

**Appendix D**  
**Software and Services Agreement**  
**DIR-TSO-2512**

The following two parties enter into this Agreement for Software and Services (herein after referred to as AGREEMENT):

CUSTOMER            Name  
                          Address  
                          City State Country Postal Code  
                          Phone Number

VENDOR             INI Inc. dba Information Network International, a Texas Corporation  
                          2050 North Loop West, Suite 100  
                          Houston Texas USA 77018-8143  
                          (713) 839-8756

**Preliminary Statements**

CUSTOMER intends to implement an automated records management system within \_\_\_\_\_ (known as Delivery Timeframe) that would allow access by internal staff to meta data related to classification schema, retention policy, and inventory objective, subjective, and location tracking information. The CUSTOMER expects the system to provide secured access and functions restricted to pre-determined roles specified by the system. The system will also allow the CUSTOMER's records management staff to fulfill service requests from users within this system.

VENDOR develops and owns *InSight* RIM Software (SYSTEM) that consists of computer software programs and related documentation in machine-readable form and has the exclusive right to license the SYSTEM to CUSTOMER. The VENDOR has the exclusive right to provide Software Support, Maintenance, and Warranty services for the SYSTEM.

**VENDOR can provide services for short- or long-terms projects related to records management initiatives. Such services include, but are not limited to:**

- **Assess existing workflows, providing recommendations for improvements.**
- **Assess existing database structures and indexing standards, providing recommendations for improvements.**
- **Conform meta data in structured systems to revised standards.**
- **Convert and import legacy meta data into new systems.**
- **Design custom integration between existing systems and *InSight*.**
- **Train internal Customer staff.**
- **Inventory physical and digitized collections.**
- **Transfer physical collections to other locations.**

- **Convert paper records to scanned images.**
- **Input meta data.**
- **Manage records centers.**

To the extent allowable by DIR Contract No. DIR-TSO-2512, all DIR Customer orders will provide for Fees in accordance with Appendix C, Pricing Index of the DIR contract DIR-TSO-2512 and Configuration Summary specifies the SOFTWARE that VENDOR agrees to provide to CUSTOMER solely for use by CUSTOMER.

To the extent allowable by DIR Contract No. DIR-TSO-2512, the CUSTOMER and VENDOR may choose to amend any Fees and Configuration Summary by attaching to this AGREEMENT: (a) updated versions of the Summary from time to time or (b) Statements of Work for SERVICES agreed upon by CUSTOMER and VENDOR. CUSTOMER and VENDOR shall perform all responsibilities assigned under this AGREEMENT in a timely manner. Amendments to Fees shall be in accordance to Appendix C, Pricing Index of the DIR contract DIR-TSO-2512.

VENDOR AND CUSTOMER, INTENDING TO BE BOUND LEGALLY, AGREE AS FOLLOWS:

## **Purchase Terms**

### **Section 1: System Description**

#### **Minimum Requirements**

VENDOR will provide *InSight* RIM Software as the licensed SYSTEM. VENDOR will configure SYSTEM to use local, wide area and intranet technology. Data managed by the SYSTEM can be stored in Microsoft SQL Server or Microsoft Access databases. Any attached Fees and Configuration Summary identifies the user operating systems, database versions, and optional modules supported by the SYSTEM and licensed for use by the CUSTOMER.

SYSTEM requires Microsoft software as detailed in the installation instructions for the version of the SYSTEM VENDOR licenses to CUSTOMER. CUSTOMER must provide the computing environment, software, workstations and servers that meet the minimum requirements for the version of the SYSTEM VENDOR licenses to CUSTOMER.

#### **Optional Add-ons**

VENDOR will specify optional SYSTEM modules and licensed capacity for CUSTOMER in any attached Fees and Configuration Summary. Optional Add-on shall be in accordance with Appendix C of the DIR Contract DIR-TSO-2512.

### **Section 2: License**

Software License section of this AGREEMENT describes the CUSTOMER's rights to use the SYSTEM.

### **Section 3: Installation**

VENDOR will provide SYSTEM set up programs and installation instructions with the SYSTEM. VENDOR will schedule to review installation instructions with CUSTOMER before CUSTOMER performs a SYSTEM installation or upgrade. VENDOR may also provide installation services described in any Fees and Configuration Summary attached to this AGREEMENT.

### **Section 4: Software Support, Maintenance, and Warranty**

VENDOR warrants that it will render SERVICES that are the subject of this AGREEMENT in a good and workman-like manner. VENDOR warrants SYSTEM, if at all, only according to the terms described in the Software License section of this AGREEMENT.

VENDOR shall support SYSTEM in manner specified in the Software Support, Maintenance, and Warranty section of this AGREEMENT. VENDOR offers support for the current version and one previous version of SYSTEM to CUSTOMER for the period made effective by the annual renewal of the SYSTEM's Software Support and Maintenance.

### **Section 5: Implementation and Technical Services**

SERVICES, inclusive of assessment, installation, conversion, and implementation services as agreed by CUSTOMER and VENDOR, may be included in any attached Fees and Configuration Summary. The same attachment describes locations where VENDOR shall perform SERVICES as well as rates and cancellation policies for SERVICES, in accordance with DIR Contract No. DIR-TSO-2512.

VENDOR may attach to the AGREEMENT an updated version of any Fees and Configuration Summary to incorporate new modules or expand license options. VENDOR will hold fees firm for one year from SYSTEM delivery date. Fees shall be in accordance with Appendix C, Pricing Index of the DIR Contract DIR-TSO-2512.

CUSTOMER may request in writing an updated Fees and Configuration Summary as required.

### **Section 6: Independent Contractor**

Independent Contractor shall be in accordance with Section 9.A, Item 3 of Appendix A, Standard Terms and Conditions of the DIR Contract DIR-TSO-2512.

### **Section 7: Insurance**

VENDOR shall maintain insurance in accordance with Section 9.N. of Appendix A, Standard Terms and Conditions of the DIR Contract DIR-TSO-2512.

### **Section 8: Payment Terms and Conditions**

Payment Terms are detailed in DIR Contract No. DIR-TSO-2512, Appendix A, Section 7, Purchase Orders, Invoices and Payments.

### **Section 9: Notices**

CUSTOMER and VENDOR shall provide written notice to the addresses included in the section that identifies parties to this AGREEMENT regarding changes of address for the offices where to direct formal notices as may be called for in this AGREEMENT.

VENDOR agrees to send correspondence and invoices to addresses designated by the CUSTOMER as appropriate for the receipt of communications related to the normal

course of business that results from this AGREEMENT. These addresses may be electronic or physical addresses as mutually agreed to by CUSTOMER and VENDOR.

### **Section 10: Governing Law and Venue**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

### **Section 11: Severability**

In the event that judgments or court orders hold invalid any one or more of the provisions of this AGREEMENT, such judgments or court orders shall not affect or impair in any way the remaining provisions of the AGREEMENT.

### **Section 12: Entire Agreement Clause**

DIR Contract No. DIR-TSO-2512 and this agreement, in their entirety, constitute the complete agreement between CUSTOMER and VENDOR. To the extent allowable by DIR Contract No. DIR-TSO-2512, CUSTOMER and VENDOR, by agreement, may incorporate additional SERVICES by reference to this AGREEMENT. In the event of a conflict in terms, the terms of DIR Contract No. DIR-TSO-2512 will have precedence.

## **Software License**

### **Section 13: License Rights**

In consideration of payment of SYSTEM license fees set forth in DIR Contract No. DIR-TSO-2512, Appendix C Pricing Index, VENDOR grants CUSTOMER a non-exclusive object code license (LICENSE) to use SYSTEM subject to the following conditions. CUSTOMER may:

1. Install SYSTEM version stated in any attached Fees and Configuration Summary.
2. Store SYSTEM documentation, transmit it through, and display it in excess of agreed number of users as stated in the attached Fees and Configuration Summary.
3. Use the SYSTEM in excess of the licensed capacity stated in the attached Fees and Configuration Summary for up to thirty (30) business days in any calendar year. After that period has accumulated in a calendar year, CUSTOMER agrees to stop using the system in excess of the licensed capacity or notify VENDOR to extend the licensed capacity for the SYSTEM.
4. Copy SYSTEM for training and backup purposes.

CUSTOMER's right to use the SYSTEM shall expire twelve (12) months after CUSTOMER terminates the SYSTEM Support, Maintenance and Warranty Agreement attached to this AGREEMENT.

#### **Section 14: Assignment or Transfer**

Assignment Terms are detailed in DIR Contract No. DIR-TSO-2512, Appendix A, Section 4.D. Assignment.

#### **Section 15: Nondisclosure and Confidentiality**

CUSTOMER may authorize use of SYSTEM to consultants and contractors who have first entered into a written agreement with CUSTOMER by which the consultants or contractors accept an obligation of confidentiality no less restrictive than that set forth in this AGREEMENT.

CUSTOMER acknowledges VENDOR has licensed use of SYSTEM to CUSTOMER for CUSTOMER's own internal business purposes and CUSTOMER shall not allow any third party to obtain or use SYSTEM for the benefit of any third party unless agreed to in writing by VENDOR.

To the extent allowable by the Texas Public Information Act, and except as otherwise provided in this AGREEMENT, CUSTOMER agrees to hold SYSTEM, including later received updates thereof, in confidence. Neither party to this AGREEMENT shall have any obligation of confidentiality or restriction on use regarding any information that is in the public domain, is independently developed, is independently obtained free from any obligation of confidentiality, or is required to be disclosed by law or court order.

#### **Section 16: Support**

VENDOR shall support SYSTEM in manner specified in the Software Support, Maintenance, and Warranty section of this AGREEMENT.

#### **Section 17: Disclaimer of Warranty and Limited Liability**

VENDOR warrants that it will render services that are the subject of this AGREEMENT in a good and workman-like manner and consistent with industry standards and best practices.

CUSTOMER ACKNOWLEDGES THAT EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, VENDOR MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO SYSTEM, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, IN FACT OR IN LAW, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR CUSTOMER ENVIRONMENT OR PURPOSE. UNLESS CUSTOMER HAS

PURCHASED MAINTENANCE AND SUPPORT PURSUANT TO THIS AGREEMENT, VENDOR SHALL HAVE NO DUTY TO UPDATE, MAINTAIN, OR PROVIDE ANY ENHANCEMENTS OR ERROR CORRECTIONS FOR THE SYSTEM. NOTWITHSTANDING THE FORM (E.G., CONTRACT, NEGLIGENCE OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT AGAINST VENDOR, VENDOR SHALL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, LOST PROFITS OR LOST SAVINGS, EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO EXPRESS INDEMNIFICATION PROVIDED FOR IN THIS PARAGRAPH.

### **Section 18: Source Code Access**

In the event VENDOR no longer makes Software Support, Maintenance, and Warranty available to customers of SYSTEM, VENDOR will provide CUSTOMER with information required to access SYSTEM source code for a fee not greater than the then current Software Support, Warranty, and Maintenance fee for CUSTOMER's licensed SYSTEM.

### **Section 19: Intellectual Property**

Intellectual Property shall be in accordance with Section 8 of the Contract DIR-TSO-2512.

## **Software Support**

### **Section 20: Installation**

VENDOR shall deliver SYSTEM, SYSTEM setup programs and SYTEM installation instructions to CUSTOMER. VENDOR will schedule up to two (2) meetings with CUSTOMER to discuss installation and instructions with CUSTOMER pursuant to this AGREEMENT. CUSTOMER and VENDOR may participate in such installation meetings via telephone.

CUSTOMER agrees to perform SYSTEM installation in accordance with SYSTEM installation instructions. CUSTOMER may authorize VENDOR to provide additional installation assistance or services if stated in the attached or a subsequently amended Fees and Configuration Summary.

### **Section 21: Access to Support**

CUSTOMER representative (herein referred to as Project Liaison) shall have access to SYSTEM support. Project Liaison must be knowledgeable in pertinent aspects of CUSTOMER's business, operations, records management program, and trained in the use of SYSTEM.

Upon execution of this AGREEMENT, VENDOR will provide CUSTOMER with VENDOR email address to use to initiate calls for Support. VENDOR will also provide CUSTOMER a toll-free telephone number for use in the United States of America (USA).

## **Section 22: Support Hours**

VENDOR shall make SYSTEM support available to CUSTOMER's Project Liaison during hours of 8:00 a.m. to 5:00 p.m. USA and Canadian Central Time on weekdays exclusive of USA federal holidays. CUSTOMER and VENDOR may agree to extend the hours of SYSTEM support by including a line item for such in the Fees and Configuration Summary attached to this AGREEMENT.

## **Section 23: Description of Support**

CUSTOMER will provide a description of the situation causing an issue. VENDOR may request that CUSTOMER provide, by email or facsimile, pertinent error messages, objects, or screen shots that provide additional clarity as required.

VENDOR shall make reasonable SYSTEM support available to CUSTOMER's Project Liaison. CUSTOMER and VENDOR understand reasonable to mean VENDOR will respond within eight (8) Support Hours as defined in Section 23. Time initiates when VENDOR receives clarified communication from CUSTOMER's Project Liaison requesting SYSTEM support.

VENDOR may address support calls using the following techniques:

1. Refer CUSTOMER to the on-line help regarding how to use SYSTEM feature that is the subject of the call.
2. Inform CUSTOMER how to use techniques or other features in SYSTEM to work around or avoid the situation causing the reported issue.
3. Schedule a consulting session with CUSTOMER.
4. Attempt to recreate the situation in order to replicate at will CUSTOMER's reported issue.
5. Compare current version of SYSTEM with version of SYSTEM installed at CUSTOMER site in order to isolate cause of the reported and replicated error.

## **Section 24: Error Detection and Remedies**

VENDOR will attempt to resolve CUSTOMER reported issues following VENDOR's diagnosis as current version SYSTEM errors according to the circumstances, priorities, and remedies described in this Section. In the event CUSTOMER reports an issue that VENDOR cannot replicate in VENDOR's support environment, CUSTOMER and VENDOR may call upon technical resources to collaborate until diagnosis identifies cause of the issue. CUSTOMER agrees to provide VENDOR with secured, remote access to SYSTEM if diagnosis or resolution proves elusive.

## **Priorities**

**Level One:** VENDOR will give priority treatment to resolving issues found in the current version of SYSTEM that prevent CUSTOMER's day-to-day access to SYSTEM.

**Level Two:** VENDOR may address issues that impair SYSTEM's input or output functions, but do not prevent CUSTOMER's day-to-day access to SYSTEM, as second priority to Level One issues reported by any other SYSTEM customer.

## **Remedies**

VENDOR will apply resolutions as follows for issues that VENDOR determines SYSTEM application code, SYSTEM installation, or CUSTOMER environment caused:

**SYSTEM Application Code:** The VENDOR will attempt to resolve any programming issue diagnosed as SYSTEM application issues in the current version of the SYSTEM. For SYSTEM errors caused by the application code, the VENDOR will deliver remedies electronically for implementation by the CUSTOMER.

In the event CUSTOMER is not using the current release, VENDOR may request CUSTOMER upgrade to current SYSTEM version. If upgrading is not feasible for CUSTOMER in a timely manner, VENDOR may offer to resolve the issue in exchange for authorization to invoice for SERVICES rendered pursuant to providing the remedy to CUSTOMER.

**SYSTEM Installation:** SYSTEM support calls made by CUSTOMER to VENDOR to report issues that VENDOR determines to be caused by a lack of conformance with SYSTEM installation instructions, may result in invoices for VENDOR services to be payable by CUSTOMER. VENDOR invoices may include fees for time spent by VENDOR to diagnose and identify cause of such issues and to resolve the installation issue at VENDOR's hourly rates as specified on the attached or subsequently amended Fees and Configuration Summary.

**CUSTOMER Environment:** In the event CUSTOMER reports an issue caused by other CUSTOMER software or equipment in use, CUSTOMER will resolve the issue or will send acknowledgement to VENDOR to inform VENDOR that CUSTOMER does not hold VENDOR responsible for resolving such issues as a part of the Software Support, Maintenance, and Warranty described in this AGREEMENT. VENDOR reserves the right to invoice CUSTOMER for SERVICES rendered to diagnose and identify such issues. CUSTOMER shall reimburse VENDOR at then current rates for all work VENDOR spent investigating an error or malfunction caused by modifications made by CUSTOMER to SYSTEM.

## **Section 25: Delivery of Remedies and Upgrades**

In order to satisfy any delivery obligation of this AGREEMENT, VENDOR at its option may send CUSTOMER in electronic form a single copy of any modification, error correction, fix, or release to SYSTEM provided pursuant to this AGREEMENT, together with instructions for CUSTOMER's installation and implementation thereof. VENDOR reserves the right to invoice for physical delivery of remedies or upgrades, or other materials pursuant to this AGREEMENT.

### **Section 26: Other Maintenance Services**

VENDOR may modify SYSTEM from time to time to incorporate new features, resolve errors, or accommodate new versions of the software used to support SYSTEM. VENDOR shall inform CUSTOMER regarding anticipated release dates for new versions of the SYSTEM licensed to the CUSTOMER. Customer may forego new features and versions and Vendor will provide support and services for the remainder of the then current term with no increase in cost or degradation in service.

CUSTOMER may add VENDOR-manufactured options to SYSTEM from time to time. Such options, when delivered, shall become part of SYSTEM. CUSTOMER and VENDOR shall maintain such options in accordance with this AGREEMENT.

Maintenance coverage of customized objects, reports, or integrations added to SYSTEM for CUSTOMER may be included as a separate line item in the attached or subsequently amended Fees and Configuration Summary or in a separate Statement of Work.

### **Section 27: Design Ideas**

CUSTOMER may at any time request that VENDOR make additional modifications to SYSTEM to add functions or improve performance. VENDOR shall consider and respond to these types of requests submitted by CUSTOMER to SYSTEM support email address. VENDOR may request additional information from CUSTOMER to gain clarity about the idea.

VENDOR may determine to include an enhancement that incorporates the design idea in the current SYSTEM or subsequent versions of the SYSTEM.

VENDOR may determine not to address the idea by a SYSTEM enhancement.

VENDOR may offer to provide a customized solution or optional module to address the idea as specified in an amended Fees and Configuration Summary.

### **Section 28: Annual Fees for Software Support, Maintenance, and Warranty**

In accordance with Appendix C, Pricing Index of the DIR Contract No. DIR-TSO-2512, CUSTOMER shall pay VENDOR an Annual Maintenance Fee or subsequently amended Fees and Configuration Summary.

As a part of this Annual Maintenance Fee, VENDOR shall provide to CUSTOMER upon request release updates for SYSTEM configuration specified in the attached or subsequently amended Fees and Configuration Summary. Additional optional modules or changes in version or configuration require an amended Fees and Configuration Summary. VENDOR will prorate Annual Maintenance Fee for such additions and modifications to conform to the original delivery date of SYSTEM Software.

### **Section 29: Warranty, Disclaimer of Implied Warranty and Limited Liability**

VENDOR warrants that it will render services that are the subject of this AGREEMENT in a good and workman-like manner. VENDOR warrants SYSTEM, if at all, only according to the terms specified in the Software License section of this AGREEMENT.

This AGREEMENT does not provide warranty or maintenance for third-party materials, equipment, or software that may be included in the attached or subsequently amended Fees and Configuration Summary. VENDOR may agree to provide CUSTOMER with support for third-party materials that are compatible or integrated with SYSTEM, if the description for providing such support is included in the attached or a subsequently amended Fees and Configuration Summary.

### **Section 30: Terms & Conditions**

Annual Maintenance referred to in this AGREEMENT shall commence on the date CUSTOMER receives SYSTEM and may be renewed for each successive year by CUSTOMER sending written notice thirty (30) days prior to renewal date to the address included in the section that identifies parties to this AGREEMENT. Termination Terms are detailed in DIR Contract No. DIR-TSO-2512, Appendix A, Section 10.B. Termination. The term of the Agreement shall be in accordance with the DIR Contract, DIR-TSO-2512.

### **Section 31: Delays**

Force Majeure Terms are detailed in DIR Contract No. DIR-TSO-2512, Appendix A, Section 10.C. Force Majeure.

\* \* \*

By execution hereof, representative signing for CUSTOMER below certifies that he/she has read this Agreement and the attached Fees and Configuration Summary and that CUSTOMER duly authorized him/her to execute this Agreement on behalf of CUSTOMER.

Presented on behalf of VENDOR  
INI Inc. dba Information Network International

Accepted on behalf of CUSTOMER

Representative Signature:

Representative Signature:

\_\_\_\_\_  
Barbara Mercer, Vice President

\_\_\_\_\_  
Customer Representative Name

Date Signed:

Date Signed:

\_\_\_\_\_

\_\_\_\_\_

## Terminology

**Concurrent User License Options:** Required license configuration that permits CUSTOMER to make the SYSTEM available for use based on the number of user sessions serviced by SYSTEM.

**Enterprise License:** Provides unlimited Microsoft Access database instances of SYSTEM within a Company or Agency. SYSTEM versions compatible with Microsoft SQL Server or Oracle also require the add-on component for each additional ODBC database managed by the SYSTEM.

**Fees and Configuration Summary:** Any attachment to this legal AGREEMENT that summarizes the SYSTEM configuration options and version, lists optional modules, and summarizes services as requested by CUSTOMER for initial implementation.

**Implementation:** Project planning and demonstration sessions for various roles of SYSTEM user community or CUSTOMER implementation team as described in attached Fees and Configuration Summary.

**Multi-user License:** One instance of SYSTEM installed on single Local Area Network (LAN) with number of individual or concurrent users as specified in attached Fees and Configuration Summary.

**Open Data Base Connectivity (ODBC):** Standard by which two databases can communicate and interface data with each other.

**Purchase Terms:** Section of this legal agreement that sets forth general terms and conditions in accordance with DIR Contract No. DIR-TSO-2512.

**Single-user License:** One Microsoft Access database instance of SYSTEM installed on a single computer hard-drive for use by one individual.

**Software License:** Section of this legal agreement that sets forth CUSTOMER's rights and limitations.

**Software Support, Maintenance, and Warranty:** Section of this legal agreement that details services related to software support, maintenance, and warranty that VENDOR will provide to CUSTOMER.