

## System Implementation Agreement

Between Scott County Emergency Communications Center, and CONTRACTOR

### WITNESSETH:

This Agreement, (hereinafter referred to as the "Agreement") is made and entered into with the State of Iowa to be performed in the County of Scott as of the Effective Date (as stated in Section 1.4, Term of Agreement) by and between Scott Emergency Communications Center (hereinafter referred to as "SECC") and CONTRACTOR, a corporation organized under the laws of the State of XXXXXXXX (hereinafter referred to as the "CONTRACTOR", located in XXXXXXXX).

In consideration of the promises and of the mutual covenants and agreements hereinafter contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SECC agrees to purchase, and the CONTRACTOR agrees to license and/or sell and furnish, the following described goods and services (hereinafter collectively referred to as the "SYSTEM").

### TERMS AND CONDITIONS

#### 1. General Contract Provisions

##### 1.1 Composition of Agreement.

The Parties' entire agreement concerning the SYSTEM consists of: (1) this Agreement; (2) the Exhibits to this Agreement; (3) the RFP; (4) the CONTRACTOR'S Proposal as it may be revised by mutual consent of SECC and CONTRACTOR prior to execution of this agreement; and (5) any written Change Orders to this agreement which may be delivered, prepared or issued after the date of the Agreement.

1.1.1 **Exhibits.** The following exhibits are attached to this Agreement and made a part hereof:

Exhibit A	Software License Provisions
Exhibit B	Scope of Work
Exhibit C	Cost Detail: Hardware, Software and Services
Exhibit D	Services Detail
Exhibit E	Payment Schedule
Exhibit F	Computer Software Support Agreement
Exhibit G	Project Schedule and Personnel
Exhibit H	Preliminary and Final Acceptance Tests
Exhibit I	Correspondence
Exhibit J	Escrow Agreement
Exhibit K	Hardware and Network Specifications

1.1.2 **Order of Documents.** In the event of any conflict or inconsistency among documents related to this agreement, the Order of Precedence shall be used to determine the resolution of the discrepancy, with the most recently dated document first, unless both parties mutually agree in writing to an alternative decision. The Order of Precedence for these documents shall be as follows:

1. Amendments, Change Orders, or modifications to the Functional Specification Document
2. This Agreement, the Functional Requirements Document when completed and mutually agreed to by both parties and added as an addendum to this agreement.
3. Correspondence as identified in Exhibit I (Correspondence)
4. Statement of Work
5. Project Deliverables, Project Schedule and Milestone Payment Schedule
6. Contractor's RFP Response Document dated \_\_\_\_\_.
7. Request for Proposal dated February 10, 2009

1.1.3 **Changes.** Changes to this Agreement shall be made by execution of a Change Order form approved by SECC. Changes shall have no force and effect until all required signatures are obtained. Change Orders may be executed for SECC by its Project Manager following approval by SECC's Executive Committee for the Project. Upon final execution by both parties, the Change Order shall be incorporated into this Agreement and shall be subject to its terms and conditions. SECC shall have no obligation to pay for additional work provided without an executed Change Order.

## 1.2 **Definitions.**

1.2.1 *CONTRACTOR APPLICATION SOFTWARE* or *CONTRACTOR'S SOFTWARE APPLICATION* shall mean all or any portion of the CONTRACTOR'S computer software programs as listed in Exhibit C (Cost Detail: Hardware, Software & Services), whether in machine readable or printed form including any corrections or updates thereto and all associated documentation.

1.2.2 *CONTRACTOR APPLICATION SOFTWARE MODULE* shall be a subset of the CONTRACTOR'S APPLICATION SOFTWARE program(s) that performs as a logical functional unit of the application(s).

1.2.3 *CONTRACTOR CUSTOM SOFTWARE* or *CONTRACTOR CUSTOM*

*APPLICATION SOFTWARE* refers to any of the CONTRACTOR'S written code, modules or applications that are customized, modified, or developed specifically for SECC under the terms of this Agreement.

- 1.2.4 SOURCE CODE refers to the original code from which the final object (machine language or final) code of the computer software programs as listed in Exhibit A is derived.
- 1.2.5 THIRD PARTY APPLICATION SOFTWARE or THIRD PARTY SOFTWARE APPLICATIONS refers to any software product that is purchased or licensed from any source external to the CONTRACTOR (i.e. distributor, re-seller, personal computer software supplier or system software supplier), and re-sold or licensed to SECC under the terms of this Agreement.
- 1.2.6 HARDWARE refers to hardware products that are obtained from hardware manufacturers by the CONTRACTOR and re-sold or licensed to SECC under the terms of this Agreement.
- 1.2.7 SYSTEM refers to the collective whole of all computer hardware and software installed under the terms of this Agreement and defined in Sections 1.2.1 – 1.2.6 above.
- 1.2.8 ERROR refers to any failure of the software to conform in all material respects to the functional specifications as defined in this Agreement.
- 1.2.9 RESPONSE TIME is defined as the time elapsed between depressing the "enter" key, to the appearance of the data requested on the next screen.
- 1.2.10 *FINAL SYSTEM ACCEPTANCE* is defined as that date on which:
  1. All hardware, software and system components purchased by and/or licensed to SECC under the terms of this Agreement have been successfully installed, tested and accepted by SECC;
  2. All software modifications have been successfully completed, tested, and accepted by SECC;
  3. All user documentation provided to SECC is verified to be complete and current with the systems installed;
  4. All user and systems management training has been completed;
  5. All tasks, sub-tasks, or components thereof that relate either directly or indirectly to this Agreement have been completed by the CONTRACTOR; and
  6. SECC executes a FINAL ACCEPTANCE document which states that

all terms and conditions of this Agreement have been successfully completed by the CONTRACTOR.

For purposes of this Section, the terms "tested and accepted" shall mean tested and accepted in accordance with the testing and acceptance criteria as described in this Agreement and in Exhibit H (Preliminary and Final Acceptance Tests).

### 1.3 **Headings.**

All headings used throughout this Agreement are for reference purposes only and shall not be considered a substantive part of the Agreement between the parties.

### 1.4 **Term of Agreement.**

The Effective Date of this Agreement shall be \_\_\_\_\_, 2009, and shall continue through completion and FINAL SYSTEM ACCEPTANCE by SECC of the entire scope of the contract.

### 1.5 **Services of Contractor.**

1.5.1 ***Scope of Work.*** The contractor hereby agrees to provide and SECC agrees to purchase all Hardware, Software, and related services and materials to implement the SYSTEM as set forth in the Scope of Work attached hereto as Exhibit B and the Project Deliverables attached hereto in Exhibit D (Services Detail). The Scope of Work includes by reference and by addendum:

1. SECC's Request for Proposal document dated February 10, 2009;
2. The CONTRACTOR's response to SECC's Request for Proposal dated XXXXX;
3. The CONTRACTOR's formal response document to the questions prepared and submitted to the CONTRACTOR for clarification as identified in Exhibit I (Correspondence);
4. All terms and conditions as outlined in this Agreement;
5. The Functional Requirements Document as described in Exhibit B (Scope of Work)
6. Amendments, Change Orders, or modifications to the Functional Requirements Document.

1.5.2 ***Contractor Representation.*** CONTRACTOR warrants it 1) fully understands the facilities, difficulties, and restrictions attending

performance of the services; and 2) has investigated the site and is fully acquainted with the conditions there existing, prior to commencement of services hereunder. CONTRACTOR shall immediately inform SECC of any conditions materially affecting performance of the work and shall not proceed except at CONTRACTOR'S risk until written instructions are received from SECC regarding any such conditions.

- 1.5.3 **Performance.** CONTRACTOR agrees to perform all work as defined in this Agreement within the time specified. If CONTRACTOR fails to perform as required, SECC has the right to take appropriate action, including but not limited to: 1) meeting with the CONTRACTOR to review the quality of the work and resolve matters of concern; 2) requiring the CONTRACTOR to repeat the work at no additional fee until it is satisfactory; 3) suspending the delivery of work to CONTRACTOR for an indefinite time; 4) withholding payment; and 5) terminating the Agreement as hereinafter set forth. Notwithstanding the provisions contained in this Section 1.5.3, the cure period as described in Section 1.22.6 shall apply.
- 1.5.4 **Subcontracting.** It is expressly understood that the experience, knowledge, capability, and reputation of the CONTRACTOR'S principal(s) were a substantial inducement for SECC to enter into the Agreement. Therefore, the CONTRACTOR shall not subcontract or assign this Agreement or any portion thereof without the prior written consent of SECC, which consent shall be at the sole discretion of SECC. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.
- 1.5.5 **Performance Standards.** CONTRACTOR warrants that all services shall be performed in a competent and satisfactory manner in accordance with Professional Standards prevalent in the industry, and all materials shall be of good quality, fit for the purpose intended.
- 1.5.6 **Changes to Scope of Work.** SECC shall have the right to order extra work or alter or deduct from said work. No such change shall be effective unless the CONTRACTOR receives a written order approved by SECC that adjusts the pricing and/or time to perform this Agreement. Said adjustments are subject to the written approval of the CONTRACTOR, which shall not be unreasonably withheld.
- 1.5.7 **License, Permits, Fees, and Assessments.** CONTRACTOR shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law to perform the services hereunder. CONTRACTOR shall have the sole obligation to pay, and shall indemnify, defend and hold harmless SECC against any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the CONTRACTOR'S performance of the services required by this Agreement.

## 1.6 **Independent Contractor.**

CONTRACTOR is and shall remain at all times as a wholly independent CONTRACTOR to SECC. CONTRACTOR shall not and expressly warrants not to at any time or in any manner represent that it, or any of its officers, agents or employees, are officers, agents or employees of SECC. Neither SECC nor any of its employees or officers shall have any control over the conduct of CONTRACTOR.

## 1.7 **Personnel.**

1.7.1 ***Personnel.*** The CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing all of the services required under this Agreement. Such personnel shall not be employees or have any contractual relationships with SECC.

1.7.2 ***Key Personnel.*** CONTRACTOR shall assign such person or persons (Project Personnel or Key Personnel), as it deems appropriate to perform the Services required by the Statement of Work. SECC has the right to approve or reject the Project Personnel proposed by CONTRACTOR at any time. Furthermore, CONTRACTOR shall provide the individuals designated as Key Personnel in Table 1 below. These individuals will be dedicated to perform the services under this Agreement for the duration of this Agreement unless the individual becomes unavailable to perform as a result of death, illness, disability, termination of his or her employment relationship with CONTRACTOR or SECC elects to reduce staff levels or change designated Key Personnel.

Table 1: Key Personnel

Title	Name
Project Manager	
Project Functional Lead	
Project Technical Lead	

1.7.3 ***Change of Personnel.*** If an individual designated as Key Personnel becomes unavailable for one of the reasons specified in Section 1.7.2 herein, CONTRACTOR shall provide SECC with a resume of a proposed replacement within a ten working day period and will offer SECC an opportunity to interview the replacement. In no event will the interview of the replacement of the Key Personnel take more than five business days following the day the former Key Personnel becomes unavailable, unless expressly waived in writing by SECC. If SECC determines that the replacement proposed by CONTRACTOR does not have the ability and experience to perform the services required under this Agreement, SECC

will so notify CONTRACTOR within a two-day period after the interview. In that situation, the process will be repeated until SECC has approved a replacement proposed by CONTRACTOR.

1.7.4 **SECC Request for Change of Personnel.** SECC shall have the right to require removal of any Project Personnel and/or Key Personnel from the CONTRACTOR'S Project team upon delivery of written notice thereof to CONTRACTOR. CONTRACTOR will replace such Project Personnel with other qualified Project Personnel in accordance with the terms set forth above in Section 1.7.3.

1.7.5 **Verification of Background.** The Contractor agrees that any employee, agent, subcontractor or consultant having access to any installation site or to any records or information relating, pertaining to or included in the System shall be required to provide his or her name, date of birth and driver's license number and, at SECC's expense, shall submit to fingerprinting and an automated fingerprint identification system (AFIS) search in order to verify the person's status and fitness to perform under this Agreement. SECC's Project Manager will have sole discretion on whether to approve or disapprove any Contractor employee. Delays associated with the subjective rejection of a Contractor employee will constitute an excusable Contractor delay. Delays associated with the rejection of a Contractor employee related to the identification of active warrants, investigative wants, or probation and/or parole mandates will constitute a Contractor caused delay. Approved employees or agents of the Contractor agree to notify SECC in writing should they be arrested, detained, investigated or convicted of any crime during the term of this Agreement.

## 1.8 **Standards of Performance.**

The following standards of performance are to be met during the Final System Acceptance Period in order for acceptance to take place. In addition, CONTRACTOR agrees to meet such standards during the term of this Agreement, with the understanding that estimated volume transactions identified in SECC's RFP will not be exceeded. If the standards are not met in the period following Final System Acceptance, CONTRACTOR agrees to take responsibility to work with SECC and solve the problem. SECC, in consultation with CONTRACTOR, has authority to make the final determination of whether the components of the System meet all specifications and performance standards.

1.8.1 **Response Time.** SYSTEM RESPONSE TIMES must not exceed the response times defined below when operating at three (3) times the expected initial volumes. Furthermore, the SYSTEM should not experience any degradation. Response times must be achievable during all other System activities (e.g., report generation, System backup, etc.). Guaranteed response times are as follows:

<b>Activity</b>	<b>Maximum Response Time</b>
Transactions	1 second
Transactions with validation	3 seconds
External database queries	5 seconds

1.8.2 **System Uptime.** SYSTEM uptime shall be 99.9% availability for all key functions of the SYSTEM applications on a 24 hour per day, 7 days a week basis. SECC in consultation with CONTRACTOR has authority to make the final determination of whether the components of the System meet all specifications and performance standards.

1.8.3 **Storage.** The proposed system must be able to store selected data files indefinitely as well as be flexible enough to create automated and manual purge dates for other data files. Storage is defined as access to imaged data via on-line storage.

SECC, in consultation with CONTRACTOR, has authority to make the final determination of whether the components of the System meet all specifications and performance standards.

### 1.9 **Compensation and Method of Payment.**

1.9.1 **Cost for Services and Equipment.** The purchase price to SECC for all hardware, operating software, initial license fees for software and fees for all related services provided by SECC pursuant to this Agreement is \$\_\_\_\_\_ and is payable as provided herein. This dollar figure includes all costs and license fees for software, hardware and related services, including maintenance and support for a period of one year from FINAL ACCEPTANCE of the SYSTEM on the proposed hardware. SECC may incur additional maintenance and support fees after the first year at prices not to exceed those listed in CONTRACTOR'S Proposal.

1.9.2 **Compensation.** Contractor shall be compensated in accordance with the terms of Exhibit E (Payment Schedule). CONTRACTOR shall commence and complete the services described in the Scope of Work within the time period shown on Exhibit G (Project Schedule and Personnel). Additional provisions may be added to the Scope of Work by written Addendum to this Agreement and by mutual Agreement.

1.9.3 **Taxes.** The purchase price for the SYSTEM under this Agreement is inclusive of all local, state and federal sales taxes.



1.9.4 **Payment Terms.** Payments shall be made to the Contractor in accordance with the Exhibit E (Payment Schedule). Upon receipt of the CONTRACTOR'S notification and request for payment, SECC will review the deliverable provided by the CONTRACTOR. If said deliverable is determined by SECC to be acceptable under the terms and conditions of this Agreement, SECC shall, within 30 days of that date, execute payment according to Exhibit E (Payment Schedule). In the event SECC determines the deliverable to be NOT acceptable, the provisions of Section 1.22 shall apply.

1.9.5 **Extra Work.** No claims for payment for extra work will be allowed unless the same shall have been previously agreed to by SECC in a written Change Order entered into pursuant to Section 1.1.3 hereof.

1.9.6 **Costs Adjustment.** If during the term of this Agreement, the CONTRACTOR provides any equipment, operating software, licensed software, maintenance, training or documentation to any other of its customers at prices less than those specified in this Agreement or the Proposal, SECC shall receive the benefit of those lower prices for any equipment, operating software, licensed software, maintenance, training or documentation received subsequently, and the costs for services and equipment specified in the Proposal or this Agreement shall be reduced accordingly.

#### 1.10 **Time of Performance.**

1.10.1 **Time is of the Essence.** Time is of the essence in the performance of the Agreement.

1.10.2 **Project Schedule.** The schedule for the implementation of the System shall initially be governed by the Project Schedule attached hereto as Exhibit G. The Initial Project Schedule shall be replaced by a definitive and mutually agreed upon Project Schedule to be delivered hereunder in accordance with the Statement of Work task (the "Project Schedule"). The Project Schedule shall be finalized no later than thirty (30) days after the execution of this Agreement. When delivered, the Project Schedule shall be deemed to be incorporated herein by this reference and shall become part of this Agreement.

1.10.3 **Liquidated Damages.** CONTRACTOR shall adhere to the completion dates in the Project Schedule. The parties agree that if, due to no fault of SECC, milestones are not completed in accordance with the Project Schedule, actual damages sustained by SECC because of such delay(s) will be uncertain and difficult to determine, and that the reasonable foreseeable damage incurred by SECC is hereby stipulated to be \$1000 per calendar day, up to a maximum not-to-exceed amount of 30% of the total contract value. If milestones are in jeopardy of not being achieved in

accordance with the Project Schedule, Contractor shall inform SECC in writing of the potential delay no less than 30 days prior to the scheduled event. CONTRACTOR's written notification of the potential delay shall include a proposed recovery plan for SECC's consideration and approval. SECC's approval of such recovery plan shall not be unreasonably withheld. If SECC approves the Contractor's recovery plan, damages relating to the delay shall only apply to the newly adjusted Project Schedule.

#### 1.11 **Legality and Severability.**

This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state and local laws, rules, regulations, court orders, and governmental agency orders. The terms of this Agreement shall not be construed for or against either party by reason of the authorship of the Agreement. If a provision of this Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall be in no way be affected or impaired thereby.

#### 1.12 **Waiver.**

No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 1.13 **Nondiscrimination.**

Unless exempt under the rules and regulations of the Secretary of Labor or other proper authority, this Agreement is subject to all applicable executive, federal, state and municipal regulations, laws, orders, or ordinances relating to equal opportunity and nondiscrimination in employment. CONTRACTOR expressly agrees not to discriminate in its employment practices against any person by reason of race, religion, color, age, gender, sexual preference, sexual identity, national origin or ancestry, physical handicap, or disability and agrees to comply with the provisions of such laws and orders, as well as laws and orders relating to the employment of the handicapped, the employment of veterans, or the employment of women and minority business enterprises.

#### 1.14 **ADA Compliance.**

In performing this Agreement, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990 (the "ADA"), and all applicable rules and regulations which are imposed directly on the

Contractor or which would be imposed on SECC as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless SECC, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

**1.15 Hold Harmless and Indemnification.**

The CONTRACTOR agrees to defend, indemnify, protect and hold SECC and its agents, officers, volunteers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the CONTRACTOR's employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the CONTRACTOR, and its agents, officers or employees, in performing the work or services herein, and all expenses of investigating and defending against same; provided, however, that the CONTRACTOR's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SECC, its agents, officers, volunteers or employees.

**1.16 Liability Insurance.**

The CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, its agents, representatives, employees, or subcontractors.

**1.16.1 *Minimum Limits of Insurance.*** CONTRACTOR shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability: \$1,000,000 per occurrence.

**1.16.2 *Deductibles and Self-Insured Retentions.*** Any deductibles or self-insured retentions must be declared to and approved by SECC. At the option of SECC, either: the insurer shall reduce or eliminate such

deductibles or self-insured retentions for SECC, its officers, officials, employees and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

1.16.3 **Other Insurance Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SECC, its officers, officials, employees, agents and volunteers are to be covered as insureds for the following: liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to SECC, its officers, official, employees, agents or volunteers.
2. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance for SECC, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by SECC, its officers, officials, employees, agents or volunteers shall be in excess of the CONTRACTOR's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SECC, its officers, officials, employees, agents or volunteers.
4. The CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to SECC.

1.16.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

1.16.5 **Verification of Coverage.** CONTRACTOR shall furnish SECC with a certificate of insurance showing maintenance of the required insurance coverage. Original endorsements affecting general liability and automobile liability coverage required by this clause must also be provided. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by SECC before work commences.

### 1.17 **Covenant against Contingent Fees.**

CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, brokerage, or contingent fee, excepting as bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach of violation of this warranty, SECC shall have the right to terminate this Agreement in accordance with the termination clause, and at its sole discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount for such commission, percentage or contingent fee.

### 1.18 **Notices.**

All notices required to be delivered under the Agreement or under applicable law shall be personally delivered, or delivered by United States mail, certified, or by reputable document delivery service such as Federal Express. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to be delivered to SECC shall be directed to:

Brian Hitchcock, Director  
Scott Emergency Communications Center  
400 West 4<sup>th</sup> Street  
Davenport, Iowa 52801

Notices to be delivered to the CONTRACTOR shall be sent to the address provided for CONTRACTOR listed below CONTRACTOR'S signature on this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this paragraph.

### 1.19 **Warranties.**

1.19.1 ***Warranty of Title.*** CONTRACTOR warrants that it holds title and/or copyright to all CONTRACTOR APPLICATION SOFTWARE and its associated MODULES licensed and delivered pursuant to this agreement.

1.19.2 ***CONTRACTOR APPLICATION SOFTWARE warranty.*** CONTRACTOR warrants that each CONTRACTOR APPLICATION SOFTWARE MODULE and all CONTRACTOR APPLICATION SOFTWARE products provided under this Agreement will perform free of software errors. This Warranty shall commence upon the Final Acceptance and shall continue for a period of 12 months.

In the event of an error that is covered by the foregoing warranty and which occurs during the applicable period stated above, the

CONTRACTOR, at its option will either repair or replace within a reasonable time the item of Software that contains the error.

The foregoing warranty is in lieu of all other warranties expressed or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. SECC agrees that CONTRACTOR's liability hereunder for damages for failure to replace or correct a defective program regardless of the form of action, shall not exceed the extent of the CONTRACTOR's insurance, as specified in Section 1.16.

**1.19.3 *HARDWARE and THIRD PARTY SOFTWARE Warranty.***

CONTRACTOR warrants at the time of SYSTEM Acceptance that all individual components of the SYSTEM and the SYSTEM as an integrated unit will function as proposed by the CONTRACTOR free of errors and with uninterrupted compatibility. This includes, but is not limited to, all HARDWARE and THIRD PARTY SOFTWARE provided as part of this Agreement. CONTRACTOR shall pass through to SECC all warranties provided to CONTRACTOR by all suppliers providing components for this Computer SYSTEM.

**1.20 Patent and Copyright Indemnity.**

CONTRACTOR agrees to defend, at its expense, any suits against SECC based upon a claim that any item of Hardware and/or Software furnished under this Agreement directly infringes a patent or copyright and to pay any and all costs and damages (including attorney's fees) finally awarded in any such suit.

**1.21 Delivery, Title and Risk of Loss.**

Title to Products (other than software) will pass to SECC upon delivery of equipment to SECC. CONTRACTOR shall bear the responsibility for all risks of physical loss or damage to the Product until such Product is delivered to SECC, except to the extent such damage is caused by SECC. To retain the benefit of this clause, SECC shall promptly notify CONTRACTOR of any loss or damage upon receipt of any or all items of Product and cooperate in the processing of any claims made by CONTRACTOR.

**1.22 Termination.**

This Agreement will terminate, or may be terminated, as subject to the following conditions:

**1.22.1 *Termination by SECC.*** This Agreement may be terminated by SECC for any or all of the following reasons:

1. For any default by CONTRACTOR;

2. For the convenience of SECC;
3. In the event of the insolvency of, or declaration of bankruptcy by, the CONTRACTOR; or
4. In the event that sufficient appropriated, or otherwise unobligated funds, no longer exist for the payment of SECC's future obligations herein.

1.22.2 **Termination for Default.** The failure of CONTRACTOR to comply with any material term, condition, or provision of this Agreement shall constitute a default. In the event of default, SECC shall notify the CONTRACTOR of the specific act or omission by CONTRACTOR that constitutes default. The CONTRACTOR shall have a reasonable amount of time, not to exceed ten (10) business days from the date of receipt of such notification to correct such default. Termination for default shall be accomplished immediately upon written notice of termination and failure to correct within the requisite time period.

1.22.3 **Termination for Convenience.** SECC may terminate this Agreement in whole or in part whenever for any reason if SECC determines that such termination is in its best interest. In such event, SECC shall provide written notice to CONTRACTOR and termination shall be effective as of the date and time specified therein. The Agreement shall terminate without further obligation of SECC as of that date, except the CONTRACTOR shall be paid for all work performed up to that time accepted by SECC and SECC shall return all hardware and software components for which it has not fully paid.

1.22.4 **Termination for Bankruptcy or Insolvency.** In the event CONTRACTOR shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors, SECC shall exercise its right to acquire Application source code held in escrow for the sole purpose of maintaining and updating the SYSTEM to avoid cessation of service or loss to SECC, and SECC may, at its option, terminate this Agreement. In such event of termination, SECC shall provide written notice to CONTRACTOR and termination shall be effective as of the date and time specified therein.

1.22.5 **Termination for Unavailability of Funds.** Notwithstanding any other provision of this Agreement, the Parties agree that the charges hereunder are payable by SECC solely from appropriated, otherwise unobligated funds. In the event such funds are determined in the sole discretion of SECC to no longer be available or to be insufficient with respect to the

charges payable pursuant to this Agreement, SECC may terminate this Agreement without further obligation of SECC up to the effective date of termination, except CONTRACTOR shall be paid for all work performed to such date and accepted by SECC.

**1.22.6 Cure Period.** At the discretion of SECC, and in the event any provisions of this Agreement are violated by either party, the grieved party shall serve written notice upon the violating party identifying the violation. Upon receipt of notice, the violating party shall have a reasonable period not to exceed 30 calendar days to cure the violation. In the event the violating party has not satisfactorily remedied the violation at the end of the thirty (30) day cure period, the grieved party may either 1) request a written plan from the violating party which defines a specific course of action for correction of the violation, or 2) serve written notice upon the violating party of intent to terminate, and seek any and all legal remedies for breach of Agreement. The grieved party reserves the sole and exclusive right to determine which course of action is selected.

**1.22.7 Failed Correction of Breach.** In the event the violating party has been notified of breach of contract and fails to correct said breach or fails to satisfactorily correct said breach under the terms and conditions of Section 1.22.6, the grieved party reserves the right to terminate this Agreement without notice and pursue any and all legal remedies including the costs of enforcing the terms of this Agreement.

**1.22.8 Procedure upon Termination.** Upon termination of this Agreement by SECC, CONTRACTOR shall:

1. Stop work under this Agreement on the date and to the extent specified in the notice of termination;
2. Place no further orders or subcontract for materials, services or facilities, except as may be necessary for completion of such portion of the work under this Agreement as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated;
4. Assign to SECC, in the manner and to the extent directed by SECC, all of CONTRACTOR's rights, title, and interest under the orders or subcontracts so terminated, in which case SECC shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Take such action as may be necessary, or as SECC may direct, for the protection and preservation of any and all property or information related to this Agreement which is in the possession of the CONTRACTOR; and



6. Within ten (10) business days from the effective date of termination, deliver to SECC all drawings, computer program source code, computer input and output, analyses, plans, tests, maps, and written materials necessary to the continued performance of the modules of the SYSTEM which are in productive use by SECC.

1.22.9 ***Payment on Termination for Convenience.*** If this Agreement is terminated for the convenience of SECC, SECC shall pay CONTRACTOR for services accepted by SECC and rendered by the CONTRACTOR up to the effective date of termination.

### 1.23 **Applicable Laws and Jurisdiction.**

The provisions of this Contract shall be construed in accordance with the laws of the State of Iowa and any provision of this Contract in conflict therewith is void. The parties agree to submit to the jurisdiction of the courts of Scott County, Iowa, for enforcement of this Contract.

### 1.24 **Attorney's Fees.**

If either party to this Agreement is required to initiate or defend, or is made a party to, any action or proceeding in any way connected with enforcement of this Agreement, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted shall be entitled to reasonable attorney's fees. Attorneys' fees shall include reasonable costs for investigating such action, conducting discovery, and all other necessary costs a court of competent jurisdiction allows which are incurred in such litigation

### 1.25 **Miscellaneous Provisions.**

1.25.1 ***Reports.*** CONTRACTOR shall prepare and submit to SECC monthly reports, beyond those defined in Exhibit B (Scope of Work), concerning CONTRACTOR's performance of the services rendered under this Agreement,.

1.25.2 ***Non-liability of SECC Officers and Employees.*** No officer, official, employee, agent, representative, or volunteer of SECC shall be personally liable to the CONTRACTOR, or any successor in interest, in the event of any default or breach by SECC for any amount that may become due to the CONTRACTOR or its successor, or for breach of any obligation of the terms of the Agreement.

1.25.3 ***Force Majeure.*** The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of SECC or the CONTRACTOR, including, but not restricted to, acts of god or of the public enemy, unusually severe weather, fires,

earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including SECC, if the delaying party shall within ten (10) working days of the commencement of such delay notify the other party in writing of the causes of the delay. In no event shall the CONTRACTOR be entitled to recover damages against SECC for any delay in the performance of this Agreement, however caused.

1.25.4 **Corporate Authority.** The person(s) executing this Agreement on behalf of the parties hereto warrant that (1) they are duly authorized to execute and deliver this Agreement on behalf of said party; (2) by so executing this Agreement, such party is formally bound to the provisions of this Agreement; and (3) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

1.25.5 **Disaster Recovery.** In the event of a disaster or accident that impairs operation of the System, the Contractor shall use its best efforts to help SECC resume the project or restore operations as soon as possible. Said services, if they exceed those included in this Agreement, will be provided at the Contractor's prevailing rates.

1.25.6 **Need for Equipment Due to Emergencies.** The CONTRACTOR shall make every reasonable effort to assist SECC in procuring use of equipment compatible with that provided under this Agreement to meet emergencies such as major breakdown, natural disasters or unforeseen peak loads.

## 2. System Delivery

### 2.1 Contractor Responsibilities.

CONTRACTOR will be responsible for a variety of products and services as defined in the Scope of Work document (Exhibit B) including, but not limited to: project management services, ordering of hardware and software, installation services, and training and support services. Further, the responsibilities of the CONTRACTOR in this area shall include, but are not limited to:

2.1.1 **Appoint Project Manager.** CONTRACTOR will appoint a Project Manager that will have the authority to make significant decisions relevant to the project and have direct access to CONTRACTOR'S management for resolving problems beyond the Implementation Manager's immediate authority. At all times during the Agreement, the Project Manager shall be reasonably accessible to SECC.

2.1.2 **Ordering of Hardware Components and Scheduling Installation as Appropriate.** Hardware will not be ordered until after the Pre-Implementation Meeting unless SECC agrees in writing to order the equipment (pursuant to the payment terms listed in Exhibit E) at the time

of execution of this Agreement. Any price increases experienced by the CONTRACTOR from hardware suppliers and third party resellers, shall be the responsibility of the CONTRACTOR. Any price decreases shall be passed on to SECC. The hardware shall be installed pursuant to the terms and conditions of this Agreement and in accordance with the timelines and scope as outlined in the Exhibit B (Scope of Work).

CONTRACTOR understands that SECC has relied upon the expertise of CONTRACTOR in the determination of the hardware configuration and components to effectively address the terms and conditions of this Agreement. As such, CONTRACTOR assumes full responsibility to insure that all required components are included in the proposed configuration that has been accepted by SECC. Any components that are (1) deemed mutually missing from the configuration and are required to effectively operate CONTRACTOR'S APPLICATION SOFTWARE, or (2) deemed incompatible or otherwise unsuited for use by SECC for the purposes stated herein, shall be replaced by the CONTRACTOR at no additional charge to SECC within 10 days of receipt of written notice regarding additional components needed.

The requested additional hardware shall be installed by CONTRACTOR pursuant to the terms and conditions of this Agreement and in accordance with the timelines and scope as outlined in the Exhibit B (Scope of Work).

- 2.1.3 **Warranty Compatibility.** CONTRACTOR shall be responsible for the testing, certification and integration of the CONTRACTOR-supplied products into SECC's network. The network is comprised of cabling hubs, routers, file servers, data circuits, interface hardware and network software. Exhibit K (Hardware and Network Specifications) identifies CONTRACTOR's specifications for the hardware and network environment. CONTRACTOR agrees its system will perform as warranted if SECC meets these specifications. In the event future problems are determined to be caused by the network installed by SECC, repair shall be SECC's responsibility.
- 2.1.4 **Install and Test Application Software.** APPLICATION SOFTWARE will be installed pursuant to the terms and conditions of this Agreement and in accordance with the timelines and scope as outlined in Exhibit B (Scope of Work).
- 2.1.5 **Training and Support Services.** CONTRACTOR will provide training and support services pursuant to the terms and conditions of this Agreement and in accordance with the timelines and scope as outlined in Exhibit B (Scope of Work).

## 2.2 **SECC Responsibilities.**

SECC shall provide access to facilities for installation of the SYSTEM, and agrees to appoint a Project Manager who shall be responsible for review, analysis and acceptance of CONTRACTOR's performance and the coordination of SECC personnel, equipment, vehicles and facilities. SECC's Project Manager shall be empowered to make decisions with the authority to bind SECC with respect to the work being performed under this Agreement.

2.2.1 ***Site Preparation.*** SECC shall prepare at its own expense the SYSTEM installation site in accordance with the requirements of CONTRACTOR's Proposal. CONTRACTOR represents that the minimum and maximum electrical requirements set forth in its Proposal, as well as all other permitted ranges of environmental variations are satisfactory for operation of the SYSTEM. CONTRACTOR shall be responsible for visiting SECC's facilities to obtain information to determine what is necessary to fully prepare the installation site. Upon completion of site preparation by SECC, CONTRACTOR shall inspect the premises and notify SECC in writing that SECC has complied with such requirements. The cost of any physical or environmental alteration or modification required for the successful installation, operation, and/or maintenance of the SYSTEM (either by CONTRACTOR or SECC) that is attributable to incomplete or erroneous site specifications provided by the CONTRACTOR shall be borne by the CONTRACTOR at no cost to SECC.

2.2.2 ***Network Installation.*** Install and certify all necessary network infrastructure components as required by the CONTRACTOR for the installation of the system provided under the terms of this Agreement.

2.2.3 ***Manage the Installation.*** Have responsibility for managing the installation of the SYSTEM on behalf of SECC.

2.2.4 ***Provide Review Services.*** Review and provide input into the development of detailed functional documentation and Exhibit B (Scope of Work) and respond to each document within 15 working days of receipt.

2.2.5 ***Provide Project-Related Information as Required by the Contractor.*** Provide day-to-day information and data concerning SECC's operations and activities. If SECC's response is inadequate or the request is major in scope, then CONTRACTOR shall make a written request specifying the desired response time, and SECC's Project Manager shall provide written response within that time, if reasonable, or specify when such response shall be forthcoming.

2.2.6 ***Manage the Change Order Process.*** Inform CONTRACTOR of any changes in SECC's requirements and initiate change orders as specified in this Agreement.

2.2.7 **Coordinate Resources as Required.** Provide personnel for file editing, table building, obtaining source documents and other necessary tasks in a timely manner, and for maintaining SECC-owned equipment.

2.2.8 **Provide Computer Time and Supplies.** Provide and make available all necessary access to computers and supplies required for SYSTEM operation and maintenance.

2.2.9 **Perform Backups as Required.** Perform backup functions on an ongoing basis as specified in SYSTEM Documentation.

2.2.10 **Provide Communication Line(s) for External Sources.** Provide all communication line(s) required for use with the CONTRACTOR'S software interfaces and support modem.

2.2.11 **Attend Training.** Attend all required training, including application software and database training.

### 2.3 **Documentation.**

CONTRACTOR shall provide current and accurate hardware and software documentation. CONTRACTOR shall provide one hard copy printout of all application software documentation (copyrighted) and provide the files in Microsoft Word format. SECC shall have the non-exclusive, non-retractable right to copy the documentation for internal purposes only.

### 2.4 **Delivery.**

The SYSTEM required under this Agreement shall be delivered and installed according to Exhibit G (Project Schedule and Personnel) that may be modified by Amendment to this Agreement.

### 2.5 **Change Orders.**

SECC shall have authority to require change orders in accordance with local government regulations. If additions or changes to the terms, products or services supplied under this Agreement are required, the price for such additional products or services shall be the fair value of the products or services involved. All such changes shall be mutually agreed upon by the parties and shall be incorporated as a written Amendment to this Agreement, and duly executed by authorized representatives of both parties. All such Amendments shall be bound by the terms of this Agreement, except where specifically modified by the Amendment.

### **3. Acceptance**

#### **3.1 APPLICATION SOFTWARE MODULES – Preliminary Acceptance Testing.**

CONTRACTOR is responsible for insuring that all documentation specifying system functionality that is used as a basis for system testing is validated through a mechanism mutually agreed upon by the parties. The validation mechanism shall appropriately link all agreed upon functionality to the implemented system. After installing each APPLICATION SOFTWARE MODULE and upon completion of user testing, and at a time mutually agreed upon by the parties, SECC will conduct a sixty-day (60) preliminary acceptance test, according to Exhibit H (Preliminary and Final Acceptance Tests), which includes procedures prepared mutually by the CONTRACTOR and SECC. In the event the APPLICATION SOFTWARE MODULE fails the preliminary acceptance test, SECC shall immediately notify the CONTRACTOR in writing, explaining the reason for test failure. The sixty-day (60) preliminary acceptance test period will be suspended until the problem is satisfactorily resolved. Upon satisfactory correction of the problem, a new sixty-day (60) preliminary acceptance test period will commence until the test period has concluded successfully. Upon notification to CONTRACTOR by SECC of Preliminary Acceptance Approval for the last APPLICATION SOFTWARE MODULE, the system may be prepared and scheduled for System-wide FINAL ACCEPTANCE testing. Preliminary Acceptance of the APPLICATION SOFTWARE MODULES shall not prejudice SECC's right to accept or reject the SYSTEM under Section 3.3 herein.

#### **3.2 System-Wide FINAL ACCEPTANCE Testing.**

Upon completion of all user and system manager training, and at a time mutually agreed upon by the parties, SECC will conduct a sixty-day (60) FINAL ACCEPTANCE test, according to the FINAL ACCEPTANCE test procedures prepared mutually by CONTRACTOR and SECC as defined in Exhibit G (Project Schedule and Personnel). In the event any component of the SYSTEM fails the FINAL ACCEPTANCE test, SECC shall immediately notify the CONTRACTOR in writing, explaining the reason for test failure. The sixty-day (60) FINAL ACCEPTANCE test period will be suspended until the problem has been satisfactorily corrected. Upon satisfactory correction, a new sixty-day (60) FINAL ACCEPTANCE test period will commence. Upon successful completion of the FINAL ACCEPTANCE test period in which the system operates in conformance with the Warranties and Provisions as contained herein, SECC shall provide notice of FINAL ACCEPTANCE representing the SYSTEM has been successfully installed and accepted by SECC. If after correction and during the second sixty-day (60) FINAL ACCEPTANCE test period the SYSTEM still fails to comply with the specifications contained herein, SECC shall have the right to terminate this Agreement immediately and obtain a full refund from CONTRACTOR of all funds expended pursuant to this Agreement and any applicable damages upon delivery of the SYSTEM equipment to the CONTRACTOR. Final Acceptance will not be unreasonably withheld.

#### **4. Authority to Execute Agreement**

Both SECC and CONTRACTOR do covenant that each individual executing this agreement on behalf of each party is a person duly authorized and empowered to execute this Agreement for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

ATTEST:

SECC

By: \_\_\_\_\_

APPROVED AS TO FORM:

CONTRACTOR

By: \_\_\_\_\_



## **Exhibit A: Software License Provisions**

### **1. Site License**

- 1.1 In consideration of the payment of license fees, CONTRACTOR grants to SECC, and SECC hereby accepts, subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable, perpetual Site License to use the CONTRACTOR'S APPLICATION SOFTWARE (herein referred to as "Licensed Program") subject to the following terms and conditions. This license is valid on any existing or replacement equipment owned, operated or leased by SECC.
- 1.2 This License-to-use shall also apply to all future error fixes, updates, new releases, and any other code or derivative works thereof that are prepared by the CONTRACTOR and released to SECC under the terms of the Computer Software Support Agreement (Exhibit F).

### **2. Scope of Rights**

SECC may:

- 2.1 Install the Licensed Program in SECC's facilities.
- 2.2 Use the Licensed Program for purposes of serving the internal needs of SECC's business.
- 2.3 Make copies of the program(s) in machine-readable form, for nonproductive backup purposes only, provided that the CONTRACTOR'S proprietary legend is included.

SECC may not use, copy or modify the Licensed Program, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by CONTRACTOR. SECC's rights may not be transferred.

### **3. Proprietary Protection of Licensed Program**

CONTRACTOR shall have sole and exclusive ownership of all rights, title, and interest in and to the Licensed Program, Design Specifications, Custom Modules, Programming and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted by CONTRACTOR. This Agreement does not provide SECC with title or ownership of the Licensed Program but only a right of limited use. SECC must keep the Licensed Program free and clear of all claims, liens, and encumbrances.

The Licensed Program is a commercially valuable, proprietary product of the CONTRACTOR, the design and development of which reflect the effort of skilled

development experts and the investment of considerable time and money. The Licensed Program is treated by CONTRACTOR as confidential and contains substantial trade secrets of CONTRACTOR, which CONTRACTOR has entrusted to SECC in confidence to use only as expressly authorized. CONTRACTOR claims and reserves all rights and benefits afforded under federal copyright law in all software programs and user materials that constitute the Licensed Program, and in all system documentation related thereto, as unpublished works.

SECC may not, at any time, disclose or disseminate the Licensed Program to any person who does not need to obtain access thereto consistent with CONTRACTOR'S rights under this Agreement. Under no circumstances may SECC "unlock" the code of the Licensed Program, as the term is generally used in the trade. Under no circumstances may SECC disclose or disseminate the Licensed Program to any competitor of CONTRACTOR. SECC will devote their best efforts to ensure that all SECC personnel and all other persons afforded access to the Licensed Program shall protect it against improper use, dissemination, or disclosure.

#### **4. Source Code Escrow Account**

Within thirty (30) days of the installation date for any module or application software provided by CONTRACTOR, CONTRACTOR shall deposit in an escrow account managed by a fiduciary agent approved by SECC, one (1) copy of all source code and all related documentation of the CONTRACTOR'S APPLICATION SOFTWARE products provided under this Agreement. CONTRACTOR also guarantees that the source code for all future updates, error fixes, new releases, etc., and all associated documentation (user and system manuals, etc.) will be updated and placed in said escrow account at least annually.

SECC reserves the right to verify all deposits for their accuracy and content. The CONTRACTOR understands and hereby acknowledges that failure on the part of the CONTRACTOR to maintain accurate and timely escrow deposits may result in unknown and undetermined damages to SECC in the event the CONTRACTOR subsequently discontinues support (for any reason) for the products provided under this Agreement.

In the event CONTRACTOR discontinues support of the application software licensed under this Agreement for any reason, SECC will have access to the source code as a named Licensee under the terms of the Escrow Agreement so that SECC may continue operation and maintenance of the system. SECC shall pay all fees associated with this escrow account.

## **Exhibit B: Scope of Work**

Under the terms and conditions of this Agreement, the CONTRACTOR has agreed to perform a variety of services and provide a variety of products for the implementation of an integrated Records Management, Jail Management, and Field Reporting System for SECC. As such, the CONTRACTOR agrees to perform all services as described in this Exhibit including: project management, ordering and installation of all necessary hardware and operating system software, installation of CONTRACTOR'S application software, development and installation of CONTRACTOR'S custom software ordered by SECC, training, conversion, testing and implementation services.

The Scope of Work to be completed by CONTRACTOR includes by reference and by addendum 1) SECC's Request for Proposal document dated February 10, 2009; 2) the CONTRACTOR'S response to SECC's Request for Proposal (dated xxxxxx xx 2009); 3) correspondence as identified in Exhibit I (Correspondence); 4) this Agreement; and 5) the Functional Requirements Document.

The Scope of Work document shall be expanded by mutual agreement to include the tasks, duties and responsibilities identified during the development of the Project Schedule (Exhibit G) within thirty (30) days of execution of this Agreement. In addition to the responsibilities defined in this Agreement, the Scope of Work required by the CONTRACTOR shall include, at a minimum, the following:

### **1. Implementation Management**

Implementation Management services shall be provided by the CONTRACTOR throughout the duration of the project. Monthly meetings between CONTRACTOR and SECC will be required throughout the duration of the project. In the event project delays or problems are caused by the CONTRACTOR, SECC reserves the right to increase the frequency of these meetings as deemed necessary. The CONTRACTOR shall provide monthly status reports that include updates to the project schedule.

### **2. Implementation Planning/Functional Requirements Verification**

Immediately after contract execution, the CONTRACTOR shall develop a formal Functional Specifications Document, which details the capabilities of the CONTRACTOR's system and which will serve as the basis for confirming conditional and final acceptance.

Working with SECC's Project Team, the CONTRACTOR and SECC shall validate the RFP functional requirements, mutually agree in writing to any further modifications to the software that will be required beyond those identified in Exhibit I (Correspondence) and clarify any issues relating to the implementation of the CONTRACTOR'S proposed products.

The documentation shall include a description of any functional changes or additions beyond those identified in Exhibit I (Correspondence), the operational impact of said

changes, and screen layout(s) showing the new data elements and descriptions of their functionality that will be included in the final system to be installed. The CONTRACTOR shall also provide, at that time, a fixed price quote to cover all costs related to the modification effort. Changes or additions shall not occur until SECC has approved them in writing and instructed the CONTRACTOR to proceed.

Concurrent with this effort, the CONTRACTOR will prepare a formal, expanded Project Schedule that includes all project tasks, subtasks, resource requirements, and associated start and end dates for each identified task/subtask. This expanded project schedule shall be submitted to SECC for review and approval. This document shall be completed and submitted to SECC within ten (10) working days subsequent to the completion and approval of any functional modifications. Failure to complete the expanded project schedule document and the functional specifications documentation as required herein, may result in default of the Agreement and release SECC from any further obligations to the CONTRACTOR.

### **3. Software Modification**

During this phase, the Software modifications mutually agreed to will be programmed, tested, installed, and all documentation created.

### **4. Hardware and Software Installation**

The CONTRACTOR will be responsible for the complete and successful installation and testing of all hardware, system and application software, and all communications equipment provided by CONTRACTOR. SECC will be responsible for the status of the network, ensuring that it has enough capacity for the SYSTEM to perform at the peak of its capabilities. The CONTRACTOR shall conduct an examination of the network, perform adequate tests to insure the network has enough capacity, and certify that the network has been adequately tested by the CONTRACTOR and has sufficient capacity.

The CONTRACTOR will not install any equipment that has been discontinued or scheduled for discontinuation by any manufacturer. SECC reserves the right to modify the configuration of equipment, prior to the CONTRACTOR's ordering of the equipment, in the event that SECC becomes aware of any changes in equipment offerings by manufacturers. The CONTRACTOR shall provide full credit to SECC for equipment exchanges and provide for the same level of discount as received in the original equipment offering. SECC shall be responsible for any and all restocking fees that result from equipment exchanges, with the exception of changes that result from price changes or product announcements that occur after the equipment order has been placed, but prior to shipping and installation.

### **5. Training Plan and Training of SECC Staff**

The training provided shall be sufficient for staff to become operationally proficient on the system installed. The CONTRACTOR shall prepare and attach a detailed training plan for SECC staff for each application to be installed. The training plan

shall 1) identify the name of the training program/course; 2) identify the length of the course, the course schedule and course outline; 3) include course materials for review; and 4) include prerequisite requirements for attendees (i.e., Windows, etc.). All training classes shall be held at SECC facilities.

## **6. Acceptance Testing**

Acceptance testing shall be conducted according to the terms of this Agreement and according to the detailed test descriptions as provided in Exhibit H (Preliminary and Final Acceptance Tests).

## **7. Maintenance**

- 7.1 For the duration of the software installation and warranty period and as long as SECC remains current as a maintenance-paying customer, legislative mandated changes that impact SECC's federal and state statistical reporting requirements and subsequently require modifications to the software shall be provided at no additional charge to SECC.
- 7.2 Updates and new releases shall not be installed without providing SECC a written document stating the impact of the update. The notice shall also include the scheduled date for installing the update and any issues, tasks or responsibilities that may be required by SECC in preparation to receive the update.

**Exhibit C: Cost Detail: Hardware, Software and Services**

**(Exhibit details to be finalized with vendor)**

	<u>One-Time Cost</u>	<u>Annual Maintenance Cost</u>
<b>HARDWARE/SYSTEM SOFTWARE</b>		
(Hardware/system software components)		
Hardware/System Software Subtotal		
<b>APPLICATION SOFTWARE</b>		
(Application software modules)		
Application Software Subtotal		
<b>SERVICES</b>		
(Service categories)		
Services Subtotal		
<b>TOTAL</b>	<b>\$</b>	<b>\$</b>



### Exhibit E: Payment Schedule

(Exhibit details to be finalized with vendor)

<b>Payment Milestones</b>	<b>%</b>	<b>Payment \$</b>
<b>Software and Services</b>		
Approval of formal project implementation schedule	10	
Installation of application software	20	
Completion of preliminary acceptance test	20	
Completion of application software training	25	
Completion of final system acceptance	<u>25</u>	
<b>Software &amp; Services Total</b>	<b>100</b>	<b>\$</b>
<b>Hardware</b>		
Installation	90	
Completion of system diagnostics	<u>10</u>	
<b>Hardware Total</b>	<b>100</b>	<b>\$</b>
<b>TOTAL ONE-TIME PAYMENTS</b>		<b>\$</b>



## Exhibit F: Computer Software Support Agreement

This Support Agreement ("this Agreement") is made and entered into in the County of Scott for services to be provided to SECC this \_\_\_\_\_ day of \_\_\_\_\_, 2009\_\_\_\_\_, by and between:

CONTRACTOR

and

SECC

### WITNESSETH

WHEREAS, CONTRACTOR and SECC entered into the Integrated Public Safety Systems Contract dated \_\_\_\_\_, 2009\_\_\_\_\_, (the "Agreement") under which SECC obtained \_\_\_\_\_ site licenses, non-exclusive, nontransferable, to use certain computer software in object code form and related user documentation (the "Licensed Program") on certain terms and conditions.

WHEREAS, CONTRACTOR desires to offer SECC certain services with respect to the Licensed Program on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises hereof, and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

### 1. DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

- 1.1 **"Software Order."** A CONTRACTOR order form identifying software modules purchased by SECC from CONTRACTOR which has been signed and accepted by SECC and has been accepted by CONTRACTOR.
- 1.2 **"Licensed Program."** The computer software known as [vendor/product name] INTEGRATED PUBLIC SAFETY SYSTEMS SOFTWARE which was developed by CONTRACTOR and for which the Contractor is paying a maintenance fee to CONTRACTOR as identified in a Software Order, including any extracts from such software, derivative works of such software, or collective works constituting such software (such as subsequent Releases) to the extent offered to the Contractor under this Agreement. This includes computer software not developed by CONTRACTOR that might be used in conjunction with the System Software.

- 1.3 **“Agreement Term.”** The Agreement term if for an initial period of one (1) year commencing upon Final System Acceptance. Thereafter, the Agreement Term shall be extended by mutual consent on an annual basis.
- 1.4 **“Error.”** Any failure of the Licensed Program to conform in all material respects to the functional specifications for the Licensed Program, as defined in this Agreement and published from time to time by CONTRACTOR. However, any nonconformity resulting from SECC’s misuse or improper use of the Licensed Program or combining or merging the Licensed Program with any hardware or software not supplied by CONTRACTOR, or not authorized to be so combined or merged by CONTRACTOR, shall not be considered an Error. Nor shall Licensed Program or data file damage resulting from unauthorized software alterations (including problems, errors, or malfunctions caused or created by the operator), customizing of programs, accident, neglect, power surge or failure, lightening, operating environment not in conformance with the manufacturer’s specifications (for electric power, air quality, humidity or temperature), operating system errors, or hardware malfunction be considered an Error.
- 1.5 **“Error Correction.”** Either a software modification or addition that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on SECC of such nonconformity.
- 1.6 **“Enhancement.”** Any modification or addition that, when made or added to the Licensed Program, materially changes the program’s utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by CONTRACTOR as minor or major, depending on CONTRACTOR’s assessment of their value and of the function added to the preexisting Licensed Program.
- 1.7 **“Coverage Hours.”** 24 hours/day, 7 days/week.
- 1.8 **“Response Time.”** Within four (4) hours of notification by SECC that an Error is present, CONTRACTOR will initiate work toward development of an Error Correction.
- 1.9 **“Releases.”** New versions of the Licensed Program, which new versions may include Error Corrections and/or enhancements.
- 1.10 **“System Administrator.”** An agent of SECC with sufficient training and/or experience with a Software Product to communicate effectively with the CONTRACTOR Support personnel.

## 2. SCOPE OF SERVICES

- 2.1 During the Agreement Term, CONTRACTOR shall render the following services in support of the Licensed Program, during Coverage Hours, subject to the compensation fixed for each type of service in CONTRACTOR's current Fee Schedule:
- a. CONTRACTOR shall maintain a program control center capable of receiving by telephone any operator reports of system irregularities.
  - b. CONTRACTOR shall maintain a 24 x 7 telephone hot line that allows SECC to report system problems and seek assistance in use of the Licensed Program.
  - c. CONTRACTOR shall maintain a trained staff capable of rendering the services set forth in this Agreement.
  - d. CONTRACTOR shall be responsible for using all reasonable diligence in correcting verifiable and reproducible Errors when reported to CONTRACTOR in accordance with CONTRACTOR's standard reporting procedures. CONTRACTOR shall, after verifying that such an Error is present, initiate work, within Response Time, in a diligent manner toward development of an Error Correction. The estimated time required to complete the Error Correction shall be reviewed with SECC. CONTRACTOR will utilize its best efforts to achieve a timely resolution. Following completion of the Error Correction, CONTRACTOR shall provide the Error Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction, and CONTRACTOR shall include the Error Correction in all subsequent Releases of the Licensed Program.
  - e. CONTRACTOR shall provide programming modifications mandated by changes to existing federal and state regulations in effect as of the date of the original Software License Agreement. Reports will be provided that use data supported within the applications software and they will provide all necessary data and totals required to complete government-mandated forms. If required, programs to transfer data to tape media will be provided.
  - f. CONTRACTOR may, from time to time, issue new Releases of the Licensed Program to its clients generally, containing Error Corrections, minor Enhancements, and, in certain instances, major Enhancements. CONTRACTOR shall provide SECC with one copy of each new Release or major enhancement, without additional charge. CONTRACTOR shall provide reasonable assistance to help SECC install and operate each new Release, provided that such assistance, if required to be provided at SECC's facilities, shall be subject to the supplemental charges set forth

in CONTRACTOR's current Fee Schedule.

- g. Subject to space availability and training fees, SECC may enroll its employees in CONTRACTOR's training classes, held at CONTRACTOR's facility for regular or advanced training.
- h. CONTRACTOR shall consider and evaluate the development of Enhancements for the specific use of SECC and shall respond to SECC's requests for additional services pertaining to the Licensed Program (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to by CONTRACTOR and SECC.
- i. CONTRACTOR software support, although primarily intended for CONTRACTOR application software, also extends support for all operating systems where CONTRACTOR has an agreement with the supplier. However, SECC must be aware of the following facts for operating system support:
  - i. CONTRACTOR will provide the first level of support for operating system and hardware.
  - ii. CONTRACTOR is forced to work with the company that developed the operating system. If that company fails to provide quality support, CONTRACTOR will not be able to provide quality support. Also, if the company charges CONTRACTOR for their support, SECC will be billed for these charges.
  - iii. Some operating system problems can only be solved on-site. If and when this situation occurs, CONTRACTOR personnel will travel to SECC's site with SECC's approval. SECC will be billed according to the CONTRACTOR fee schedule for travel expenses and comprehensive per diem.
  - iv. In the event that an error is identified in the operating system, CONTRACTOR will immediately report the error directly to the provider and will cure with the same provisions in Section 2.1(d) of this section.
  - v. CONTRACTOR will provide assistance with operating system upgrades but SECC is responsible for obtaining the upgrade from CONTRACTOR and paying any required fee.
  - vi. CONTRACTOR will review all operating system upgrades in advance to verify that the upgrade is compatible with the system software.

- j. CONTRACTOR agrees to provide such services to SECC as long as such services are provided to any other CONTRACTOR client, and SECC meets its obligations as defined herein.

### **3. SECC OBLIGATIONS**

- 3.1 SECC shall provide reasonable access to its facilities in connection with the performance of CONTRACTOR of its obligations hereunder. No charge shall be made for such access. It is agreed that prior notification will be given when access is required.
- 3.2 SECC must provide CONTRACTOR with all relevant information to assist CONTRACTOR in duplicating the circumstances under which a Problem in a Software Product became apparent.
- 3.3 SECC must maintain a modem and data set connected 24 hours per day, 7 days a week, to the direct dial network near any CPU used with a Software Product being maintained by CONTRACTOR hereunder and provide access to a dedicated voice grade local telephone.
- 3.4 All communications by SECC to CONTRACTOR must be in the English language.

### **4. SYSTEM ADMINISTRATOR REQUIREMENTS**

- 4.1 Effective system administration is the key to a successful installation and smooth on-going system operation. System administration personnel will be the focal point for communications between SECC and CONTRACTOR, and will handle the daily operation of the system.
- 4.2 System administrative personnel should have or possess the potential to develop the following knowledge and skills:
  - General understanding of computer systems' architecture and configurations; recognizing such pieces of hardware as CPU, memory, peripherals, scanners, etc.
  - Understands general computer concepts such as relational database, operating systems, application software, word processing and fourth generation languages.
  - Excellent verbal and written communication skills with governmental administrators, programmers, and system maintenance personnel.
  - Understands the importance of data integrity and security (file backups and password control).
- 4.3 System administration responsibilities include, but are not limited to, the following:

- Communications with CONTRACTOR support personnel.
- Adds new users to the system and maintains security profiles.
- Compiles backup and recovery procedures.
- Completes off-site backup procedures.
- Provides first level support to end users.
- Upgrades system software in conjunction with CONTRACTOR and the computer hardware manufacturer.
- Ensures data and equipment security.
- Diagnoses and resolves minor hardware problems.
- Manages workload effectively.
- Trains new staff on software packages.
- Maintains documentation.

## **5. FEES AND CHARGES**

- 5.1 SECC shall pay CONTRACTOR its fees and charges for support services as shown in Exhibit C (Cost Detail: Hardware, Software and Services). CONTRACTOR reserves the right to change its Maintenance Fees from time to time, but shall not exceed current prices plus 5 percent per year for each year after final acceptance, No such change will be effective until at least 90 days after CONTRACTOR has given SECC written notice of such change.
- 5.2 SECC shall be responsible for the fees and charges for procuring, installing, and maintaining all equipment, telephone lines, modems, communications interfaces, and other hardware necessary to operate the Licensed Software and to obtain from CONTRACTOR the services called for by this Agreement.
- 5.3 SECC agrees to pay additional charges according to the CONTRACTOR Fee Schedule for all work performed outside of Coverage Hours. SECC shall approve any work, performed outside of Coverage Hours in advance.
- 5.4 On-site assistance will be performed as requested by SECC. However, SECC will be billed according to the CONTRACTOR Fee Schedule for reasonable travel and living expenses. SECC will be provided an estimate of fees and shall approve them in advance of the assistance being performed.

## **6. Contract Extension.**

The term of the contract may be extended by mutual consent for an additional year.

## 7. TERMINATION

CONTRACTOR shall continue to provide services so long as SECC abides by its obligations under this Agreement. This Agreement may be terminated according to the provisions established in Section 1.22 of the General Contract Provisions.

## 8. MISCELLANEOUS

- 8.1 Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.
- 8.2 In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.
- 8.3 Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, except to a successor of all or substantially all of its business and properties.
- 8.4 The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.
- 8.5 Authority to Execute Agreement. Both SECC and CONTRACTOR do covenant that each individual executing this agreement on behalf of each party is a person duly authorized and empowered to execute this Agreement for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

ATTEST:

SECC

By: \_\_\_\_\_

APPROVED AS TO FORM:

CONTRACTOR

By: \_\_\_\_\_

**Exhibit G: Project Schedule and Personnel**

**(To be developed with Vendor)**



## **Exhibit H: Preliminary and Final Acceptance Tests**

**(To be developed with Vendor)**

### **Exhibit I: Correspondence**

**(List and attach all vendor correspondence between proposal and final contract which has a material impact on the project scope.)**

### **Exhibit J: Escrow Agreement**

1. CONTRACTOR agrees to deliver in a sealed package a copy of the Source Code for the computer software supplied, pursuant to the terms of this Agreement, to Escrow Agent,  

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2. The sealed package containing the Source Code shall be so marked. If any modifications are contracted in the future, Source Code for these modifications shall be placed in escrow and marked with the name of the Scott County Law Records Management SECC.
3. In the event CONTRACTOR ceases doing business, becomes insolvent or a bankruptcy proceeding is filed by or against CONTRACTOR, and such proceedings are not dismissed within 60 days, or fails to meet its obligations for providing software support as defined in Exhibit F (Computer Software Support Agreement), the Escrow Agent, upon the written demand of SECC, shall release the Source Code to SECC, provided that the Escrow Agent shall first give CONTRACTOR written notice of such demand.
4. The release of the Source Code by the Escrow Agent to SECC shall be solely for the purpose of enabling SECC to use and maintain the software for its own internal use, and CONTRACTOR hereby grants to SECC a paid-up, royalty-free, non-exclusive license to use and modify the Source Code for such purposes and for no other. Under no circumstances shall SECC be authorized to use such software or license others to use the same for any purpose other than the internal needs of SECC.
5. The responsibilities of the Escrow Agent are limited solely to the receipt and custody of the sealed packages containing the Source Code, the receipt of any notices from SECC relating to the items in Section 3 above, and the delivery of the sealed packages containing the Source Code to SECC as contemplated by this Agreement.
6. Within 30 days of Final Acceptance or full payment, whichever is later, CONTRACTOR agrees to deliver Source Code for the installed version of the products to the Escrow Agent. CONTRACTOR will require that Escrow Agent to notify SECC in writing within 30 days of receipt of the Source Code.
7. CONTRACTOR will update Source Code no less frequently than annually, at its expense, after the initial delivery of Source Code to the Escrow Agent.
8. SECC may verify the validity of Source Code at its expense at any time. SECC shall assume responsibility for any CONTRACTOR expenses associated with the verification process.
9. Source code may also be purchased as an option.

## **Exhibit K: Hardware and Network Specifications**

**(To be provided by Vendor)**