

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. Paetz  
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**