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 though 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 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.

4

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: ████████

Account Name: Digimarc ID Systems
Account Number: ████████

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.

21

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