Contract # 09-1800-001
Service PO #08SC180143

JCH has complete bound contract in office.

Final 5-30-08

# OMS AGREEMENT

THIS OMS AGREEMENT is dated for reference the third day of June 2008.

BETWEEN:

SYSCON JUSTICE SYSTEMS, INC., having a place of business at 110 Blue Ravine Road, Suite 162, Folsom, CA 95630;

(hereafter "Syscon")

AND:

SOUTH DAKOTA DEPARTMENT OF CORRECTIONS, having a place of business at 3200 East Highway 34, Pierre, SD 57501

(hereafter the "State")

WHEREAS:

A. The State, through its Department of Corrections, issued a request for proposals number RFP 23704 for an offender management system (the "RFP");

B. Syscon provided a response to the RFP dated August 24, 2007 and a revised response and a revised cost proposal, each dated November 14, 2007 (the November 14, 2007 documents along with the May 8, 2008 Functional Requirement Matrix are collectively the "Bid") and the State has determined that it will enter into this agreement with Syscon pursuant to the RFP and the Bid; and

C. Syscon will provide to the State the computer software and related services described in this agreement on the terms and conditions set out herein.

IN WITNESS WHEREOF the parties have agreed as follows:

## 1. DEFINITIONS

1.1 Definitions In this agreement, the following terms have the meaning assigned to them as follows:

a) "Development Services" means all services to be provided by Syscon to the State described in item B above, other than Support Services, and includes preparation and modification of the Project Charter, pre-implementation analysis and other requirements definition, software installation, modifications to the software, data conversion, testing, training and implementation.

b) "OMS Project" means, collectively, the delivery to the State of the offender management system contemplated by the RFP and the Bid, as it may from time to time be modified by the Project Charter.

c) "Product" means the software application programs (in object code form) known as the TAG Offender Management System including any enhancements or modifications thereto and related materials and documentation.

d) "Application Package" means the Product together with the Oracle Programs and Database.

e) "Project Charter" means the document or documents, when signed by authorized representatives of both parties, contemplated by paragraphs 2.2 and 2.3.

f) "Support Services" means the services described in the Customer Support Agreement attached hereto as Attachment 2.

g) "Software Licenses" means collectively the TAG Software License Agreement in the form attached hereto as Attachment 1 and the Oracle Sublicense Agreement in the form attached hereto as Attachment 3.

h) "The Bid," means the revised response and cost proposal provided by Syscon, which is dated November 14, 2007, further clarified in the Functional Requirement Matrix, dated May 8, 2008 attached to the Bid (attachment 4).

i) "Source Code" means all source code of the TAG Software, together with all commentary and other materials supporting, incorporated into or necessary for the use of such source code, including all supporting configuration, documentation, and other resource files and identification by Syscon and version number of any software (but not a license to such third-party software) used in connection with the source code and of any compiler, assembler, or utility used in generating object code.

j) "Acceptance" means the earlier of: 1) the State's written notice of acceptance of the Application Package or, (2) the first day upon which the State commences Live Processing of all modules of the Application Package. "Live Processing" means that the Application Package is installed in all facets (Production and Test), brought on line, and used to perform or process the State's data or business functions in actual operations.

## 2. SCOPE

2.1 Scope The OMS Agreement is the primary governing contract and the following attachments are incorporated into and form part of this agreement:

| Attachment Number | Description |
|---|---|
| 1 | TAG Software License Agreement |
| 2 | Customer Support Agreement |
| 3 | Oracle Sublicense Agreement |
| 4 | The Bid |
| 5 | Project Charter which encompasses the work plan/project plan/payment schedule |

2.2 Project Charter Upon execution of this agreement, Syscon will promptly begin preparation of a project charter that will set out the various aspects of the OMS Project including:

(a) the planned scope and deliverables;
(b) respective responsibilities of the parties;
(c) testing and acceptance criteria;
(d) go-live procedures; and
(e) change management.

The Project Charter whether in the form of a single document or including additional documents developed pursuant thereto, forms part of and is incorporated into this

agreement and, at any particular time, the then current Project Charter will be Attachment 5 to this agreement.

2.3 Evolving Charter The parties acknowledge that the Project Charter will be developed and modified over the course of the OMS Project as a version controlled document and further documents, such as a pre-implementation plan and one or more project plans will be developed pursuant to the Project Charter. The parties will, as circumstances require, indicate their acceptance of the Project Charter by signing the applicable document or documents. Neither the initial project charter nor any amendment or document ancillary thereto will have any force or effect unless signed by both parties.

2.4 Change Orders All material changes to the scope, deliverables, responsibilities of the parties, schedule, cost or other material aspect of the OMS Project will be negotiated, signed by both parties, and agreed in accordance with the change management and escalation process to be included in the Project Charter.

## 3. DELIVERABLES

3.1 Deliverables Syscon will, in accordance with the Project Charter, provide to the State the Development Services, Software Licenses and Support Services.

3.2 Interim Software License Syscon hereby grants to the State an interim, non-exclusive, non-transferable license that permits the South Dakota Department of Corrections to use the Product for evaluation, testing, training and the live processing of data within the State adult prison system, the State adult parole system and the State juvenile corrections system. The interim license hereby granted will be governed, during the term thereof, by the terms and conditions of the TAG Software License Agreement attached as Attachment 1. The State will use the Interim License until they are granted the permanent license following each Go-Live period.

3.3 Term of Interim License Unless otherwise agreed in accordance with paragraph 2.2 hereof, the license granted under paragraph 3.2 hereof will expire, without further act on the part of either party, on October 1, 2010.

3.4 Oracle Sublicense Upon payment by the State of the initial $500,000 payment contemplated by paragraph 4.2, Syscon will execute and deliver to the State a license to use certain software owned or licensed by Oracle Corporation in the form attached hereto as Attachment 3. The State will promptly thereafter execute and deliver to Syscon a duly signed copy of the Oracle Sublicense Agreement.

3.5 Development Services Upon execution of the Project Charter, Syscon will provide the Development Services at the times and in the manner therein specified.

3.6 Software License Subject to the payments described in part 4 of this agreement having been made when due, and at the time or times set out in the Project Charter, Syscon will:

(a) execute and deliver to the State a license to use the Product in the form attached hereto as Attachment 1. The State will promptly thereafter execute and deliver to Syscon a duly signed copy of the Software License Agreement; and

(b) execute and deliver to the State an acknowledgement that the license granted to the particular User Group (as defined in the Software License Agreement) has become effective.

3.7 Support Services Following Go-Live (as that term is defined in the Customer Support Agreement), Syscon will provide to the State the support and maintenance services described in the Customer Support Agreement, Attachment 2.

## 4. FEES, CHARGES AND PAYMENTS

4.1 Fees For the deliverables described in part 5 of the Bid (Attachment 4), the State will pay to Syscon an amount not to exceed $4,904,940.00.

4.2 Payment Schedule The State will pay Syscon $500,000.00 following acceptance of the initial Project Charter by the State and Syscon. The remaining amount, not to exceed $4,404,940.00, will be paid in increments based on deliverables identified in the milestones and payment schedule to be included in the Project Charter.

4.3 Other Charges In addition to the amount described in paragraph 4.1, the State will pay to Syscon such other amounts as may become payable pursuant to part 3 of the Customer Support Terms.

4.4 Taxes The State of South Dakota is exempt from taxes and shall not be charged or assessed any sales, use, withholding or excise taxes, or any other assessments against the State in the nature of taxes, duties or charges however designated on the deliverables contemplated by paragraph 3.1. To the extent that Syscon incurs any taxes, including the foregoing taxes or those based on the income of Syscon, taxes are the exclusive obligation of Syscon.

4.5 Changes to Fees or Payments Any changes to the amounts payable to Syscon hereunder or the amount or timing of the installment payments will be negotiated, signed by both parties, and agreed in accordance with the change management process to be included and recorded in the Project Charter.

4.6 Late Payment If the State fails to make any payment to Syscon when due, Syscon may, at its option, suspend the performance of its obligations until payment is made provided that Syscon first gives written notice to that effect to the State, and may pursue any other remedies it may have at law or under this agreement.

4.7 Late Deliverables If Syscon fails to meet deliverable milestones as outlined in the Project Charter, the State may, at its option withhold payment until the deliverables are reached, provided that the State first gives written notice to that effect to Syscon, and may pursue any other remedies it may have at law or under this agreement.

## 5. Contract Terms and Conditions

5.1 Conditions and Termination

a) The Vendor (Syscon) Syscon will perform those services described in the Bid and Project Charter, which will be attached to the agreement as Attachment 4 and 5 and incorporated herein by reference.

b) Contract Commencement and Termination The services to be provided under the Agreement shall commence and terminate on mutually agreed upon dates. This agreement will come into force upon execution and delivery by both parties and will continue in force until the mutually agreed upon termination date or termination as set forth in part 5 of this Agreement and any additions in Attachment 1 and 3.

c) Indemnity Provision Syscon agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services

hereunder. This section does not require Syscon to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

d) Insurance Provision Syscon, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

1) Commercial General Liability Insurance:

Syscon shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than $1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

2) Business Automobile Liability Insurance:

Syscon shall maintain business automobile liability insurance or equivalent form with a limit of not less than $1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

3) Worker's Compensation Insurance:

Syscon shall procure and maintain workers' compensation and employers' liability insurance as required by state laws.

Before beginning work under this Agreement, Syscon shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days prior written notice to the State. Syscon shall furnish copies of insurance policies if requested by the State.

e) Independent Contractor While performing services hereunder, Syscon is an independent contractor and not an officer, agent, or employee of the State of South Dakota. As such, Syscon agrees not to use State equipment, supplies, and facilities unless otherwise agreed to.

f) Reporting of Injury Syscon agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Syscon or the State to liability. Syscon shall report any such event to the State immediately upon discovery.

Syscon's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Syscon's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Syscon to report any event to law enforcement or other entities under the requirements of any applicable law.

g) Termination Provision This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event Syscon breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If

termination for such a default is effected by the State, any payments due to Syscon at the time of termination may be adjusted to cover any additional costs to the State because of Syscon's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. In the event of termination, Syscon shall deliver to the State all reports, plans, specifications, technical data, and all other information completed prior to the date of termination. If after the State terminates for a default by Syscon and it is determined that Syscon was not at fault, then Syscon shall be paid for eligible services rendered and expenses incurred up to the date of termination.

In addition to the provisions for termination set out above, this agreement will terminate in the event that:

1) Syscon becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for Syscon, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against Syscon and it is not dismissed within 30 days following commencement thereof;

2) The State:

A. Makes use of the Product or the software governed by the Oracle Sublicense Agreement other than as permitted in the applicable Software License;

B. Breaches the prohibition against disclosure of confidential information set out in part 6 hereof.

C. Fails to make payment of any installment payment or other amount payable when due, provided that Syscon has first given the state not less than thirty days written notice of its intention to rely on this clause, which notice may not be given with respect to any particular payment or amount until sixty (60) days following the date the particular amount became due.

D. Breaches prohibition against reverse engineering, disassembling or recompilation the Application Package (or any portion thereof) or develops derivative works thereof.

In the event of termination of this agreement by Syscon, Syscon shall provide 30 days written notice to the State of its intent to exercise termination of this agreement.

In the event of termination of this agreement by the State for reason other than default by Syscon, the State agrees that any accrued but unpaid charges, payments and expenses as described in the Project Charter up to the date of termination shall be payable by the State.

These rights of termination shall be in addition to all other rights and remedies available to the parties.

h) Default Provision This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

i) Amendment Provision This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

j) Controlling Law Provision This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

k) Compliance with Regulations Syscon will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

l) Vendor Hiring Provision and Eligibility of Employees Syscon may not use subcontractors to perform the services described herein without the express prior written consent of the State. The State reserves the right to reject any person from the project presenting insufficient skills or inappropriate behavior.

Syscon will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. Syscon will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

m) Communication Notice Requirements Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth on page one of this agreement. Notices shall be given by and to the South Dakota Department of Corrections Director of Operations on behalf of the State, and by the General Manager, on behalf of Syscon, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

n) Severability Provision In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

o) Supercession Provision All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

p) IT Standards Syscon warrants that the software developed or purchased for the State will be in compliance with the BIT Standards for security, file naming conventions, executable module names, Job Control Language, systems software version and release levels, temporary work areas, executable program size, forms management, network access, tape management and job stream procedures prior to the installation and acceptance of the final project. BIT hardware and software standards can be found at http://www.state.sd.us/bit/MainFrame/MGMT/MGMTMain.htm. For this project, the exceptions allowed are Oracle database 10g2 and the Oracle Application Servers. Both

parties must mutually agree upon subsequent revisions to the BIT Standard exception list in writing.

q) Conflict of Interest The undersigned on behalf of Syscon states to the best of its knowledge, information and belief that no state employee or officer is directly or indirectly interested in this contract except for the extent authorized by SDCL 5-23-14.

## 6. NON-DISCLOSURE

6.1 Non-Disclosure During the course of the OMS Project or otherwise, a party (the "Disclosing Party") may disclose certain proprietary or confidential information to the other party (the "Recipient") or its employees, agents or consultants. The proprietary or confidential information may be oral or written, may be of a technical or commercial nature, may take the form of software (including, in the case of Syscon, the Product), plans, drawings, processes, formulae, schedules, reports, projections, analyses, programs, prints, recordings, lists or other compilations of information, and may relate to the Disclosing Party, its vendors, agents, employees or customers. All such proprietary information and confidential information is herein collectively called the "Confidential Information".

All Confidential Information obtained by the Recipient shall be considered confidential and shall not be disclosed by the Recipient to any person without the prior written consent of the Disclosing Party or except as may be required by law or a court of competent jurisdiction.

6.2 Exceptions The restrictions on disclosure set out in paragraph 6.1 do not apply to:

(a) information which at the time of disclosure was in the public domain as evidenced by a printed publication or otherwise;

(b) information which after disclosure becomes part of the public domain by publication or otherwise, other than by action of the Disclosing Party;

(c) information which was in the possession of the Recipient at the time of disclosure by the Disclosing Party and was not previously acquired, directly or indirectly, from the Disclosing Party; or

(d) information which the Disclosing Party rightfully receives from an independent third party who did not receive such information, directly or indirectly, from the third party with any limitation or restriction on its use.

In addition, Syscon acknowledges that the State of South Dakota and all of its departments and agencies are public entities and thus are bound by South Dakota open meetings and open records laws. No good faith attempt by the State to comply with South Dakota open meetings or open records statutes by disclosure of information under and pursuant to such statutes shall constitute a violation of the obligations imposed by part 6 of this agreement provided that the State provides Syscon with 10 business days notice of any request or proposal to make disclosure under such laws where the disclosure would involve any aspect of all or any part of the Application Package (other than offender data or other data of the State) in order to permit Syscon to object to such disclosure.

6.3 Confidentiality of Information Both parties agree that all officers, agents, vendors and employees will not, at any time, either directly or indirectly, communicate to any person, firm, or corporation or public entity, in any manner whatsoever, any information concerning any matters affecting or relating to the business, records, or other business data of the State that may be obtained in the course of performing this Agreement. If work assignments performed in the

course of this Agreement require additional security requirements or clearance, Syscon will be required to undergo investigation.

6.4 Survival The terms of this part 6 will survive the expiration or termination of this agreement.

## 7. PROPERTY RIGHTS

7.1 Work Products Syscon hereby acknowledges and agrees that all reports, plans, specifications, technical data (other than relating to the design of the Product or the Oracle Programs), miscellaneous drawings, agreements and all information contained therein provided either by the State to Syscon or by Syscon to the State in connection with Syscon's performance under this Agreement shall belong to and is the property of the State and will not be used in any way by Syscon without the written consent of the State.

Papers, reports, forms or other material (other than the Product and any modifications or enhancements thereto) which are a part of the work under this Agreement will not be copyrighted without written approval of the State. The State reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, the work for government purposes, subject always to the restrictions on disclosure set out in Part 6 of this agreement.

7.2 Intellectual Property Any ideas, concepts, know-how, techniques or software developed during the term of this Agreement are the exclusive property of Syscon. All physical media provided pursuant to this Agreement shall be and remain the property of the State of South Dakota. This Agreement does not grant the State of South Dakota any proprietary or intellectual property rights, title or interest in or to the Product or any modifications thereto, except as specifically granted herein.

7. 3 Ownership The State of South Dakota acknowledges that all copies of the Application Package in any form provided by Syscon or made by the State are the sole property of Syscon and its suppliers. The State shall not have any right, title or interest to any Software or copies thereof except as provided in this Agreement, and further shall secure and protect all Software and documentation consistent with maintenance of Syscon's proprietary rights therein.

## 8. WARRANTIES AND LIMITATION OF LIABILITY

8.1 Warranty for Services and the Product Syscon warrants that the Application Package, all Developmental Services and Support Services will be provided in good and workmanlike manner and in accordance with the Project Charter. EXCEPT AS SET FORTH IN THIS SECTION AND SECTION 6 of the TAG Software License Agreement (Attachment 1), FOLLOWING THE 90-DAY WARRANTY PERIOD FROM GO-LIVE OF EACH USER GROUP IMPLEMENTATION PHASE, SYSCON MAKES NO OTHER EXPRESS WARRANTIES WITH RESPECT TO ITS WORK SERVICES OR WORK PRODUCT HEREUNDER.

8.2 LIMIT OF LIABILITY Syscon shall only be liable for direct damages to the State or arising out of any claim against the State by any party arising out of this Agreement, the Application Package or performance of Syscon's obligations under this Agreement but Syscon shall not be liable for indirect, consequential, exemplary, incidental or special damages or for lost profits, lost business revenue or other commercial or economic loss.

8.3 Limitation Period No action arising out of this Agreement may be brought by the State of South Dakota against Syscon more than six years after the date of the occurrence giving rise to the claim.

## 9. ADDITIONAL TERMS

9.1 Force Majeure: Neither party shall be responsible for any failure to perform hereunder due to unforeseen circumstances or causes beyond the non-performing party's reasonable control, including, without limitation acts of God, war, riots, embargoes, acts of government, civil or military authorities, catastrophe, fire, floods, accidents, strikes, shortages of transportation, facilities, fuel, energy, labor or material acts of a public enemy.

9.2 Assignment Neither party may assign its rights, duties or obligations under this agreement, without the prior written consent of the other, which consent shall not be unreasonably withheld.

9.3 SOURCE CODE ESCROW:

a) Deposit in Escrow Within ninety (90) days of the Agreement effective date, Syscon shall deposit the Source Code for the software with a nationally recognized software escrow company (subject to the approval of the State not to be unreasonably withheld) (the "Escrow Agreement"). Within thirty (30) days after delivery to the State of any major update, Syscon shall deposit the Source Code for such update with the Escrow Agent pursuant to the Escrow Agreement. For all other updates, Syscon shall deposit the Source Code for such updates on a semiannual basis with the Escrow Agent pursuant to the Escrow Agreement.

The parties agree that the Escrow Agreement is an "agreement supplementary to" the Agreement as provided in Section 365(d) of Title 11, United States Code (the "Bankruptcy Code"). Immediately upon termination of this Agreement, the Source Code shall be released back to Syscon.

b) Conditions for release The State will have the right to obtain the Source Code in accordance with and subject to the terms and conditions of the Escrow Agreement provided that all of the following three conditions are met (collectively a "Release Event"):

I. Syscon winds down its business or liquidates its business under a Chapter 7 Bankruptcy proceeding or discontinues maintenance and support of the Software,

II. No entity has succeeded to Syscon's obligations to provide maintenance and support on the Software in accordance with the Agreement in effect between the parties, and

III. The State is not in breach of its obligations under the Agreement.

c) Source Code In no event shall the State have the right to use the Source Code "barring a release event" for any purpose, and the State is specifically prohibited from using the Source Code to reverse engineer, develop derivative works or to sublicense the right to use the Source Code to any other person or entity for any purpose. The State will also be obligated to treat the Source Code as Confidential Information of Contractor under the Agreement.

d) The cost for establishing and maintaining the Escrow Account will be the liability of the State.

IN WITNESS WHEREOF the parties have executed this agreement as of the date set out at the beginning of this agreement.

Final 5-30-08

For Syscon Justice Systems, Inc.:

Signed:

Name: DANIEL A. CRAWFORD

Title: GENERAL MANAGER

Date: 6 JUNE, 2008

For the State of South Dakota:

DOC

Signed: Tim Reisch

Name: Tim Reisch

Title: Secretary of Corrections

Date: 6-16-2008

BOA

Signed:

Name: Jack Blumenberg

Title: Commissioner

Date: 6-09-08

BIT

Signed:

Name: Otto Doll

Title: Commissioner

Date: 6-10-08