor identification number and the attendant charge. Itemized invoices must clearly identify the services and/or Deliverable 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. Upon the agreement of both parties, payments may be made via electronic funds transfer.

Monthly invoices must be addressed to:

Texas Dept. of Public Safety  
Accounting and Budget Control  
P.O. Box 4087  
Austin, Texas 78773-0001

Payments to the Contractor made via electronic funds transfer shall be sent to the following Contractor account:

Wells Fargo Bank  
San Francisco, CA  
ABA: 121000248

Account Name: Digimarc ID Systems  
Account Number: 495-0047373

### **8.26 Acceptance of Products and Services**

All products furnished and all services performed under this Contract must be to the satisfaction of TXDPS and in accordance with the specifications, terms, and conditions of the Contract. TXDPS reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services.

All system hardware, software and accessories that are shipped are to be new. Refurbished or demo hardware will not be accepted, unless otherwise specified in this Contract.

Except as otherwise provided in this Contract, all hardware is to be provided with standard manufacturer's warranty. Instruction manuals, service, and parts manuals are to be shipped at no charge.

### **8.27 Card Production Orders**

TXDPS requires that card production orders must be completed and delivered to TXDPS no later than three (3) Business Days from the document order date. Completed DL/ID/EI cards must be delivered to the License Issuance Bureau. Completed CH/PS licenses must be delivered to the Regulatory Licensing Service.

If Contractor delivers substandard cards or does not deliver completed document orders on or before three (3) Business Days from the document order date, TXDPS may, at its option, require payment of liquidated damages on the same basis as specified in the Section herein entitled "Liquidated Damages" as if applied for Contractor's failure to meet the Implementation deadline. Such liquidated damages must accrue until such document orders are delivered.

### **8.28 Governing Law**

This Contract will be construed and governed by the laws of the State of Texas. Venue for any litigation will be Travis County, Texas.

### **8.29 Technology Equivalent Access**

Contractor expressly acknowledges that state funds may not be expended in connection with the procurement of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to TXDPS that the technology provided to TXDPS for this procurement is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

1. Providing equivalent access for effective use by both visual and non-visual means;
2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
3. Being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws.

Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

### **8.30 Non-Incorporation**

This Contract embodies the entire agreement between the Parties hereto with relation to the transaction contemplated hereby, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties or restrictions between the Parties hereto with regard thereto other than those specifically set forth herein.

### **8.31 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 (1) such counterpart.

### **8.32 Contract Amendments**

No modification or amendment to the Contract will become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to the Contract must be forwarded to the TXDPS DLR Project Manager for prior review and approval. Only the TXDPS Director or his/her designee will be authorized to sign changes or amendments.

### **8.33 Independent Contractor Status**

Contractor agrees that Contractor and Contractor's employees and agents have no employer-employee relationship with TXDPS. TXDPS will have no liability or responsibility with respect to payment of Federal Insurance Contribution Act (FICA), federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will TXDPS furnish or be liable for the provision of any medical or retirement benefits or any paid vacation or sick leave to Contractor and any of its employees.

### **8.34 Entities**

Prime vendors using Subcontractors is an authorized arrangement, provided any Subcontractors have been identified and TXDPS has not objected. Failure by TXDPS to

object to a particular vendor at any time will not be deemed a waiver of TXDPS' right to object to or disapprove of such Subcontractors at a later time.

### **8.35 Delegation of Duties**

Contractor must assume full responsibility for all Deliverables and services performed 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 work is 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 work to be subcontracted, financial statements for each Subcontractor, and descriptive information concerning each Subcontractor's qualifications.

Unless specified in the Contract, 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 or suppliers. TXDPS will not direct payments for services or products acquired in connection with the Contract other than to Contractor, nor will TXDPS 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.

### **8.36 Right to Audit and Inspect**

At any time during the term of this Contract and for a period of four (4) years thereafter TXDPS or duly authorized audit representative of TXDPS, at its expense and at reasonable times, reserves the right to:

#### **8.36.1 Inspect Services**

1. TXDPS has the right to inspect and test all services called for by 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.
2. 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.

3. If any of the services do not conform to this Contract's requirements, TXDPS may require Contractor to perform the services again in conformity with this Contract's requirements, at no increase in this Contract's amount. When the defects in services can not be corrected by re-performance, TXDPS may:
  - a. Require Contractor to take necessary action to ensure that performance conforms to this Contract's requirements; and
  - b. Reduce this Contract's price to reflect the reduced value of the services performed.
4. If Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with this Contract's requirements, TXDPS may:
  - a. By Contract or otherwise, perform the services and charge to Contractor any cost incurred by TXDPS that is directly related to the performance of such service; or
  - b. Terminate this Contract for default.

#### **8.36.2 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 responsible for determining that the Parties have complied with the applicable laws. The State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Contract or indirectly through a subcontract under this Contract. Acceptance of funds directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

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. Contractor/Subcontractor(s) understand and agree, pursuant to Texas Government Code Section 2262.003, that acceptance of funds received from the State directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

### **8.37 Criminal History Background Checks**

Contractor and any Subcontractors must have all Image Collection and Card Production project personnel submit to a TXDPS fingerprint based criminal history background investigation. Costs associated with this background investigation will be the responsibility of TXDPS. Expenses incurred for fingerprint acquisition other than at TXDPS will be the responsibility of Contractor. To facilitate this criminal history background investigation, each person must be required to complete a HR Personal History Statement form, which will be provided by TXDPS. Additionally, Contractor and Subcontractor personnel must agree to and comply with all relevant TXDPS policies that relate to the security of data and confidentiality of information. Contractor and Subcontractor personnel must also sign documents that indicate acceptance of these policies. In addition, Contractor must not allow personnel to work on the Image Collection and Card Production project who have not submitted to a TXDPS fingerprint-based criminal history background investigation as required by TXDPS. Contractor must not allow any personnel to work on the Image Collection and Card Production project who have not been approved by TXDPS. Criminal behavior may be used to exclude an individual's participation in the project.

### **8.38 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.

### **8.39 Observance of State Rules and Regulations**

Contractor agrees that at all times its employees and Subcontractors must observe and comply with all laws and regulations pertaining to state facilities, including but not limited to parking and security regulations. In the event that an employee of Contractor has failed to comply with such laws or regulations, TXDPS will have the right to require Contractor to remove such employee from any involvement in this Contract.

### **8.40 Damage to Building(s) and Grounds**

Contractor must be financially responsible and liable for any and all damage done by its workers or Subcontractors to building(s), grounds, equipment, or other properties or to other vendor's work. Contractor is responsible for the removal of all debris resulting from work performed under this Contract.

### **8.41 Recall Notice**

Contractor must, immediately upon discovery of same, advise TXDPS of any and all required replacements or modifications to hardware or component part thereof or

withdrawal of product by reason of safety hazard or recall regardless of the nature of same. Any verbal notification must be confirmed in writing within twenty-four (24) hours of such verbal notification. All such formal notices must be submitted to the TXDPS DLR Project Manager.

#### **8.42 Confidentiality and Non-Disclosure**

This section is subject to the rights specified in the sections herein entitled "Intellectual Property Rights" and "Intellectual Property/Source Code."

Unless stated otherwise in the section called "Intellectual Property Rights" and the section called "Intellectual Property/Source Code" herein, the party that provides such Confidential Information (as defined below) to the other party is hereinafter called the "Owner," and the party that receives such Confidential Information from the other party is hereinafter called the "Recipient".

Recipient shall (i) hold Owner's Confidential Information in trust and confidence and avoid the disclosure or release thereof to any other person or entity by using the same degree of care (but not less than reasonable care) as it uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature; and (ii) not use Owner's Confidential Information for any purpose whatsoever except as expressly contemplated under this Contract. Recipient shall only disclose Owner's Confidential Information to those of its employees and agents having a need to know such Confidential Information and shall take all reasonable precautions to ensure that its employees and agents comply with the provisions of this section.

The term "Confidential Information" shall mean any and all information and proprietary material (in every form and media now known or available in the future) not generally known in the relevant trade or industry, and which has been or is hereafter disclosed or made available by Owner to the Recipient in connection with the efforts contemplated hereunder, including, without limitation: (i) all trade secrets; (ii) information relating to existing or contemplated products, services, designs, technology, processes, technical data, engineering methodologies, techniques and concepts; (iii) information relating to business plans, sales or marketing methods and customer lists or requirements; and (iv) any and all information that may be lawfully characterized as "confidential". "Confidential Information" does not include information that is disclosed by TXDPS in accordance with the legal requirements of the Public Information Act, Chapter 552 of the Government Code.

The obligations of Recipient under this section will not apply to information that Recipient can demonstrate: (i) has been received from a third party without restriction on disclosure and without breach of contract or other wrongful act by the Recipient; (ii) is independently developed by the Recipient without regard to the Confidential Information of the Owner; or (iii) is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority, provided that the Recipient shall furnish prompt written notice of such required disclosure and reasonably cooperate with Owner, at

Owner's cost and expense, in any effort made by Owner to seek a protection order or other appropriate protection of its Confidential Information.

Contractor shall abide by all TXDPS policies, as they now exist and as amended in the future, regarding privacy and security of information.

Recipient must notify Owner of any unauthorized release of Confidential Information within two (2) days of when Recipient knows of such unauthorized release.

Recipient agrees to maintain all such Confidential Information in confidence during this Contract and after the expiration or earlier termination of this Contract.

Contractor shall immediately return to TXDPS all Confidential Information, including any copies thereof, when this Contract terminates or 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.

This section shall survive the termination or expiration of this Contract.

If Recipient has any questions or doubts as to whether particular material or information is Confidential Information, the Recipient shall obtain the prior written approval of Owner prior to using, disclosing or releasing such information.

The Parties acknowledge that Confidential Information is unique and valuable, and that Owner may have no adequate remedy at law if the Recipient does not comply with its obligations under this Contract. Therefore, Owner shall have the right, in addition to any other rights it may have, to obtain 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 obligations of Recipient if Recipient fails to perform any of its obligations under this Contract. This paragraph only applies to the extent authorized by law.

Contractor shall only disclose the Confidential Information to those of its employees and agents having a need to know such Confidential Information to perform work under this Contract and shall take all reasonable precautions to ensure its employees, Subcontractor(s), and Subcontractor's employees review this Contract, execute Exhibit A to this Contract and receive a copy of this Contract and the executed Exhibit A before gaining access to the Confidential Information. Contractor is obligated to ensure Exhibit A has been executed without unauthorized changes prior to disclosing the Confidential Information. Contractor shall then send the original of the executed Exhibit A to TXDPS at the address listed in the section, entitled herein "Notices".

TXDPS shall only disclose the Confidential Information to employees and third party contractors/subcontractor(s) and their employees having a need to know such Confidential Information for the purpose of developing, operating, modifying, manipulating, maintaining, and/or enhancing the Image Collection and Card Production

System. TXDPS shall take all reasonable precautions to ensure its third party contractors/subcontractor(s) and their employees review this Contract, execute Exhibit B to this Contract and receive a copy of this Contract and the executed Exhibit B before gaining access to the Confidential Information. TXDPS is obligated to ensure Exhibit B has been executed without unauthorized changes prior to disclosing the Confidential Information. TXDPS shall then send the original of the executed Exhibit B to Contractor at the address listed in section, entitled herein "Notices".

#### **8.43 Publicity**

Contractor agrees that it must not publicize any portion of this Contract or its content or disclose, confirm, or deny any details thereof to third parties or use any photographs or video recordings of TXDPS' name in connection with any sales promotion or publicity event, or for any purpose whatsoever, without the prior express written approval of TXDPS.

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

#### **8.44 Severability**

If one (1) 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, the remainder of the Contract and the application of the provision to other parties or circumstances will remain valid and in full force and effect.

#### **8.45 Non-Waiver of Defaults**

Any failure of TXDPS, at any time, to enforce or require the strict keeping and performance of any of the terms and conditions of this Contract will not constitute a waiver of such terms, conditions, or rights, and will not affect or impair same or the right of TXDPS at any time to avail itself of same.

#### **8.46 No Liability for Employees and Officers**

Subject to the indemnity obligations listed herein, each party to this Contract agrees that it shall have no liability whatsoever for the actions and/or omissions of the other party's employees, officers or agents, regardless of where the individual's actions and/or omissions occurred. Each party is solely responsible for the actions and/or omissions of its employees, officers and agents; however, such responsibility is only to the extent required by Texas law. Where injury or property damage result from the joint or concurring acts and/or omissions of the parties, any liability shall be shared by each party in accordance with applicable Texas law, 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.

#### **8.47 Dispute Resolution**

The Texas Government Code, Chapter 2260, prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. If and to the extent that Chapter 2260 applies to this Contract, Contractor shall comply with the requirements of Chapter 2260 and the TXDPS administrative rules adopted pursuant to Chapter 2260.

In the event that any provision of this Contract calls for mutual agreement, and the Parties are not able to agree on an issue, the issue shall be resolved in accordance with the Dispute Resolution Process detailed in the Statement of Work as Appendix C.

#### **8.48 Debt Liability**

Contractor agrees that any payments due under this Contract will be applied towards any debt, including, but not limited to, delinquent taxes and child support owed to the State of Texas.

#### **8.49 Historically Underutilized Business (HUB)**

Contractor may subcontract for goods and services under this Contract if Contractor agrees to follow the HUB subcontracting plan identified in Texas Government Code Chapter 2161 and Texas Administrative Code, Title 1, Sections 111.13 and 111.14. Contractor may not subcontract unless TXDPS gives prior written approval of each Subcontractor. TXDPS reserves the right to reject any subcontract and Subcontractor. Contractor, in subcontracting any of its performance hereunder, shall legally bind Subcontractor(s) to perform and make such Subcontractor(s) subject to all applicable duties, requirements, and obligations of the Contractor under this Contract. Contractor shall be jointly and severally liable for all performances under this Contract, including the performance of its Subcontractor(s) to the extent permitted under the Constitution and the laws of the State of Texas. TXDPS' Policy on Utilization of Historically Underutilized Businesses is posted on the TXDPS web site at [http://www.txdps.state.tx.us/director\\_staff/accounting/hub.htm](http://www.txdps.state.tx.us/director_staff/accounting/hub.htm).

Contractors/Subcontractor(s) must comply with all State HUB reporting requirements.

#### **8.50 HUB and Disadvantaged Business Enterprise (DBE)**

Contractors/Subcontractor(s) must comply with all State HUB and DBE (if applicable) reporting requirements.

#### **8.51 HUB and DBE Continuing Performance and Reporting**

This contract includes continuing reporting responsibilities related to HUB and DBE (if applicable) subcontracting. The Contractors may not change any Subcontractor without the prior written consent of TXDPS.

## **8.52 Controlling Order of Contract**

The Contract between the Parties consists of the following:

1. Terms and Conditions of this Contract
2. TXDPS Purchase Order, (including any Purchase Order Change Notices), excluding any pre-printed terms and conditions which will have no effect
3. Statement of Work, including project work plan and other appendices
4. Contractor Response to Request for Proposal, excluding the exception to Section 8.76 of the Terms and Conditions
5. Request for Proposal, excluding Section #8 (Terms and Conditions)
6. Exhibit A to Terms and Conditions – Agreement To Be Bound By Confidentiality and Non-Disclosure Section of The Contract Between Contractor and Texas Department of Public Safety
7. Exhibit B to Terms and Conditions - Agreement To Be Bound By Confidentiality and Non-Disclosure Section of The Contract Between Contractor and Texas Department of Public Safety
8. Exhibit C to Terms and Conditions - CJIS Security Addendum(s) and CJIS Security Policy
9. Exhibit D to Terms and Conditions – Source Code Escrow Agreement

In the event of any conflict or contradiction between or among these documents, the documents will control in the following order of precedence:

1. Terms and Conditions of this Contract, including all Exhibits. However, to the extent there is a conflict with the section in the Terms and Conditions entitled "Confidentiality and Non-Disclosure," the CJIS Security Addendum(s) and/or CJIS Security Policy govern any information covered by the CJIS Security Addendum(s) and/or CJIS Security Policy.  
;
2. TXDPS Purchase Order (including any Purchase Order Change Notices), excluding any pre-printed terms and conditions which will have not effect;
3. Statement of Work including the project work plan and other appendices;

4. Contractor Response to Request for Proposal, excluding the exception to Section 8.76 of the Terms and Conditions; and
5. Request for Proposal, excluding Section #8 (Terms and Conditions).

The State of Texas, TXDPS and their respective employees, officers, agents, and representatives, can neither agree to hold Contractor harmless nor agree to indemnify Contractor or Subcontractors, and any provisions to the contrary are void.

### **8.53 Insurance**

No contract will be executed unless and until certificates are delivered, reflecting the appropriate insurance coverages. The following insurance provisions may be subject to modification depending on the specific goods and services awarded.

All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. TXDPS will be named as an Additional Insured on all required coverages. Required coverages must remain in effect through the term of the Contract.

#### **8.53.1 Standard Insurance Provisions**

1. Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401.001 et seq. of the Texas Labor Code) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.
2. Commercial General Liability with a combined single limit of \$500,000 per occurrence for coverage AB&C including products and completed operations, where appropriate, with a separate aggregate of \$500,000. The policy must contain the following provisions:
  - a. Blanket contractual liability coverage for liability assumed under the Contract
  - b. Independent Contractors coverage
  - c. TXDPS, listed as an additional insured
  - d. Thirty (30) day Notice of Cancellation in favor of the TXDPS
  - e. Waiver of Transfer Right of Recovery against Others in favor of TXDPS
3. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are

\$250,000 bodily injury per person \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy must contain the following endorsement in favor of TXDPS:

- a. Waiver of Subrogation endorsement
- b. Thirty (30) day Notice of Cancellation endorsement
- c. Additional Insured endorsement

#### **8.54 Intentionally Left Blank**

#### **8.55 Advertisements**

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

#### **8.56 Handling of Written Complaints**

Contractor may direct written complaints to the following offices:

**Texas Department of Public Safety  
Chief of Finance  
5805 North Lamar Boulevard, Building A  
Austin, Texas 78752  
Telephone: (512) 424-2060  
Fax: (512) 424-2816**

**and**

**Texas Department of Public Safety  
Chief of Driver License Division  
5805 North Lamar Boulevard, Building A  
Austin, Texas 78752  
Telephone: (512) 424-2346  
Fax: (512) 424-5084**

#### **8.57 Non-Discrimination Policy**

In compliance with state and federal law, the State of Texas does not unlawfully discriminate in employment, contracts, or any other activity. If any special accommodations are needed for Americans with Disabilities Act (ADA) compliance, Contractor must promptly notify the TXDPS DLR Project Manager.

#### **8.58 Standards**

The service proposed will consider and accommodate statewide standards for information technology. These statewide standards are located at <http://www.dir.state.tx.us/standards>.

### **8.59 Assignment by Contractor**

Contractor must not assign or transfer any interest in the Contract without the express prior written consent of TXDPS.

### **8.60 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.

### **8.61 Disclosure of Litigation**

The Contractor is required to provide TXDPS with full information regarding the following Proceeding(s) that relate directly or indirectly to the types of deliverables and services specified in this Contract:

1. Criminal or governmental investigations or inquiries;
2. Criminal proceedings; and
3. Civil proceedings, including, but not limited to, litigation, arbitration, informal dispute resolution.

This disclosure requirement applies to the Contractor as well as its Subcontractor(s). Contractor must disclose any Proceeding(s) to which it is currently a party or a subject, as well as any Proceeding which is pending or threatened. This is a continuing disclosure requirement.

Any such Proceeding must be disclosed to TXDPS in a written statement to the TXDPS DLR Project Manager within fifteen (15) days of Contractor's knowledge of its occurrence. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated as such. Specifically, Contractor shall disclose the following information about such Proceeding:

1. Names of all parties;
2. Jurisdiction of the Proceeding;
3. Date Proceeding was initiated;
4. Remedy, penalty or purpose of the Proceeding;
5. Amount of money damages sought, if any;
6. Whether injunctive relief was requested or obtained;

7. Factual basis for the Proceeding;
8. Legal basis for the Proceeding;
9. Result of Proceeding, if known; and
10. Present status of Proceeding.

#### **8.62 Assurances**

In the event that any such Proceeding disclosed to the TXDPS pursuant to the Section herein entitled "Disclosure of Litigation" in these Terms and Conditions, or of which the TXDPS otherwise becomes aware, during the term of this Contract, causes the TXDPS to be concerned about:

1. Contractor or its Subcontractor's ability to continue to perform the Contract in accordance with its terms and conditions; or
2. Whether Contractor or its Subcontractors in performing services for TXDPS is engaged in conduct that is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of the Contract or a violation of Texas law, regulations or public policy.

Contractor must provide TXDPS all reasonable assurances requested by TXDPS to demonstrate that:

1. Contractor and/or its Subcontractors will be able to continue to perform the Contract in accordance with its terms and conditions, and
2. Contractor or its Subcontractors has not and will not engage in conduct in performing services for TXDPS which is similar in nature to the conduct alleged in such Proceeding.

Failure by Contractor to comply with the terms of this section will constitute a material breach of the Contract.

#### **8.63 Competency, Lack of Reliance on TXDPS Representations, etc.**

I have read and fully understand this Contract between TXDPS and Contractor. I am legally competent to execute this Contract and I do so of my own free will and accord, without reliance on any representation of any kind or character by TXDPS which is not expressly set forth herein. I understand that I have the opportunity to consult with a lawyer prior to signing this Contract.

#### **8.64 Signatory**

The signatory for Contractor hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this Contract and that she/he has full and

complete authority to enter into this Contract on behalf of the Contractor. At the time the signatory for Contractor signs this Contract, or within thirty (30) days thereafter, he/she will sign a letter designating signature authority by position and title for signing this Contract and any amendments or documents related thereto.

#### **8.65 Indemnity**

Contractor agrees to indemnify, defend and hold TXDPS, the State, and its employees and agents harmless against any and all claims for damages, costs, and expenses to persons or property that may arise from or be caused by any negligence, act, or omission of Contractor or any officer, agent, servant, employee, associate of Contractor or other person acting on behalf of Contractor in the execution or performance of the services under this Contract.

#### **8.66 Intellectual Property Infringement Indemnity**

Contractor must indemnify, defend, and hold harmless TXDPS, the State, and its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest, fines and penalties), incurred in connection with any action or proceeding brought against TXDPS, the State, or its employees or agents to the extent that such action or proceeding is based on a claim that any piece of equipment or any software supplied by Contractor/Subcontractor(s), or the operation thereof, or goods or services provided, or the use or reproduction of any documentation provided with such equipment or software, infringes any United States or foreign patent, copyright, trade secret, or other proprietary right of any person or entity. In addition, should the equipment or software, or goods or services provided, become, or in Contractor's opinion be likely to become, the subject of a claim of infringement, Contractor, at its own expense, must procure for TXDPS the right to continue using the equipment, software, goods, or services. If such option is not reasonably available to Contractor, Contractor must replace or modify the same with equipment or software, as the case may be, of equivalent function and performance so that it becomes non-infringing.

#### **8.67 Other Indemnities**

Contractor must indemnify, defend and hold harmless the TXDPS, the State, its employees and agents from and against all losses, liabilities, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest, fines and penalties), arising from or in connection with any of the following:

1. The breach by Contractor of any representation or warranty made by Contractor in this Contract;

2. Any claims arising out of or related to occurrences that Contractor is required to insure against as provided above;
3. The death or bodily injury of any person, or the damage, loss, or destruction of any real, tangible or intangible personal property in connection with the performance of services by Contractor, by any of its Subcontractor(s), by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation must not apply to the extent, if any, that such death, bodily injury, or property damage is caused solely by the negligence or reckless or intentional conduct of the TXDPS, the State, its employees or agents;
4. Any claim or demand asserted against the TXDPS, the State, or its employees or agents, which results from an act or omission of Contractor or any officer, agent, employee, or associate of Contractor or any of its Subcontractor(s) in its or their capacity as an employer of a person; and
5. Any breach of Contractor's confidentiality obligations set forth in the Contract.

In any and all claims against the TXDPS, the State, or its employees and agents, by any employee of Contractor or any of its Subcontractor(s), the indemnification obligation under the Contract will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for Contractor or any of its Subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts.

#### **8.68 Personnel**

Contractor must warrant that all persons assigned to the project are employees or Subcontractors of Contractor, and are fully qualified to perform the work required herein.

Personnel commitments made in Contractor's proposal and this Contract will not be changed without the prior written notification of TXDPS. 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.

#### **8.69 Key Personnel**

Contractor must receive written approval from TXDPS for all Key Personnel assigned to this Contract as specified in the Statement of Work. Contractor must assign all Key Personnel to complete all of their planned and assigned responsibilities in connection with performance of the obligations of Contractor under this Contract. TXDPS must approve the assignment and replacement by Contractor of all Key Personnel assigned to provide services or to provide on-site representation of Contractor, including, without limitation, project team manager, and/or other individuals.

Before assigning an individual to any key positions, Contractor must notify TXDPS of the proposed assignment, must introduce the individual to the appropriate representatives of TXDPS, 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.

#### **8.70 Replacement of Personnel at TXDPS' Request**

TXDPS reserves the right to require Contractor to replace Contractor or Subcontractor employees whom TXDPS judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of TXDPS. Upon receipt of a written request from an authorized representative of TXDPS, Contractor must proceed with the replacement. The written replacement request must include the desired replacement date and the reason for the request. Before a written request is issued, authorized representatives of TXDPS and Contractor will discuss the circumstances. Contractor must use its best efforts to effect the replacement in a manner that does not degrade service quality. 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 services for TXDPS under this Contract.

#### **8.71 Unauthorized Removal of Key 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 Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of Contractor's obligations under the Contract. The unauthorized removal of Key Personnel by Contractor will be considered by TXDPS as a material breach of the Contract and grounds for termination.

#### **8.72 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  
Chief of Driver License Division  
5805 North Lamar Blvd., Bldg. A  
Austin, Texas 78752**

**ATTN: DLR Project Manager**  
**Fax: (512) 424-5084**

A copy must be sent to:

**Texas Department of Public Safety**  
**5805 North Lamar Blvd., Bldg. A**  
**Austin, Texas 78752**  
**ATTN: Chief of Finance**  
**Fax: (512) 424-2816**

**If to Contractor:**

**Digimarc ID Systems**  
**Greg Gibson, Senior Project Manager**  
**63 Third Avenue**  
**Burlington, MA 01803**  
**Phone: (781) 744-6703**  
**Fax: (781) 744-6749**

A copy must be sent to:

**Digimarc ID Systems**  
**Brian Bloch, Senior Corporate Counsel**  
**63 Third Avenue**  
**Burlington, MA 01803**  
**Phone: (781) 744-6405**  
**Fax: (781) 744-6747**

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.

**8.73 Funding Out Clause**

The term of this Contract extends for several fiscal years. Continuation of this Contract is subject to appropriation of funds and collection of sufficient fees. If funds to effect continued payment are not appropriated or otherwise made available by law, TXDPS will have the right to terminate this Contract without penalty at the end of the period for which funds have been appropriated or otherwise made available by law by giving written notice of termination to Contractor.

If funding for the Image Collection and Card Production project is reduced by law or funds to pay Contractor for the agreed to level of services to be provided by Contractor are not appropriated or otherwise made available by law, TXDPS may, upon thirty (30) days written notice to Contractor, reduce such level of services in such manner and for

such periods of time as TXDPS may elect. The charges payable under this Contract will be equitably adjusted to reflect such reduced level of services.

In connection with this Contract, TXDPS agrees to notify Contractor promptly when it appears certain that the necessary funding or authorizations will not be obtained. If partial funding sufficient for a clearly separate task or tasks will be made available, the Parties may agree to perform their respective obligations relative to such tasks, and this Contract will be amended accordingly.

#### **8.74 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 services and/or goods to be provided under this Contract impossible, unnecessary, void or substantially amended or that would terminate the appropriations for this Contract, TXDPS may terminate this Contract without penalty to, or any liability whatsoever on the part of, TXDPS, the State of Texas and the United States. The Contract does not grant Contractor a franchise or any other vested property right.

#### **8.75 Contract Modifications and Change Orders**

This section is subject to the requirements, including any future requirements, under the Statement of Work. TXDPS may, from time to time, request modifications to the Contract terms or changes in the services of Contractor to be performed under the Contract. Such modifications or changes, which are mutually agreed upon by and between the TXDPS and Contractor, including any additional fees that may be required, will be incorporated in written amendment to the Contract.

#### **8.76 Warranty**

Warranties shall be applied to the software upon the date of the Letter of Acceptance and shall continue during the entire term, including any renewals, of this Contract.

In the case of software owned by Contractor, all software releases and upgrades available during the warranty period must be provided to TXDPS at no additional cost. In the case of software licensed from a third party, Contractor shall provide at no additional cost any releases and upgrades that are necessary for the ICCP System to comply with the applicable specifications under this Contract.

The warranty period for the hardware, system applications and any other third-party software will begin upon installation of products at the TXDPS site(s).

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

1. Contractor (and its Subcontractors) must perform all services in accordance with the highest professional standards in the industry.
2. Contractor (and its Subcontractors) must use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the services.
3. Contractor (and its Subcontractors) 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.
4. Contractor (and its Subcontractors) must use its best efforts to use efficiently all resources or services necessary to provide the services that are required under the Contract.
5. Contractor (and its Subcontractors) must use its best efforts to perform the services in the most cost-effective manner consistent with the required level of quality and performance.
6. Contractor (and its Subcontractors) must perform the services in a manner that does not infringe the proprietary rights of any third party.
7. Contractor (and its Subcontractors) must perform the services in a manner that complies with all applicable laws and regulations.
8. Contractor (and its Subcontractors) has duly authorized the execution, delivery, and performance of the Contract.
9. Contractor (and its Subcontractors) has not provided any gifts, payments, or other inducements to any officer, employee or agent of TXDPS.
10. Contractor (and its Subcontractors) must use its best efforts to ensure that no viruses or similar items are coded or introduced into the systems used to provide the services.
11. Contractor (and its Subcontractors) must not insert or activate any disabling code into the systems used to provide the services without TXDPS' express prior written approval.
12. Contractor (and its Subcontractors) must prevent all security breaches during the entire term of the Contract including, but not limited to, security breaches regarding theft of cards and/or card materials, creating duplicate cards for fraudulent use, selling or providing cards and/or card materials to unauthorized individuals, employee fraud, compromise of applicant specific data and images,

etc.

#### **8.77 Pass-through of Warranties**

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

#### **8.78 State Exculpation**

Contractor acknowledges and agrees that neither the State nor TXDPS will be responsible for or liable to Contractor or its Subcontractor(s) for any increased costs or expenses that may be incurred by Contractor or its Subcontractor(s), or for any other damages that may be suffered by Contractor or its Subcontractor(s), as a result of any act or omission of any other vendor to the State or TXDPS.

#### **8.79 News Releases**

Except as provided for in the Section herein entitled "Publicity," Contractor and Subcontractor(s) will 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.

#### **8.80 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 the Contract for any reason:

1. The Parties respective indemnity and confidentiality obligations;
2. Contractor's media and advertisement restrictions;
3. Audit Rights;
4. The intellectual property and source code rights and obligations; and
5. Warranties.

#### **8.81 No Joint Enterprise**

TXDPS is associated with the Contractor only for the purposes and to the extent set forth herein, and with respect to the performance of services hereunder, the 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 the Contractor or any other party.

#### **8.82 Employee Non-Solicitation**

Contractor must not, during the term of this Contract and for a period of twelve (12) months thereafter, directly solicit for employment any person who is a TXDPS employee or was a TXDPS employee during the previous six (6) months with whom Contractor had substantial contact in the course of performing its obligations under the Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this Section.

#### **8.83 Availability of TXDPS Manpower**

All of the TXDPS obligations and requirements in this Contract are subject to the availability of TXDPS manpower and are subject to the practicability of TXDPS to perform such obligations and requirements. The determination regarding availability of TXDPS manpower and the practicability of TXDPS to perform such obligations and requirements is within the sole discretion of TXDPS management. The availability of TXDPS manpower could directly impact the deliverable timeline. If adequate TXDPS manpower is not allocated as specified in the Statement of Work, then Contractor shall not incur Liquidated Damages as allowed by the section entitled herein "Liquidated Damages" of this Contract, as long as Contractor timely and properly complies with the section herein entitled "Rolling Estoppel." However, the adequacy of TXDPS manpower to meet the project schedule Deliverables will be a joint decision made by the TXDPS DLR Project Manager and Contractor's Project Manager. If the project managers cannot agree on the issue of adequacy of TXDPS manpower, the determination of TXDPS manpower will be decided according to the Issue Management Process for this project to the extent authorized by law.

#### **8.84 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.

#### **8.85 Responsibility for State Property**

Contractor must assume full responsibility for and must indemnify the TXDPS, the State of Texas, and its employees and agents for any and all loss or damage of whatsoever kind and nature to any and all State property, including any equipment, supplies, accessories, or parts furnished, while in Contractor's custody and care for storage, repairs, or services

to be performed under the terms of this Contract, resulting from the acts or omissions of Contractor or any employee, agent, or representative of Contractor or Subcontractor(s).

#### **8.86 Required Consents**

TXDPS will promptly obtain and provide to Contractor all Required Consents necessary for Contractor to provide the services described in the Statement of Work. A Required Consent means any consents or approvals required to give Contractor and its Subcontractor(s) the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products that TXDPS uses, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products provided that this provision shall not require TXDPS to obtain consents from any third parties to provide source code for any Third Party Software to Contractor.

Contractor will be relieved of the performance of any obligations that may be affected by TXDPS' failure to promptly obtain and provide any Required Consents to Contractor.

Where Contractor is providing hardware, software, firmware, services and/or other products that require consent from third parties, Contractor will promptly obtain all Required Consents necessary for Contractor to provide the services described in the Statement of Work, provided that this provision shall not require Contractor to obtain consents from any third parties to deposit Third Party Software into escrow pursuant to the Section herein entitled "Intellectual Property/Source Code."

TXDPS will be responsible for the content of any existing database, the selection and implementation of controls on its access and use, backup and recovery and the security of the stored data.

#### **8.87 Duration and Renewal of This Contract**

This Contract will become effective on the date of execution by both Parties. However, the initial term of five (5) years will begin on the date of the TXDPS Letter of Acceptance. The Parties reserve the right to renew this Contract, in whole or in part under the same terms, conditions and price, for up to ten (10) years in increments of one or more years at a time. TXDPS reserves the right to exercise this option to initiate renewal discussions by providing written notice to Contractor not less than ninety (90) days prior to the expiration of the initial term of this Contract or the anniversary date thereof. Any renewal will only become effective after both Parties sign a document agreeing to renew this Contract. The Parties reserve the right to amend the term of this Contract if the date of the TXDPS Letter of Acceptance changes from the date listed in the Statement of Work Project Plan.

### **8.88 Buy Texas**

Pursuant to Section 2155.4441 of the Texas Government Code, Contractor shall buy Texas products and materials for use in providing the services authorized in the 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.

### **8.89 Agreement**

In Witness whereof, the Parties have executed the Contract as of the date specified below. Each Party represents and warrants that its respective signatory is duly authorized to execute the Contract on its behalf.

### **8.90 Texas 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.

### **8.91 Definitions**

Definitions are provided in the following sources: a) Appendix J to RFP: Glossary of Terms; b) Section #13 of the Statement of Work; and c) in these Terms and Conditions, including this section.

**Confidential Information:** As defined in the section herein entitled "Confidentiality and Non-Disclosure."

**Custom-Developed Application Software:** As defined in the section herein entitled "Intellectual Property Rights."

**Customized Pre-Existing Application Software:** As defined in the section herein entitled "Intellectual Property Rights."

**Implementation:** As defined in the section herein entitled "Liquidated Damages."

**Materials:** As defined in the section herein entitled "Source Code."

**Open Source Software:** As defined in the section herein entitled "Intellectual Property Rights."

**Pre-Existing Application Software:** As defined in the section herein entitled "Intellectual Property Rights."

Third-Party Software: As defined in the section herein entitled "Intellectual Property Rights."

**Texas Department of Public Safety**

By: *Thomas A. Davenport*  
Name:

Date: 10-13-05

Title:  
Texas Department of Public Safety (TXDPS)  
5805 North Lamar Blvd. Bldg. A  
Austin, Texas 78752

**Contractor**

By: *B. Davis*

Date: 10-13-05

Contractor

Name: Bruce DAVIS

**TXDPS PURCHASE ORDER**

# PROCUREMENT AND CONTRACT SERVICES

## REVIEW/SIGNATURE ROUTING SHEET

<b>Contract No:</b>	405-C6-1001	<b>Modification:</b>	11
<b>Service:</b>	Image Collection and Card Production	<b>Assigned Attorney:</b>	
<b>Type:</b>	Software	<b>CRB Approval Date:</b>	N/A
<b>Contractor:</b>	MorphoTrust	<b>Gov't Code 2252.908 Disclosure Received:</b>	N/A

The referenced contract document is submitted for review and signature.

Please route to the next office after each review.

**Phuc T. Vuong, CTPM, CTCM**  
Purchaser  
Procurement and Contract Services

PC                      5/18/16  
Initials                      Date

**Ken Maze, CTPM**  
Team Lead  
Procurement and Contract Services

KM                      5/18/16  
Initials                      Date

**Alfred Ramos, CTPM**  
Branch Manager  
Procurement and Contract Services

AR                      5/18/16  
Initials                      Date

**Marita Washington**  
Director  
Procurement and Contract Services

MW                      5-20-16  
Initials                      Date

**Pam Smith**  
Managing Attorney, Contracting  
Office of the General Counsel

*egj*  
5-23-16  
2252.908  
Joan M 4-12-16

PS                      5/24/16  
Initials                      Date

**MorphoTrust**  
Contractor

5/12/2016                      5/17/2016  
Sent                      Received

**Steven C. McCraw**  
Director  
Texas Department of Public Safety

SM                      5/24/16  
Initials                      Date

Please return files to the **Phuc Vuong** at Ext. 82896 for distribution and administration.

TEXAS DEPT. OF PUBLIC SAFETY  
OFFICE OF GENERAL COUNSEL

MAY 23 2016

**Amendment No. 11  
TO THE CONTRACT FOR  
IMAGE COLLECTION AND CARD PRODUCTION  
FOR THE STATE OF TEXAS  
405-C6-1001**

This Amendment No. 11 to this Contract between the Texas Department of Public Safety ("TXDPS"), an agency of the State of Texas, and MorphoTrust USA, LLC ("MorphoTrust" or "Contractor") is entered into by and between TXDPS and the Contractor.

**I. Recitals**

**Whereas**, on October 13, 2005, TXDPS and Digimarc ID Systems, LLC entered into this Contract to be effective October 13, 2005;

**Whereas**, on October 13, 2005, TXDPS issued Purchase Order 405-C6-1001 under this Contract to Digimarc ID Systems, LLC with a not to exceed of \$29,588,544.11;

**Whereas**, Digimarc ID Systems, LLC was merged into its parent, Digimarc Corporation, effective as of March 31, 2006;

**Whereas**, Digimarc Corporation was acquired by L-1 Identity Solutions, Inc. on August 13, 2008 and renamed L-1 Secure Credentialing, Inc.;

**Whereas**, TXDPS and the Contractor entered into Amendment No. 1 to this Contract, effective as of August 2, 2010 to reflect the name change and update the notice provisions;

**Whereas**, on December 28, 2005, TXDPS, Digimarc ID Systems, LLC and Guard-IT Corporation executed an escrow agreement regarding the source code;

**Whereas**, on August 31, 2007, TXDPS issued a Purchase Order Change Notice to Digimarc ID Systems, LLC, amount \$85,114.00, regarding programming modifications to enhance the Image Verification System;

**Whereas**, on August 31, 2007, TXDPS issued a Purchase Order Change Notice to Digimarc ID Systems, LLC, amount \$55,800.00, regarding programming modifications to enhance the Image Verification System;

**Whereas**, on September 12, 2008, TXDPS issued a Purchase Order Change Notice to Digimarc ID Systems, LLC, amount \$69,508.00, regarding creation of temporary visitor card format, new card;

**Whereas**, on September 30, 2008, TXDPS and the Contractor entered into a letter agreement regarding the creation of concealed handgun licenses under this Contract;

**Whereas**, on August 26, 2011, TXDPS issued its Letter of Acceptance and the initial five-year term of this Contract began on September 1, 2011;

**Whereas**, on December 19, 2011, TXDPS issued a Purchase Order Change Notice to L1 Identity Solutions, amount \$119,740.00, regarding programming changes to card production;

**Whereas**, TXDPS and the Contractor entered into Amendment No.2 to this Contract, effective as of April 13, 2012 to provide additional hardware, software, support, and maintenance services for the image collection and card production system;

**Whereas**, TXDPS and the Contractor entered into Amendment No. 3 to this Contract, effective July 19, 2012 to provide modifications to the Private Security Card;

**Whereas**, TXDPS and the Contractor entered into Amendment No. 4 to this Contract, effective as of July 19, 2012 to provide additional hardware, software, support, and maintenance services for the image collection and card production system;

**Whereas**, TXDPS and the Contractor entered into Amendment No. 5 to this Contract, effective as of August 20, 2012 to provide additional hardware, software, support, and maintenance services for the image collection and card production system;

**Whereas**, TXDPS and the Contractor entered into Amendment No. 6 to this Contract, effective as of August 18, 2014 to procure card production programming changes for compliance with the REAL ID Act of 2005 and the American Association of Motor Vehicle Administrator ("AAMVA") standards through an additional Statement of Work;

**Whereas**, TXDPS and the Contractor entered into Amendment No. 7 to this Contract, effective as of April 20, 2015 to reflect the assignment of this Contract to MorphoTrust with MorphoTrust assuming all rights and obligations, in all respects, including payment and performance;

**Whereas**, TXDPS and the Contractor entered into Amendment No. 8 to this Contract, effective as of August 21, 2015 to provide changes to the Concealed handgun license for compliance with House Bill 910 (84<sup>th</sup> Texas Legislature);

**Whereas**, TXDPS and the Contractor entered into Amendment No. 9 to this Contract, effective as of April 4, 2016 to develop two new card types, the "Commercial Learner Permit (CLP)" and the "Non-Domiciled CLP," and modify the existing "Non-Resident Commercial Driver License (CDL)" to be a "Non-Domiciled CDL" through an additional Statement of Work;

**Whereas**, TXDPS and the Contractor entered into Amendment No. 10 to this Contract, effective as of May 11, 2016 to provide changes to the current Driver License (DL) card and the personal Identification Card (ID) in order to comply with the REAL ID Act of 2005, to issue secure, tamper-resistant DL and IDs through an additional Statement of Work;

**Whereas**, TXDPS desires to procure and the Contractor desires to make changes to the current Private Security Bureau (PSB) card through an additional Statement of Work;

**Whereas**, Section 8.32 of this Contract provides that no modification or amendment to this Contract will become valid unless in writing and signed by both parties and that only the TXDPS Director or his/her designee is authorized to sign changes or amendments; and

**Whereas**, Section 8.75 of this Contract provides that TXDPS may, from time to time, request modifications to this Contract or changes in the services of the Contractor to be performed under this Contract, and that such modifications or changes which are mutually agreed upon by and between TXDPS and the Contractor, including any additional fees that may be required, will be incorporated in written amendment to this Contract.

Now, therefore, the parties hereby agree as follows:

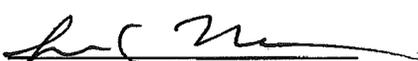
## II. Statement of Work

- A. The Quotation and the Statement of Work for changes to the current PSB card are attached to this Amendment No. 11 as Exhibit A and Exhibit B and are incorporated as part of this Contract.
- B. The Contractor's total firm fixed price compensation for completion of the Statement of Work, Exhibit A to this Amendment No. 11 is \$172,787.00.
- C. Only individuals expressly authorized by the Director of TXDPS by reference to this paragraph II.C of this Amendment No. 11 may provide written approvals on behalf of TXDPS under this Contract.
- D. The "Terms and Conditions of this Contract" as used in Section 8.52 on page 28 of this Contract and elsewhere in this Contract includes the Terms and Conditions in this Contract and no additional provisions or modifications or any other conflicting term.
- E. This Amendment No. 11 represents the entire agreement between the parties concerning the subject matter of this Amendment No. 11 and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations.
- F. Except as expressly provided herein, all other provisions of this Contract and prior Amendments remain unchanged and are in full force and effect and are ratified and affirmed by the parties. By their execution and delivery of this Amendment No. 11 neither party waives or releases any default thereunder.
- G. If there is a conflict between this Contract and any prior Amendments, then the following will control in this order of priority:
  - 1) Amendment No. 11
  - 2) Amendment No. 10
  - 3) Amendment No. 9
  - 4) Amendment No. 8
  - 5) Amendment No. 7
  - 6) Amendment No. 6
  - 7) Amendment No. 5
  - 8) Amendment No. 4
  - 9) Amendment No. 3
  - 10) Amendment No. 2
  - 11) Amendment No. 1
  - 12) Purchase Order Change Notices
  - 13) This Contract
- H. This Amendment No. 11 will be effective as of the date of the last party to sign.

### III. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Amendment No. 11 on behalf of the respective parties. This Amendment No. 11 may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

**TXDPS**

By: 

Name: Steven C. McCraw

Title: Director

Date: 5/24/16

**MorphoTrust USA, LLC.**

By: 

Printed Name: Robert Eckel

Title: Chief Executive Officer

Date: 5/17/16





January 18, 2016

Meredith McCall, PMP, CSPO  
Business Program Manager, Operations Bureau  
Texas Department of Public Safety  
Regulatory Services Division  
5806 Guadalupe Street Bldg I,  
Austin, TX 78752  
Phone: (512) 424-7721

**Quotation Reference Number:**

**FQ20150821TX05R3**

Dear Ms. McCall,

MorphoTrust USA, LLC ("MorphoTrust") is pleased to provide the Texas Department of Public Safety ("TX DPS") with this quotation in response to your request. A description of the goods and/or services you have requested, plus certain terms and conditions of this quotation, are provided below.

**DESCRIPTION OF GOODS AND SERVICES:**

TX DPS has requested that MorphoTrust quote changes to their current Private Security Bureau (PSB) card. The Regulatory Services Division (RSD) is redesigning the Private Security database (Back-end), including the Private Security Pocket Card, into a new system that is referred to as Texas Online Private Security (TOPS). TOPS wishes to create a NEW card loosely based on the existing card. The factory interface for the folios will remain in the current field mapping specification. The following goods and services are in scope for the effort:

- Card Changes are for a NEW TOPS Card format and require a NEW Card Design with all associated Card Design Approval Documentation (CDAD).
- Consolidation of PSB Card types in to 4 TOPS card Types
- NEW Development effort to accommodate new TOPS card designs
- NEW Factory Implementation concurrent with existing production
- Formalized Customer Review & Acceptance assurance.

**ASSUMPTIONS:**

- This quote is dependent on agreement of final specifications with the customer.
- The existing PSB card will need to be produced while the new TOPS card changes are developed, tested and implemented, in the same environment.
- No changes from current PSB card materials – the TOPS card will use existing Card materials, Pre-print, and Security features 'as-is'
- No change to security features from PSB to TOPS Card
- There is no work expected as a byproduct of the NEW TOPS Back End.
- Keep and maintain the exiting file extract and all current operational procedures for generating PSB card using DL Images (Portrait and Signature) and existing factory equipment.

MorphoTrust is pleased to provide you with this quotation. Prices specified in this quotation shall remain fixed for a period of 60 days from the date of this quotation. Prices quoted herein are based upon the information that has been provided to MorphoTrust by TX DPS. If any of this information changes or is incorrect, MorphoTrust reserves the right to make such adjustments to the prices in this quotation as MorphoTrust deems appropriate in its sole discretion.

MorphoTrust standard terms and conditions which govern all purchases made pursuant to this quotation are listed below. To the extent such terms directly conflict with those set forth in this quotation, the terms in this quotation shall govern.

Please feel free to contact me with any questions you may have.

Sincerely,



Cagney Shattuck  
Client Executive  
MorphoTrust USA, LLC  
296 Concord Road, Suite 300  
Billerica, MA 01821  
(402) 676-1577



**QUOTATION**

Date: January 18, 2016  
 Quote No: FQ20150821TX05R3  
 Valid Through: 60 days from date above  
 Payment Terms: Payable within 30 days of Invoice by TX DPS  
 Delivery: Delivery of goods and services anticipated to be completed within 3-4 months after receipt of Purchase Order

**To:**  
 Meredith McCall, PMP, CSPO  
 Business Program Manager, Operations Bureau  
 Texas Department of Public Safety  
 Regulatory Services Division  
 5806 Guadalupe Street Bldg I,  
 Austin, TX 78752  
 Phone: (512) 424-7721

**From:**  
 Cagney Shattuck  
 Client Executive,  
 MorphoTrust USA, LLC  
 296 Concord Road, Suite 300  
 Billerica, MA 01821  
 (402) 676-1577

Description of Goods and/or Services as per Quote Letter	Total Price
Planning	\$22,086
Requirements and Specification	\$19,785
Card Design Effort	\$42,339
Engineering Development, Integration and Test	\$39,728
QA System, Modification, and Testing	\$30,758
Low Rate Initial Production and Factory User Acceptance Testing	\$18,091
<b>Total - One Time Expenses for new TOPS cards</b>	<b>\$172,787</b>

**NOTE:** This is a firm fixed quotation for goods and services.

**TERMS AND CONDITIONS:** MorphoTrust USA and Texas DPS are governed by the terms and conditions as set forth by the ICCP Contract Number 405-C6-1001

Quote Acceptance:

Print: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_



# SAFRAN

## MorphoTrust USA

TEXAS DEPARTMENT OF PUBLIC SAFETY  
Regulatory Services Division (RSD)

Statement of Work

### INTRODUCTION/BACKGROUND

The Texas Department of Public Safety (TXDPS) has requested that MorphoTrust work with TXDPS's Regulatory Services Division (RSD) to make changes to the current Private Security Bureau (PSB) identification card that is currently produced by MorphoTrust, under the Image Collection and Card Production (ICCP) contract, Contract Number: 405-C6-1001.

TXDPS is redesigning the PSB Backend infrastructure and interfaces, inclusive of the Private Security Card. A new RSD PSB project is expected to be implemented by RSD - referred to as Texas Online Private Security (TOPS) - by August 15, 2016. The TOPS Redesign project will require changes to the existing MorphoTrust interface for the folio factory submission interfaces to work correctly. The TOPS project will also require a new card design that will be based on the existing PSB card construction technology, data elements used, and layout elements.

MorphoTrust is happy to provide TXDPS with this statement of work in support of the TXDPS TOPS Redesign project specific activities, deliverables and respective timelines. This Document establishes the Statement of Work for the outlined Project Deliverables changes as understood by MorphoTrust and requested by TXDPS.



## SCOPE OF WORK

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The scope of work for the MorphoTrust TOPS Project includes the following standard activities:

- Project planning
- Requirements definition
- Card design, development, integration, and testing
- Interface design, development, integration, and testing
- Testing consumables planning
- Execution
- Implementation
- Low rate initial production (LRIP)
- Factory user acceptance and testing (F/UAT)
- TXDPS acceptance of a new TOPS Card produced within the existing MorphoTrust TXDPS card production factory and transition to operations

Configuration Management, Environment Management and Change Management of the TXDPS card factory environment for concurrent card production of TXDPS driver license (DL), concealed handgun license (CHL) and PSB cards, now referred to as TOPS cards, must take precedence, and be carefully managed concurrently with the testing activities designated to bring this TOPS project into production.

Environment management must clearly delineate production and testing modes until the TOPS project is successfully accepted and approved for production of TOPS cards. It is paramount that production service levels for the TXDPS shared card programs are maintained while we leverage the one set of factory equipment for onboarding of the new TOPS project.

Specific deliverables and milestones are listed in the Work Requirements and Schedules / Milestones sections of this SOW.

This project does not include in its scope of work any work related to card materials of construction, card pre-print materials, card security features or other core existing card features and components, and factory interfaces for the folios and folio mappings specifications.

MorphoTrust USA, in partnership with TXDPS shall execute this project as Amendment No. 11 to the ICCP Contract (Contract Number 405-C6-1001).



## PERIOD OF PERFORMANCE

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The period of performance for the MorphoTrust TOPS Project begins upon the date that Amendment No. 11 to the ICCP Contract is fully executed. Because MorphoTrust understands the importance and urgency of completing the TOPS project, immediately after mutual execution, we will meet in person with RSD to define the best way to accomplish all necessary work as expediently as possible. All work is scheduled to complete within the timeframes shown in the Schedule / Milestones section below. Any modifications or extensions will be handled through the change control process and governed by the terms and conditions as set forth by the underlying ICCP Contract Number 405-C6-1001.

## PLACE OF PERFORMANCE

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The majority of the work will be performed at MorphoTrust facilities. MorphoTrust will establish a weekly status meeting to track the project progress. The project milestones listed herein are considered 'project gates' that require the RSD Project Manager's (Meredith McCall) approval before the project can continue to the next 'gate'. Once the Project reaches the Factory and User Acceptance and Test (UAT) phase the work can only be performed in the existing factory, using the existing factory equipment. All TOPS factory work must be conducted outside of the established daily normal card production windows of operation. The Factory equipment must only be leveraged for testing upon the successful completion of all preexisting daily production card factory jobs, or with a waiver from the approved TXDPS designee identified within ICCP Contract Number 405-C6-1001.

## WORK REQUIREMENTS

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As part of the TOPS Redesign Project, MorphoTrust and TXDPS shall work together on mutually dependent project tasks to ensure project success. The following is list of tasks which will result in the successful completion of this project:

### *Execution & Acceptance (anticipated on or before May 6, 2016)*

- Mutually executed Change Modification and Contract Amendment No. 11

### *Project Kickoff:*

- MorphoTrust, in cooperation with the TXDPS project team, shall create and finalize:
  - o a detailed project plan including schedule,



## MorphoTrust USA

- a testing plan,
- an implementation plan,
- a Factory User acceptance testing plan,
- an Low Rate Initial Production (LRIP) plan and
- a production go live transition plan.

### *Requirements and Design Phase:*

- MorphoTrust shall work with TXDPS to gather requirements and establish specifications and designs for the new redesigned TOPS Card layout
- The card design layout will be created based on the existing PSB card construction materials, security features and card preprint
- The MorphoTrust developed Interface Control Document (ICD) will document the existing TXDPS/DLS file extract and maintain all current operational procedures for generating TOPS cards using existing DL Images (Portrait and Signature) and existing factory equipment and interfaces
- MorphoTrust shall develop Card Quality Standard and Card Manufacturing Tolerances
- MorphoTrust shall present written status at the weekly meeting
- The MorphoTrust developed Card Design Approval Document (CDAD) shall document the agreed to card design changes. Signoff of the CDAD by TXDPS is required to proceed

### *Build/Development Phase:*

- MorphoTrust shall complete all card designs and card art work per the TXDPS approved CDAD designs and specification
- MorphoTrust shall complete all card element coding per the TXDPS approved Card Design Approved Documents (CDAD) designs and specification
- MorphoTrust shall complete all Quality Testing of all coding efforts in compliance with the approved designs and specification
- MorphoTrust shall verify and test all card security features
- MorphoTrust shall coordinate and communicate with the TOPS Project team, a testing schedule for conducting F/UAT per the provided detailed user testing plan
- MorphoTrust shall procure sufficient test quantity card consumables in order to complete testing and acceptance phases defined
- MorphoTrust shall present written status at the weekly meeting
- MorphoTrust shall complete all internal tests and environment management required to produce preliminary digital output files of "as rendered" cards, for RSD/TOPS approval

### *Introduction & Implementation Phase:*

- TXDPS shall generate test data in conformance with the agreed to specifications, to produce test credentials and to test the required interfaces
- MorphoTrust shall develop and test all card factory changes in conformance with agreed to specification



## MorphoTrust USA

- MorphoTrust shall perform Quality Testing of all coding efforts to be in compliance with the approved designs and project specification
- MorphoTrust shall perform integration testing using TXDPS generated test data
- TXDPS shall work with MorphoTrust to correct and remedy any identified integration issues
- MorphoTrust shall present written status at the weekly meeting
- MorphoTrust shall complete all internal tests required to produce preliminary physical sample cards for TXDPS approval before entering the UAT Phase

### *User Acceptance & Test (UAT) Phase:*

- MorphoTrust shall coordinate and communicate with the TOPS Project team, and coordinate all testing per the schedule for conducting F/UAT
- TXDPS shall generate test data in conformance with the agreed to specification, to produce test sample credentials in the factory and to test the required interfaces, per the UAT plan
- MorphoTrust shall provide a detailed user testing plan using the available factory production environment
- MorphoTrust shall produce sample physical TOPS cards in the Factory environment
- MorphoTrust shall perform QA and Testing on the sample cards to ensure card conformance with the design and specifications. Once QA approved, sample cards will be manufactured for customer acceptance
- MorphoTrust shall present written status at the weekly meeting
- The sample UAT cards (PCAD's) will be provided to TXDPS and the TOPS project team for approval

### *Go Live Phase:*

- TXDPS shall configure a LRIP production job to the Factory production environment of up to 200 cards
- MorphoTrust shall produce the LRIP set of cards in duplicate
- MorphoTrust shall provide 100% QA card inspection of the LRIP job to ensure compliance with the specifications
- Upon successful MorphoTrust validation of the LRIP card production job, TXDPS shall review 100% the LRIP production job for approval of the card quality output
- Upon TXDPS formal written acceptance of LRIP production card job, TXDPS shall configure all daily production jobs to the NEW production environment, per the specifications, and the project will be "Live"
- TXDPS shall communicate to MorphoTrust the timing of the first production resumption with the new TOPS card, in alignment with the milestone schedule
- MorphoTrust shall once again verify the first production job set of cards for compliance with the TOPS card designs and specifications
- MorphoTrust shall present written status at the weekly meeting



## MorphoTrust USA

- Written formal acceptance of the LRIP production job "Go Live" by TXDPS, will constitute contractual performance compliance, and agreement to proceed with invoicing

### *Project Handoff/Closure:*

- Upon successful "Go Live" and TXDPS formal written acceptance of the LRIP production job, the new card will be "in production", and the project will be "closed" and placed in "operations"
- MorphoTrust shall present written status at the project closure meeting

## SCHEDULE/MILESTONES

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The list below consists of the Project milestones identified for the RSD TOPS Project and reflect the expected business day duration impact from the effective date of the Amendment. A project of this scope typically has a completion expectation of 6 months' worth of work effort. The Dates reflected below are estimated based on the knowledge of scope of work. The below dates are approximate. The following timeline is represented in a linear format. It is anticipated that parallel work processes can be found once the RSD and MorphoTrust teams develop the project plan and schedule, finalized within the Requirements Specifications project phase. Both parties are working diligently towards the project delivery date.

Mutual Execution of Amendment No. 11	[Effective date]
Project Meeting Kick-off	[Effective date + 2 Business Days]
Card Design (CDAD) Sign-off	[Kick-off date + 10 Business Days]
Requirements Specification Sign-off	[Kick-off date + 10 Business Days]
Development and QA complete Days]	[CDAD sign-off date + 40 Business Days]
MorphoTrust Test Production Jobs Start Days]	[QA Complete date + 10 Business Days]
Factory User Acceptance Test (F/UAT) Start Days]	[QA Complete date + 10 Business Days]
Factory User Acceptance Test Acceptance sign-off Days]	[F/UAT Start date + 10 Business Days]
LRIP Acceptance Days]	[F/UAT sign-off date + 2 Business Days]
Go Live Day]	[LRIP Acceptance date + 1 Business Day]
Mutual Execution of Formal Written Acceptance	[Go Live date + 0 Days]
Project Completion/Closure/Archives Complete	[Go Live date + 20 Business Days*]

\* This milestone does not impact the project delivery schedule date.



## ACCEPTANCE CRITERIA

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For the TXDPS TOPS Redesign Project, the acceptance of all deliverables will be in compliance with a formal written acceptance executed by both parties. The TXDPS Project Manager is required to ensure the completeness of each stage of the project and that the scope of work has been met, and that all executable dependencies are met in order for the project to maintain the scheduled timeline.

In order to ensure a timely build phase, and successful project timeline completion deadlines, TXDPS and MorphoTrust shall work to create a timely acceptance assurance of all pre-requisite specifications, designs and requirements documentation.

Once a project phase is completed and MorphoTrust provides their report/presentation/acceptance form for review and approval, the TXDPS project manager shall either sign off on the approval for the next phase to begin, or reply to the MorphoTrust assigned Project Manager, in writing, advising what tasks must still be accomplished.

Once all project tasks have been completed, the project will enter the handoff/closure stage. During this stage of the project, MorphoTrust shall provide their project closure report and project task checklist to the TXDPS Project Manager. A formal written acceptance document will be executed by both parties to acknowledge acceptance of the overall project.

Any discrepancies involving completion of project tasks or disagreement between MorphoTrust and TXDPS Project Managers will be addressed per ICCP Contract Number 405-C6-1001.

## DELIVERABLES

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As part of the overall project, MorphoTrust shall provide the following deliverables:

1. MorphoTrust shall develop a project Schedule
2. MorphoTrust shall create a Card Design Approval Document that will reflect the requested changes for the new TOPS card formats and designs.
3. MorphoTrust shall develop a new Interface Control Document (ICD) to document existing factory interfaces to any new TOPS back end.
4. MorphoTrust shall develop a Data Dictionary (DD) to reflect the existing and any new data element mapping and requirements.
5. MorphoTrust shall develop and provide a detailed user acceptance testing plan (UAT Plan).



6. MorphoTrust shall coordinate and communicate with TXDPS and the TOPS Project team, a testing schedule for conducting F/UAT per the provided detailed user testing plan using the available production environment.
7. MorphoTrust shall produce digital pdf card layouts proofs for TXDPS review and approval before moving to the UAT phase.
8. MorphoTrust shall provide an acceptance UAT PCAD Card samples.

## CONDITIONS AND ASSUMPTIONS

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As part of the overall performance on the project is expected that the project be governed by the underlying expectations for both MorphoTrust and TXDPS, under the following conditions and assumptions:

1. The existing PSB card will need to be produced in the factory while the new TOPS card changes are developed, tested and implemented, in the same and only factory environment.
2. The factory environment is used for TXDPS DL/ID card production and usage of the factory environment for validation and testing of the work under this Statement of Work must be planned and conducted after, and without impact to, all existing factory production planned work.
3. There are no changes to the existing Card materials, Pre-print, and Security features of the existing PSB Card. The existing PSB Card stock will be used 'as-is' in the creation of the new TOPS card.
4. The card design layout in the CDAD will be created based on the existing PSB card construction materials, security features and preprint.
5. The exiting file extract and all currently in place operational procedures for generating the legacy PSB card will be leveraged and used "as is" in the TOPS project. No new interfaces will be created for the creation of the file extract, or to communicate with the MorphoTrust factory.
6. All work required to modernize the RSD project into the TOPS project and associated modifications of the TXDPS interfaces to function per the specifications of this project, and interface with the MorphoTrust factory are the responsibility of TXDPS project team.
7. TXDPS shall coordinate and manage any and all third party contractor's that may be engaged to work on the project on behalf of TXDPS, as required, for interfacing with the MorphoTrust team and ensuring project timely execution.
8. The MorphoTrust developed Interface Control Document (ICD) will document the exiting TXDPS/DLS file extract and maintain all current operational procedures for generating PSB cards using existing DL Images (Portrait and Signature) and existing factory equipment and interfaces.
9. TXDPS shall generate test data in conformance with the agreed to specifications, to produce test credentials and to test the required interfaces.



10. Upon successful customer approval of the sample UAT card, and based on a mutually agreeable date, the go Live Date, MorphoTrust will initiate the switch to production.
11. Once the TOPS card is live in production, any legacy interfaces will be removed from the system.
12. All test material and artifacts will be destroyed in the factory, per existing factory governance standards.
13. MorphoTrust shall supply sufficient materials to perform the specified testing and produce TOPS sample cards for evaluation, compliance, and project acceptance, in an amount not expected to exceed 5000 test cards.
14. LRIP cards and all Production cards are expected to be billed at the contractual rate in effect.

## OTHER REQUIREMENTS

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All requirements for the project will be governed by the pre-existing terms and conditions as set forth by the ICCP Contract; Contract Number 405-C6-1001 between MorphoTrust and TXDPS.