

EL DORADO COUNTY
 BOARD OF SUPERVISORS
 AGENDA TRANSMITTAL
 MEETING OF SEPTEMBER 24, 1996

*Approved 9/12/96
 [Signature] #51*

AGENDA TITLE: A.C.I.S. SOFTWARE LICENSE/MAINTENANCE SERVICE PLAN

Original

DEPARTMENT: SHERIFF

DATE: 9/12/96

CAO USE ONLY

CONTACT: NANCY EGBERT

PHONE: 621-5479

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION: Your Board is requested to authorize the Chair to sign the Software Product License Agreement and the Software Maintenance Service Plan for the Automated Criminal Information System (A.C.I.S.) from TracNet Corporation.

CAO RECOMMENDATION:

Financial impact? Yes No

Funding Source: Gen Fund Other

BUDGET SUMMARY:

Total Est. Cost	\$109,900.00
Funding	
Budgeted	\$109,900.00
New Funding	\$ _____
Savings*	\$ _____
Other	\$ _____
Total Funding Available	\$109,900.00
Change in Net County Cost	\$ <u>-0-</u>

Explain _____

CAO Office Use Only:

4/5's Vote Req'd. Yes No
 Change in Policy Yes No
 New Personnel Yes No

CONCURRENCES:

Risk Management _____
 County Counsel _____
 Other _____

BOARD ACTIONS:

Vote: Unanimous _____ Or

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors.

Yes:

Yes:

Date: _____

Abstentions:

Attest: DIXIE L. FOOTE, Board of Supervisors Clerk

Present:

By: _____

OFFICE OF EL DORADO COUNTY COUNSEL

INTER-OFFICE MEMORANDUM

TO: Nancy Egbert
El Dorado County Sheriffs' Department

FROM: Judith Kerr, Deputy County Counsel ^{JK}

RE: TracNet Software Product License Agreement

DATE: September 16, 1996

This memorandum is written as a follow-up to our most recent conversations with you and with Kip Rolle, TracNet Corporation, formerly known as Botog Corporation. As you know we were unable to reach agreement with Mr. Rolle in regard to various contract provisions involving warranty, indemnification and liability issues. The following overview of our continuing concerns is provided to assist you and the Board of Supervisors in determining whether to enter this contract.

We recommend that the contract contain a warranty provision that would enable the county to hold the contractor liable for defects in the product and accountable for problems that may arise in the maintenance agreement. Although the contract now contains a warranty provision, the current proposal provides the county with minimal and incomplete protection should a problem arise.

We have proposed a warranty provision that is tied to the written documents that have been provided to the County by the contractor since they should include the contractors representations about their product and services. The following provision was rejected by the contractor.

7.2 Licensor warrants, guarantees and insures that the software programs provided by Licensor are sufficient to operate as described in all TRACNET written documentation provided to Licensee, including but not limited to "Proposed Product Software License" documents, Software Product License contract documents and plans, maintenance and service agreements if applicable, all contract changes issued in accordance with the contract documents which may be delivered or issued after the Effective Date of this Agreement. In case of any conflict between this Agreement and any other contract document, this Agreement shall take precedence.

In no event will Licensor be liable for any damages caused by Licensee's failure to perform their responsibilities.

Section 7. EVALUATION PERIOD, as proposed by TracNet, provides, "This evaluation period is provided in place of any representations or warranties, except as described in Section 8." Section 7 provides a 60 day evaluation period on four laptop computers, four desk top computers and the host system (AS 400). Under section 7, the county is entitled to return the software during the evaluation period and would not be liable for payment of the license fee less a \$400.00 charge. However, one time costs for the "installation and training, agency customization and modification, and data conversion are not refundable." In addition, cost for hardware, operating software, communications connections, other third party software and other costs "are not reimbursable by the Licensor." It is our understanding that these one time only costs will exceed \$20,000.00.

Section 8. LIMITED WARRANTY, provision appears meaningless given the fact that the only remedy the county has for breach of the warranty is return of the software in the 60 day evaluation period as outlined in section 7. As a result, the limited warranty provides no additional options for the county should problems arise at some point beyond the 60 day evaluation period. The only option with or without the limited warranty provision, is return of the software during the 60 day evaluation period.

One problem with this proposal is that the evaluation period is for the limited period of 60 days. It is our understanding that the system will not be fully operational within 60 days since the test period does not involve the full complement of computers that will be using the system in the future. It is conceivable that problems may arise after the 60 day period. For example, problems associated with the amount of use of the program along with those connected with an increase in the number of computers using the system will not be covered in the 60 day period. In addition, problems associated with third party liability claims due to failure of the system may also arise in the future.

Sections 7 and 8 make it clear that TracNet accepts no responsibility or liability for any problems associated with their product or services that fall outside of the initial test period. In addition section 8 provides that "In no case shall LICENSOR's liability exceed the license fees paid for the right to use the Licensed Program." It is our understanding that the license fee is \$85,000.00.

Section 9. FITNESS FOR PURPOSE AND SOFTWARE PERFORMANCE provides, "THE LICENSOR MAKES NO WARRANTIES, (OTHER THAN STATED IN SECTION 8-LIMITED WARRANT(Y)) EITHER EXPRESS OR IMPLIED, WITH RESPECT TO LICENSES SOFTWARE, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE."

As discussed previously, Section 8. LIMITED WARRANTY appears meaningless. As a result, the contract language appears to provide that the county take this product as is without warranty. The option of returning the product is limited to the 60 day evaluation period and as outlined above, with the exception of the license fee less \$400.00, the county will be responsible for all other costs associated with this product.

Another significant problem that arises involves Section 10. LIMITATION OF LIABILITY AND INDEMNIFICATION. Section 10 provides that the County will forever discharge and release TracNet from any obligation or responsibility related to the contract with the exception of obligations under the Maintenance Service Plan. Again, liability is allegedly limited to the amount of the license fees. However, any potential liability would appear to be offset by the hold harmless and indemnification language in the next paragraph.

The next paragraph in Section 10 provides that the County shall defend, indemnify and hold TracNet harmless against all claims etc. in connection with the Software. In contrast, this office has recommended that TracNet provide the County with indemnification. This proposal has been rejected.


One other problem involves section 2.2 under section 2. GRANT OF LICENSE AND LICENSEE'S AGREEMENTS. Section 2.2 refers to payment of "the additional license fees" if the County uses the program on any additional computer systems. It is not clear what number of computers and laptops may utilize the software program since Exhibit A does not have a specific number of computers identified. We recommend that the county be certain to include numbers that will provide for expectations in growth. In addition, although we understand that additional fees will be charged for use of the program on additional computers the parties do not intend to include within the scope of this contract, it is not clear what are "the additional fees".

We recommend that pursuant to the mandatory provisions of Charter section 602, the county contract administrator be identified. We also recommend that standard notice to parties provisions be included.

Although we understand that TracNet may have a long history of successful working relationships with other clients, the contract as proposed subjects the County to considerable potential liability and out-of-pocket expense should problems arise.

JMK:ks
f:botog

**EL DORADO COUNTY SHERIFF'S DEPARTMENT
INTER OFFICE MEMO**

TO: Board of Supervisors
FROM: Sheriff Don McDonald 
DATE: September 12, 1996
SUBJECT: Software License/Maintenance Service Plan for A.C.I.S.

Recommendation:

Authorize the Chair to sign the Software Product License Agreement and the Software Maintenance Service Plan for the Automated Criminal Information System (A.C.I.S.) from TracNet Corporation.

Reason for Recommendation:

On July 23, 1996 your Board determined that competitive bidding for an automated crime report system would produce no economic benefit to the County and directed that a contract be negotiated with Botog Corporation for acquisition of the Automated Criminal Information System (A.C.I.S.).

Those negotiations have been completed and have resulted in the attached Software Product License Agreement and Software Maintenance Service Plan. During the course of the negotiations, Botog Corporation changed its name to TracNet Corporation. The name change in no way alters the product being purchased.

County Counsel has concerns about the Software Product License Agreement (see attached memo from Judith Kerr to Nancy Egbert dated September 16, 1996) and has not signed the "Blue Sheet". Those concerns are with the sections related to warranty, liability and evaluation period. Additionally, Counsel has noted that Exhibit A was not filled out completely on the copy of the Agreement provided for review, that the contract administrator is not identified in the Agreement and that the standard notice to parties provisions are not included.

The Sheriff's Department has reviewed and considered the concerns raised by County Counsel and recommends your Board authorize the Chair to sign the documents in spite of those concerns.

The language of the warranty and liability sections are standard to the software industry and the Department is not aware of any other software vendor with an acceptable product who would agree to the terms desired by County Counsel.

TracNet does warranty its product during the 60-day evaluation period and thereafter warranties it via the maintenance agreement. The warranty language is similar to that found on any software purchased for home or office use by "name" vendors such as Microsoft, Corel or Broderbund. In the ten years TracNet has serviced its software in other California jurisdictions, there have been no warranty problems according to those other jurisdictions.

TracNet is not assuming any liability for El Dorado County's use of the software. That too is similar to the limitations found on any software purchased for home or office use. And again, no liability problems has arisen in the ten years the product has been used in other jurisdictions.

Counsel is also concerned about the length of the evaluation period and the potential loss of funds should the Sheriff's Department determine that the product is unsatisfactory during the evaluation period. The evaluation period starts after the software is loaded on the host computer (the AS/400 at the jail), four laptops and four desk tops and training has been provided. The Department developed the evaluation plan in conjunction with the vendor after consulting with Communications and Information Services (CIS) staff and believes it provides sufficient time to determine whether the software is satisfactory. County Counsel is concerned that the full system will not be in use within the evaluation period; neither the Department nor CIS shares that concern. A system of similar size is running in Mariposa County and a larger system, involving both the County and all cities in the County, is running in Kings County. Neither has experienced any "volume" problems.

Counsel's determination that the County stands to lose in excess of \$20,000 should the Department find the software unsatisfactory during the evaluation period is incorrect. All software fees paid will be refunded to the County less \$400. Any training days provided during the evaluation period would have to be paid for. Maximum loss would be two (2) days at \$1000 per day. The \$5000 cost of converting data currently on the mainframe so it could be loaded on the AS/400 would have to be paid for. The \$5000 cost of customizing the evidence module to include barcoding would be paid for only if work had been completed. The Department believes maximum loss would be \$12,000 and more likely only \$7,000.

The copy of Exhibit A presented for the Chair's signature does reflect the number of desktop and laptop computers involved in the system as well as the County's contract administrator. There is a notice to parties clause (see Section 15.3) that includes all of the elements of the County's standard clause, though the wording is slightly different.

In recommending to your Board that the Chair be authorized to sign these documents in spite of Counsel's concerns, the Department looked at two things. First, the warranty

TracNet Corporation
Software Product License Agreement

This is a Software Product License Agreement between TracNet Corporation, a California corporation with its principal place of business at 405 Asilomar Blvd., Pacific Grove, CA. 93950 (called "LICENSOR") and EL DORADO COUNTY, with a business address of 300 Fair Lane Placerville, CA (called "LICENSEE").

1. DEFINITIONS OF TERMS USED

1.1 "Computer System" is the specific combination of a computer central processing unit (or units), computer terminals, and other related devices listed in Exhibit A to this License in the configuration described. LICENSEE is only licensed to use this Licensed Program on that system. Use on any other system or configuration requires a supplementary license.

1.2 "Licensed Program" is the set of copyrighted, computer programs listed in Exhibit A and any additions or enhancements to the programs that LICENSOR may provide from time to time regardless of the form in which LICENSEE may subsequently use them.

1.3 "Documentation" means LICENSOR's Licensed Program manual and any written or printed technical material provided by LICENSOR with the Licensed Program to explain the operation of the Licensed Program and aid in its use.

1.4 "License" means this License Agreement and the rights and obligations which it creates under the United States Copyright law and other applicable state or federal law.

1.5 "Derivative" means any computer software program which may be developed containing any part of the Licensed Program, regardless of the form of the resulting code, the media it is carried on, or its intended use.

1.6 "Trade Secret" means the program structure, logic, data structures, design, processes, procedures, formula and algorithms contained in the ordered set of instructions which together constitute the Licensed Program.

2. GRANT OF LICENSE AND LICENSEE'S AGREEMENTS

2.1 In consideration of LICENSEE's payment of the license fee stated on Exhibit A of this License and of LICENSEE's agreement to abide by the terms and conditions of this License, LICENSOR grants LICENSEE a nonexclusive nontransferable right to use and display the Licensed Program on the computer system identified in Exhibit A, so long as LICENSEE complies with the terms of this License. LICENSOR reserves all rights not expressly granted to LICENSEE.

2.2 LICENSEE agrees to pay LICENSOR the additional license fees due if LICENSEE uses the Licensed Program on any additional computer systems. Such additional license fees shall be

due and payable within thirty (30) days of the commencement of LICENSEE's use of the Licensed Program on any additional computer systems.

2.3 LICENSEE agrees to take reasonable steps to protect the Licensed Program from theft or from use by others contrary to the terms of this License. Only those persons in LICENSEE's organization having a need to use the Licensed Program in the normal course of their employment are authorized to use the Licensed Program. LICENSEE agrees to take reasonable steps not to disclose or use any Trade Secrets which are provided to LICENSEE except in accordance with the terms of this License. In addition, LICENSEE agrees not to disassemble, decompile or otherwise reverse engineer the Licensed Program. LICENSEE agrees to notify LICENSOR of any misuse and assist in ensuring provisions of this agreement are not violated.

2.4 LICENSEE agrees either to destroy (with written notification to LICENSOR) or return, at the option of LICENSEE, the original and all existing copies of the Licensed Program and Documentation within fifteen (15) days after the effective date of any termination.

3. OWNERSHIP OF LICENSED PROGRAM

LICENSEE may be deemed to own the magnetic or other physical media on which the Licensed Program is originally or subsequently recorded or fixed, but an express condition of this License is that copyright owner shall retain ownership of all copies of the Licensed Program recorded on any media. This License is not a sale of the Licensed Program data content recorded on the copies delivered to LICENSEE or any subsequent copy.

4. POSSESSION AND COPYING OF THE LICENSED PROGRAM -

LICENSEE agrees to make no more than three (3) copies of the Licensed Program for archival or backup purposes only, all of which copies (together with the original) shall be kept in the possession or direct control of LICENSEE. LICENSEE shall label each backup copy of the Licensed Program with the serial number, program name, version number and the copyright notice, in the same form as they appear on the original licensed copy. In addition, LICENSEE shall maintain a record of the location of all such copies and shall make such records available to LICENSOR upon request. LICENSEE shall erase or otherwise destroy any copy of the Licensed Program contained on any media before the media is reused or discarded.

5. TRANSFER OR REPRODUCTION OF LICENSED PROGRAM

5.1 LICENSEE is NOT licensed to reproduce the Licensed Program except to the extent necessary to use it as authorized by this License Agreement. LICENSEE may not rent, lease, transfer, network, or distribute the Licensed Program to another agency, except as specifically provided in this agreement.

5.2 The Licensed Program may only be used on the Computer System(s) listed on "Exhibit A" and any subsequent amendments thereto.

6. DERIVATIVES OR MODIFICATIONS TO THE LICENSED PROGRAM

LICENSEE is prohibited from making any modifications to the Licensed Program and from creating any Derivative of the Licensed Program except as described herein.

7. EVALUATION PERIOD

The Licensed Program will be provided to LICENSEE for a sixty (60) day review and evaluation period to commence upon successful installation of the Licensed Program on four laptop computers, four desk top computers, the host system (AS400 computer), and completion of System Administrator Training. This evaluation period is provided in place of any representations or warranties, except as described in Section 8. If LICENSEE, in its sole discretion, determines that the Licensed Program is useable for LICENSEE's intended purposes in its existing condition, LICENSEE may retain the Licensed Program and use it subject to the terms and conditions of this Agreement. If LICENSEE has any reservations, problems, or concerns about the Licensed Program during the evaluation period, LICENSEE may return the original copy to LICENSOR, together with LICENSEE's written certification that it has destroyed all copies of the Licensed Program, and receive full refund of the license fee, less a \$400 charge to cover the costs of preparation and processing, within thirty (30) days after software and certification of non acceptance are delivered to LICENSOR. LICENSEE understands and agrees that the evaluation period is provided for LICENSEE to evaluate the fitness for purpose. Costs associated with installation and training, agency customization and modification, and data conversion are not refundable. Any costs incurred by LICENSEE, including but not limited to, hardware, operating software, communications connections, other third party software, and any other costs associated with operating the software programs during the evaluation period are the LICENSEE's responsibility and not reimbursable by LICENSOR.

8. LIMITED WARRANTY

TracNet warrants the version of software which is initially delivered is sufficient to operate as described in the written Proposal, Software Product License Agreement and Maintenance Service Plan, if applicable, and to be free of software "bugs" for a period of 60 days from the date of software installation for the Evaluation Period on the Licensee's CPU. To evoke this warranty, the LICENSEE must, within the warranty period, notify TracNet in writing of the problems encountered. TracNet will, within a reasonable time after notification by the LICENSEE, affect change in the software. The sole remedy for LICENSEE, should LICENSEE determine the software is not sufficient to operate as described in the written proposal or a "bug" is not fixed in LICENSEE's opinion, is to return the software to TracNet under the terms and conditions of the Evaluation Period as stipulated in Section 7. In case of any conflict between this Agreement and this Section and any other contract document or contract section, this Agreement and Section shall take precedence. In no event will Licensor be liable for any damages caused by Licensee's failure to perform their responsibilities. In no case shall LICENSOR's liability exceed the license fees paid for the right to use the Licensed Program.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES WHETHER ORAL OR IMPLIED. THE AGENTS AND EMPLOYEES OF TracNet ARE NOT AUTHORIZED TO WARRANT THE SOFTWARE AND TECHNICAL INFORMATION LICENSED HEREWITH. ACCORDINGLY, ANY SUCH STATEMENTS WHETHER ORAL OR WRITTEN SHOULD NOT BE RELIED UPON. THIS WARRANTY IS NULL AND VOID IF THE VERSION OF THE CODE HAS BEEN MODIFIED BY THE LICENSEE OR ANY OF HIS AGENTS IN ANY MANNER FROM ITS ORIGINAL CONTENT, OR, IF ANY HARDWARE OR THIRD PARTY SOFTWARE OTHER THAN RECOMMENDED AND APPROVED IN WRITING BY TracNet ARE USED IN CONJUNCTION WITH THE LICENSED SOFTWARE.

9. FITNESS FOR PURPOSE AND SOFTWARE PERFORMANCE

LICENSEE agrees to assume the entire responsibility for the evaluation of the Licensed Program and LICENSEE's determination that the Licensed Program is suited to LICENSEE's needs and performs to LICENSEE's satisfaction. LICENSOR MAKES NO WARRANTIES, (OTHER THAN STATED IN SECTION 8 - LIMITED WARRANTY) EITHER EXPRESS OR IMPLIED, WITH RESPECT TO LICENSED SOFTWARE, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. The entire risk as to quality and performance of Licensed Software is with LICENSEE, and LICENSEE assumes the cost of any and all incidental or consequential damages. LICENSEE assumes the entire cost of all necessary servicing, repairs or corrections, except as provided under Section 8 - Limited Warranty, or as may be covered in a separate Maintenance Service Plan, if purchased.

10. LIMITATION OF LIABILITY AND INDEMNIFICATION

In no event will LICENSOR be liable for any special, indirect or consequential damages or any damages whatsoever resulting from loss of use, data or profits, whether in an action of contract, negligence, or other tort action arising out of or in connection with the use or performance of the Licensed Software Programs, whether or not its use is under this Software License. LICENSEE forever discharges and releases LICENSOR, its successors and assigns from any losses that may result from its use. Except as provided under Section 8 - Limited Warranty - during the 60 day evaluation period, LICENSEE forever discharges and releases LICENSOR, its successors and assigns from any obligation or responsibility to correct problems or errors in the Licensed Program, except as may be provided for under the Maintenance Service Plan. In no case shall LICENSOR's liability exceed the license fees paid for the right to use the Licensed Program.

LICENSEE shall defend, indemnify and hold TracNet Corporation harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with LICENSEE'S use or non-use of Licensed Software Programs or any derivative under this agreement, regardless of the existence or degree of fault or negligence on the part of TracNet, subcontractor(s) and employee(s) of any of these, except for the active negligence of the TracNet Corporation, its officers and employees.

11. MAINTENANCE AND SUPPORT OF THE LICENSED PROGRAM.

Should LICENSEE desire any maintenance, support, or modifications to the Licensed Program, LICENSEE may request such services from LICENSOR, and LICENSOR may, but need not, provide the requested services. Any such services will be provided at LICENSOR's then prevailing rates, currently \$125.00 per hour, for the desired services or as otherwise agreed in writing between the parties. Any additions or modifications to the Licensed Program that may be provided by LICENSOR to LICENSEE shall be subject to the same terms, conditions and restrictions as the original copy of the Licensed Program delivered under this Agreement.

12. TERM AND TERMINATION.

12.1 This License shall last as long as LICENSEE continues to use the Licensed Program.

12.2 LICENSOR, its successors, or assigns may terminate this License Agreement on thirty (30) day's written notice should LICENSEE violate any of the provisions of this License and fail to cure them. Prior to issuance of the termination notice, Licensor shall provide ten (10) days written notice of intent to terminate, enumerating the reasons for termination. LICENSEE shall have sixty (60) days to cure the enumerated violations. Such termination shall be effective upon receipt by LICENSEE of a final notice of termination following the expiration of the cure period.

12.3 LICENSEE may terminate this License Agreement at any time for its convenience by giving thirty (30) days written notice of termination to LICENSOR, its successors, or assigns and destroying (with written certification of destruction) or returning all copies of the Licensed Program and Documentation.

12.4 The parties to this agreement recognize and acknowledge that LICENSEE, El Dorado County, is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18, of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year. Notwithstanding any other provisions of this agreement to the contrary, County shall give notice of cancellation of this agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this agreement. Upon the effective date of such notice, this agreement shall be automatically terminated and County released from any further liability hereunder. In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

13. TAXES

LICENSEE shall pay all taxes relating to the transfer of Licensed Program from LICENSOR to LICENSEE. The prices stated in Exhibit A are exclusive of any federal, state, municipal or other governmental taxes, duties, excise taxes or tariffs now or hereinafter imposed on the

licensing, production, storage, sale, transportation, import, export or use of the Licensed Program. Such charges shall be paid by LICENSEE, or in lieu thereof, LICENSEE shall provide an exemption certificate acceptable to LICENSOR and the applicable taxing authority. Should an audit of either party by governmental authorities result in a claim that any such charges are due, LICENSEE shall pay such charges, together with interest, penalties and other costs, on demand by LICENSOR.

14. BINDING ARBITRATION

14.1 Except for the right of either party to apply to a court of competent jurisdiction for a Temporary Restraining Order, a Preliminary Injunction or other equitable relief to preserve the status quo or prevent irreparable harm pending the selection and confirmation of the arbitrator(s), any controversy or claim arising out of, relating to, or connected with this Agreement, or the breach thereof, shall be settled by binding arbitration in accordance with the Rules of the California Arbitration Act, California Code of Civil Procedure section 1280 et seq..

14.2 Demand for Arbitration

If a dispute arises under this agreement, either party may demand arbitration by filing a written demand with the other party within 60 days after occurrence of the dispute.

14.3 Appointment of Arbitrator

The parties agree that one arbitrator will be appointed to hear a dispute. The arbitrator shall be selected by both parties from a list of at least five neutral arbitrators provided by the American Arbitration Association, and deemed to be qualified by American Arbitration Association to hear the matter in dispute. Alternatively, the parties may agree to any arbitrator by mutual consent. Should the parties fail to agree to the selection of an arbitrator, the arbitrator shall be appointed by the Court from the list of qualified arbitrators provided by the American Arbitration Association or as agreed to by the parties.

14.4 Arbitration

The arbitrator shall have jurisdiction to grant any relief a court would have authority to provide with the exception of punitive damages.

14.5 Mediation

The parties agree to submit all disputes to pre-arbitration mediation. A mediator will be appointed by the court or alternatively, as agreed to by the parties.

14.6 Discovery

The parties will also be entitled to conduct discovery prior to commencement of arbitration.

14.7 Costs of Arbitration

The costs of the arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrator determines.

15. GENERAL PROVISIONS

15.1 This Agreement shall in all respects be interpreted, construed in accordance with, and governed by the internal laws of the State of California, without regard to the rules on conflict of laws. The place of making and the place of performance for all purposes shall be Pacific Grove, California, regardless of the actual place of execution or performance. In the event of any litigation between the parties, the parties stipulate that the sole and exclusive jurisdiction for such action shall be in the Municipal or Superior Courts for the County of Sacramento, California or the United States District Court for the Sacramento, District of California. Both parties agree that the above referenced courts shall have personal and exclusive jurisdiction over the parties for any dispute arising out of this Agreement that is not covered by the Arbitration provision.

15.2 This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. LICENSEE acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by both parties to this Agreement.

15.3 Any notice required or permitted by this Agreement shall be in writing and shall be hand delivered, sent by prepaid, registered air mail, or by courier, addressed to the other party at the address shown at the beginning of this Agreement or at such other address for which such party gives notice hereunder. Such notice shall be deemed to have been given on the earlier of the date of actual delivery or five (5) days after deposit in the mail.

15.4 Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

15.5 If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15.6 Paragraph headings are for convenience only and shall not be considered in the interpretation of this Agreement.

15.7 LICENSOR and LICENSEE are not representatives or agents of the other and neither party shall have any power to assume any obligations on behalf of the other.

15.8 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

15.9 All the referenced Exhibits are included by reference in this Agreement.

15.10 The County's contract administrator shall be the Sheriff's Manager of Administration and Finance.

"EXHIBIT A"

The following is a description of (1) the Licensed Program to be provided under this License, (2) the configuration of the Computer System the Licensed Program may be used on, (3) the maintenance period to be provided, (4) the cost of the Licensed Program License and initial maintenance, and (5) the delivery and training schedule for the Licensed Program and Documentation. The rights and obligations of the parties to this License agreement are governed by the terms of the attached Software Product License Agreement.

1. Licensed Program Name and Version:

- a. Name: Automated Criminal Information System - AS/400
 - A.C.I.S. For The Office
 - A.C.I.S. On The Road
 - A.C.I.S. Evidence Barcode Component
- b. Version Number: 2.00

2. Computer System Configuration:

- a. Installed Host CPU Make and Model - IBM AS/400 Model 9402-200
- b. Host Operating System(s) - Operating System/400
- c. Workstation Operating System(s) - Windows 95
- d. Number of attached Workstations - 31
- e. Laptop Operating System(s) - Windows 95
- f. Number of Laptops - 101
- g. Number of Laptop Controllers - 2
- h. Other system devices -

(Licensee to provide the Make, Model, Serial Numbers and locations of devices on separate attachment within 30 days of device installation and/or change.)

3. Maintenance Period:

Maintenance will be provided during the evaluation period. Maintenance will be provided after the conclusion of the evaluation period commencing on the date and at the price stipulated in the terms and conditions of the Maintenance Service Plan for the Licensed Program installed on the Computer System. Additional services may be purchased from LICENSOR at LICENSOR's then prevailing service rates.

EXHIBIT "A" - Page 2

4. Cost of License:

The price of this Licensed Program license is \$ 85,000.00 (Eighty Five Thousand Dollars). Transfer of the Licensed Program to another Computer System will require the payment of additional fees.

The price for the conversion of existing El Dorado County data alpha information is \$5,000.00 (Five Thousand Dollars).

The price for integration of the Evidence Bar Code system is \$5,000.00 (Five Thousand Dollars).

The price for training is \$5,000.00 (Five Thousand Dollars) for five days.

5. Licensed Program Delivery schedule:

See attached Program Delivery Schedule

6. Training Schedule:

5 Training Days provided with a mutually agreeable schedule to be developed.

ACCEPTED BY:

LICENSEE

By: *Raymond J. Nutting*

Title:

RAYMOND J. NUTTING

Date:

9/24/96 CHAIRMAN

ACCEPTED BY:

LICENSOR

By: *Patrick N. Rolue*

Title:

PRESIDENT - PATRICK N. ROLUE

Date:

9/14/96

ATTEST: DIXIE L. FOOTE, Clerk
of the Board of Supervisors

By: *Marjorie E. Moody*

DEPUTY

9/24/96

Delivery Schedule

<u>Day</u>	<u>Milestone/Event</u>
1	Contract Signing
14	Installation of A.C.I.S. software on host AS/400 computer
21	Installation of A.C.I.S. For The Office software on P.C.'s connected to host
21	Training as per Training Schedule begins
28	Installation of A.C.I.S. On The Road software on Laptop Computers (60 day Evaluation Period Commences)
35	Installation of converted alpha data into A.C.I.S. system on AS/400 host computer
88	(60 day Evaluation Period Concludes)
88	(Maintenance Service Plan Commences)
TBD	Barcode Component Delivery to be determined depending on El Dorado Co. Specs.

Training Schedule

The training schedule will include five days of on-site training in a "Training the Trainers" approach. The actual schedule will be developed by the "Training Team" consisting of El Dorado County designated "Trainers" to be trained and the TracNet trainers designated to train the trainers. The five days may be 5 consecutive days or grouped into two separate multi-day sessions at the discretion of the Training Team. Additional days may be obtained, if desired by El Dorado County, at the cost of \$1,000 per day.

Supplemental Agreement

El Dorado County and TracNet Corporation

Source Code

TracNet understands that El Dorado County desires to maintain a copy of the A.C.I.S. source code to ensure availability of source code should TracNet, its' successors or assignees, cease business operations and cease supporting the A.C.I.S. System.

TracNet agrees to provide El Dorado County with a copy of the Source Code with the following understanding and agreement:

1. El Dorado County will hold the Source Code within El Dorado County, in El Dorado County facilities, in a locked safe or other locked area secured from theft or loss of the tape(s) containing the source code.
2. The Tapes will be stored in a container with a seal placed by TracNet and the Source Code Tape is not to have the seal broken or be opened or installed on any machine except upon dissolution of TracNet Corporation and non-support of the A.C.I.S. System.
3. The Source Code Tape provided is the basic source for the programs and will not reflect the customization the agency has requested, and therefore, it is understood that any attempt to install the Source Code and compile programs will result in A.C.I.S. system failures unless a competent programmer understands the implications of what he/she is doing.
4. The Source Code Tape may be returned to TracNet, not to exceed two times per year, or upon El Dorado County's request after a major upgrade, in the container with the seal unbroken, at which time any updated version will be returned for safe holding.
5. The Source Code will be returned, unopened, to TracNet Corporation upon termination of the Maintenance Service Plan, at which time that specific copy of the Source Code will, at TracNet's option, be placed in a similar arrangement with an escrow holding company or an existing A.C.I.S. user who is currently on the Maintenance Service Plan, to be held and not released except upon the events stipulated in Section 2 above.
6. If the Source Code Tape seal is broken or any attempt is made to install all or part of the Source Code on the El Dorado County machine, support of the A.C.I.S. system may be terminated at the option of TracNet.
7. It is understood that the Licensed Software Source Code is and contains proprietary information and trade secrets of TracNet Corporation and is protected by Copyrights owned by TracNet. Any transfer or disclosure of the Licensed Software Source Code, or other protected materials, will substantially reduce TracNet's value in Licensed Software and trade secrets. Any unauthorized disclosure of the source code, either in magnetic media or printed form, will be a breach of this agreement. Any breach of this agreement requiring TracNet to engage in any proceedings, legal or otherwise, to enforce its right's or protect it's interests shall entitle TracNet

to equitable relief in addition to monetary damages for other sums due, reasonable attorney fees, costs and necessary disbursements involved in the proceedings.

8. Nothing in this agreement shall be construed as transferring or creating any interest by Licensee in any title, interest, ownership or right to Licensed Software.

LICENSOR and LICENSEE hereby execute this Supplemental Agreement in their respective names and by their duly authorized officers, effective as of the date of the latter acceptance below.

ACCEPTED BY:

ACCEPTED BY:

LICENSEE: EL DORADO COUNTY

LICENSOR: TracNet Corporation

By: *Raymond J. Nutting*
Title: **RAYMOND J. NUTTING**
Date: 9/24/96 CHAIRMAN

By: *Patrick N. Rollé*
Title: PRESIDENT - PATRICK N. ROLLÉ
Date: 9/14/96

ATTEST: DIXIE L. FOOTE, Clerk
of the Board of Supervisors

By: *Margaret E. Moody*
DEPUTY
9/24/96

**TracNet Corporation
Software Maintenance Service Plan**

This agreement specifies the services and software upgrades included in the TracNet subscription service for the Automated Criminal Information System software (ACIS) in object code (machine readable form). TracNet Corporation ("TracNet") agrees to provide such services to Licensee named below in consideration of payment of the annual fee set forth below. The annual fee is payable in lump sum or 12 monthly installments upon execution of this agreement. Services not explicitly included in this agreement, including system training, may be available at additional cost to Licensee on TracNet's standard terms.

1. MAINTENANCE OBLIGATION

TracNet's obligation is to provide the services described below as necessary to cause the ACIS system to perform in accordance with the designed functions in effect at the time of delivery to Licensee of ACIS and includes providing Licensee with such improvements or changes to the ACIS system as TracNet determines to be suitable for ACIS.

2. SERVICES

2.1. Telephone Support

All service provided hereunder shall be via telephone. Emergency support is available by telephone 24 hours per day, seven days per week. "Emergency Service" is intended to mean only circumstances under which entry or inquiry of information cannot be handled through the computer system running ACIS. Non-emergency support and support via modem will be provided from 8:00 AM to 5:00 PM California local time on normal TracNet business days.

2.2. Designated Contacts

Customer service support services shall be restricted to three Licensee representatives who have successfully completed the ACIS training and have been so recognized by TracNet Customer Service Department.

2.3. General Service

Telephone support in responding to requests for guidance in the proper use of the features and functions which are then standard and support via modem as applicable to existing circumstances. The restoration of the ACIS system by means of removable media and or by modem connection is also included.

TracNet shall not be held responsible for damaged or lost data as a result of hardware or software dysfunction or the loss of any data in the attempt to recover data or restore programs. At Licensee's request, TracNet will use reasonable efforts to recover data damaged by hardware or software dysfunction, however, TracNet makes no guarantee or representation as to such recovery. Licensee is advised to minimize exposure to lost data by following accepted system copy practices recommended in the training program.

2.4. Software Errors

Licensee understands that there can be no guarantee that a software program will function without error. If ACIS should be found not to function in accordance with its designed functions, TracNet will use its reasonable effort to provide a correction and will include any such correction in the next revision of ACIS offered. In some cases, the solution to an identified program flaw may require

the user of the system to work around the flaw by modifying procedures so as not to cause undesirable system responses. Revisions to procedures offered in instructional literature may also be made in order to avoid undesirable system responses.

2.5. Upgrades

This service entitles the Licensee, at no additional charge, to ACIS upgrades if TracNet makes any upgrade function licensed to Licensee by TracNet. It does not include the addition of functions or components not originally or subsequently licensed. Documentation for instruction in the use and application of the upgrade, if available, is also included. Instructional aid in the application and use of upgrades by telephone is available to Licensee Contact(s) named below.

2.6. Charges for Media

TracNet reserves the right to charge a reasonable amount for removable media delivered hereunder whenever an exchange of media is not feasible.

2.7. Hardware Service Not Covered; Certain Required Hardware

This subscription service agreement is for TracNet software only. It does not include hardware service, operating system software or other third party software support, all of which Licensee should obtain for a vendor qualified to support the computer(s) operating the ACIS software program.

3. LICENSEE OBLIGATIONS

3.1. Licensee will designate contact(s) to coordinate all of Licensee's service requirements and will identify such person(s) below or promptly notify TracNet of the identity and telephone number of such person(s).

3.2. Licensee will provide a host communication port and connect a modem with a minimum effective baud rate of 9600 bps to a telephone line in order to allow TracNet to make telephonic service available.

4. INDEMNIFICATION

LICENSEE shall defend, indemnify and hold TracNet Corporation harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the services provided under this agreement, regardless of the existence or degree of fault or negligence on the part of TracNet, subcontractor(s) and employee(s) of any of these, except for the active negligence of the TracNet Corporation, its officers and employees. This indemnification will survive the termination of this agreement.

In no event will LICENSOR be liable for any special, indirect or consequential damages or any damages whatsoever resulting from loss of use, data or profits, whether in an action of contract, negligence, or other tort action arising out of or in connection with the this Maintenance Service Plan. In no case shall LICENSOR's liability under this agreement exceed the cost of 6 months payments of the Maintenance Service Plan.

5. TERM

This Maintenance Service Plan shall commence the day following the expiration of the 60 day evaluation period as defined in Section 7 of the Software License Agreement, and have a term of one year from the Commencement Date. The agreement may be renewed on or before the 30th day prior to the end of the term by payment (subject to acceptance by TracNet) of TracNet's then current Annual Fee. Either TracNet or Licensee may terminate this Agreement for any reason or without cause upon sixty (60) days prior written notice. If TracNet terminates this Agreement, it shall remit to Licensee the remaining balance, if any, of the Annual Fee. Such termination shall be without prejudice to any other remedies the terminating party may have.

6. LIMITATION ON TRACNET OBLIGATIONS

Any modification of ACIS or any failure of Licensee to implement any improvement upgrade, revision or other changes to ACIS supplied by TracNet shall void the obligation of TracNet under this Agreement unless Licensee has obtained prior written authorization from TracNet permitting such modification or failure to implement. The maintenance service provided for in the Agreement does not extend to assistance required because of failure of Licensee to maintain the hardware system in proper order or from natural disasters, unusual shock or electrical damage. In no event shall TracNet be liable for any incidental or consequential damages. EXCEPT AS STATED HEREIN THERE ARE NO EXPRESS OR IMPLIED WARRANTIES RESPECTING THIS AGREEMENT. Nothing contained in this Agreement gives the Licensee any rights with respect to new or different computer programs published or marketed by TracNet.

7. MISCELLANEOUS

- 7.1. Any Notices provided for under this Agreement shall be given by hand delivery or first-class mail, registered or certified to the addresses set forth below.
- 7.2. This Agreement supersedes all prior agreements, negotiations, communications, and understanding of whatever types, whether written or oral, and constitutes the entire agreements between parties on the subject of this Agreement. This Agreement may be altered or amended only in writing signed by both parties.
- 7.3. This Agreement may not be assigned in whole or in part without the consent of both parties, except in the events of a merger, acquisition, sale of substantially all assets or similar transaction.
- 7.4. This Agreement shall be governed and construed in accordance with the laws of the State of California as that law is construed and applied between residents of that State.

Annual Fee: \$ 19,800.00

Monthly Payment: \$ 1,650.00

Commencement Date: Upon expiration of Evaluation Period

Licensee Contact(s): _____

ACCEPTED BY THE LICENSEE

ACCEPTED BY TRACNET, INC.

Agency Name: EL DORADO County

TracNet Corporation

Address: 330 FAIR LANE
PLACERVILLE, CA 95667

405 Asilomar Blvd.

City/State: _____

Pacific Grove, California 93950

Signature: *Raymond J. Nutting*

Signature: *Patrick N. Roue*

Name (Type or Print): RAYMOND J. NUTTING

Name (Type or Print): PATRICK N. ROUE

Title: CHAIRMAN

Title: PRESIDENT

Date: 9/24/96

Date: 9/14/96

ATTEST: DIXIE L. FOOTE, Clerk
of the Board of Supervisors

Marybeth Mooney
DEPUTY
9/24/96