Software License & Service Agreement

Effective Date: October 1, 2017

THIS AGREEMENT between **Destiny Software Inc.** ("Licensor"), of 19724 166th Ave NE, Woodinville, Washington 98072, and **Hidalgo County, Texas** ("Licensee"), of Hidalgo County 100 E Cano, Edinburg, Texas 78539

WHEREAS:

(A) This Agreement is a license and service agreement and not an agreement for the sale of software.

(B) This Agreement gives Licensee limited rights to use the Software and Related Materials described below and imposes upon Licensee certain obligations to protect the Software and Related Materials from unauthorized use, reproduction, distribution or publication.

(C) This Agreement imposes upon Licensor certain obligations to provide customer service in regard to the ongoing maintenance of Software and Related Materials described below.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Definitions**. In this Agreement the following words and phrases shall have the following respective meanings, unless the context otherwise requires:

   (a) "**Confidential Information**" means proprietary material or information belonging to Licensor, or to any third party to which Licensor owes a duty to maintain confidentiality, directly or indirectly placed by Licensor, or by third parties to which Licensor is related, into the possession of Licensee which material or information is not generally available to or used by others (except other persons whom Licensor has granted licenses of the Software and Related Materials or part thereof) or the utility or value of which is not generally known or recognized as standard practice, whether or not the underlying details are in the public domain, and includes, without limitation, all business information, computer software and computer technology, whether patentable or not, which is acquired by or on behalf of Licensee from time to time and which, owing to the relationship between Licensor and Licensee, may become known to Licensee.

   (b) "**Copyrights**" shall refer to those copyrights or copyright registrations for the Software or the Software and Related Materials and shall include future copyrights belonging to Licensor or any third party related to Licensor for improvements and modifications thereof and applications by Licensor for registration of copyrights for improvements and modifications thereof;

   (c) "**Enhancements**" means changes and/or improvements to the Software, whether arising out of the particular Software configuration for the specific use of Licensee or otherwise;

(d) "**Errors**" means, with regard to the Software, incorrect source code or object code or anything not in agreement with published Specifications or requested modifications;

(e) "**Know-How**" includes all technology, source code, object code, local area network manager code, technical information, procedures, processes, trade secrets, methods, practices, techniques, information, logic/flow charts, sketches, drawings, Specifications, application and modification manuals and data relating to the design, manufacture, production, inspection, and testing of the Software, which are from time to time in Licensor's possession;

(f) "**Manuals**" means the programmer's manuals, the technical manuals and the user manuals and other similar documentation;

(g) "**Modifications**" means Enhancements and/or correction of Errors, and Modifications shall be deemed to have been accepted by Licensee upon the lapse of sixty (60) days following successful installation of any Modifications unless Licensee notifies Licensor in writing prior to the lapse of such period that the Modifications in question do not conform to Specifications;

(h) "**Related Materials**" means all of the printed materials, user documentation, training documentation and confidential activation code for the Software supplied by Licensor to Licensee, and includes the Manuals;

(i) "**Service**", which means consulting time, providing technical information and or assistance in the ongoing maintenance of the Software;

(j) "**Software**", which includes the Know-How and, unless otherwise hereinafter set out to the contrary, any Modifications, is described on Schedule "A" herein and includes all actual copies of all or any portion of the computer programs delivered by Licensor to Licensee, inclusive of backups, updates and merged copies either permitted by this Agreement or supplied subsequently by Licensor or any party related to Licensor; and

(k) "**Specifications**" means the functional performance parameters of the Software.

2. **Grant of License and Reservation of Ownership**. Licensor hereby grants to Licensee a personal, non-exclusive, non-transferable license to use the Software and Related Materials at the site referred to in **Schedule "A"** hereto and otherwise pursuant to the terms of this Agreement. Licensee agrees to use its best efforts to protect the Software and Related Materials from unauthorized use, reproduction, distribution or publication.

3. **License & Service Fee**. In consideration for the granting of the license of the Software and Related Materials to Licensee, and for the providing by Licensor of service, as defined in **Schedule "B"**, Licensee hereby agrees to pay to Licensor a license & service fee, as defined in **Schedule "B"**. Licensee shall also pay to Licensor all sales, excise and other taxes thereon and upon any other amounts payable by Licensee to Licensor pursuant to this Agreement.

4. **Copyrights**.

   (a) The Software and Related Materials are owned by Licensor and are protected by U.S. copyright laws and applicable international treaties and/or conventions. Without limiting the prohibition on assignment contained elsewhere in this Agreement, Licensee acknowledges that its rights to use the Software and Related Materials are personal to Licensee. Licensee therefore covenants not to permit the use of the Software and Related Materials by unauthorized persons and to use its best efforts to prevent the exportation of the Software and Related Materials or any portion thereof into any country which does not have copyright laws that will protect Licensor's Copyrights.

   (b) Licensor, at its own expense, will defend and indemnify Licensee from all claims that the Software and Related Materials infringe a United States of America copyright, provided that Licensee gives Licensor prompt written notice of such claims and permit Licensor to defend or settle the claims and provides Licensor with all reasonable co-operation and further provided that Licensor shall not be required to defend and indemnify Licensee from infringement claims resulting from Modifications by Licensee.

   (c) As to any Software and Related Materials which are or in the opinion of Licensor may become subject to a claim of infringement, Licensor, at its option, will obtain the right for Licensee to continue using the Software and Related Materials or replace or modify the Software and Related Materials so as to make it non-infringing. If none of the aforementioned alternatives are available on commercially reasonable terms, then Licensee agrees to return the Software and Related Materials to Licensor upon Licensor's written request and Licensor shall, upon return, refund to Licensee all license fees paid by Licensee to Licensor, and Licensor shall have no other or further liability to Licensee. Licensee acknowledges that the remedies set out in paragraph 11 hereof constitute the sole and exclusive remedy of Licensee for copyright infringement.

5. **Permitted Uses of the Software and Related Materials**. As each configuration of central processing units and/or networked systems may be unique, Licensee agrees to conform Licensee's use of the Software to the particular Software configuration licensed by Licensor to Licensee. Said configuration is incorporated into this license agreement by reference, inclusive of Modifications created or approved by Licensor. Licensee may

make one (1) copy of the Software for archival purposes only, unless Licensor agrees otherwise in writing.

6. **Uses Not Permitted**. Licensee covenants and agrees that it will not:

   (a) whether in whole or in part, sell, rent, lease, sublease, license, sublicense, lend, time-share, transfer, assign or provide the use of or access to the Software and Related Materials, or any portion thereof, to unlicensed persons;

   (b) assign, mortgage, charge or otherwise encumber either the Software and Related Materials or its rights under this Agreement;

   (c) reverse engineer, decompile or disassemble the Software;

   (d) alter, modify or create any derivative works of the Software and Related Materials or any portion thereof, except as needed for Licensee’s own use of Software;

   (e) except as permitted elsewhere in this Agreement, make additional copies of the Software and Related Materials or any portion thereof;

   (f) obscure or remove any copyright or trademark notices.

7. **Assignment**. Without limiting anything contained elsewhere in this Agreement, Licensee shall not assign this Agreement or any rights herein without the prior written consent of Licensor, which consent may be arbitrarily withheld. Any purported assignment without Licensor's consent shall be deemed to be null and void.

8. **Term**. The license granted by this Agreement shall commence on the date of this Agreement and shall continue thru September 30, 2021. This Agreement shall be automatically terminated at the end of the three year period unless Licensee requests renewal, in writing, prior to the end of the period. Notwithstanding the foregoing, this Agreement will terminate automatically without notice if Licensee fails to comply with any provision of this Agreement. The parties agree that all provisions set out in this Agreement for the protection of Licensor and its Copyrights shall remain in force notwithstanding termination of this Agreement.

9. **Updates**. Provided that Licensee is in compliance with the terms and conditions of this Agreement, Licensor agrees to make available to Licensee all updates, improvements and enhancements for the Software. Nothing herein shall be construed or interpreted as requiring Licensor to develop any such updates, improvements or enhancements.

10. **Limited Warranty**.

(a) Licensor warrants that the Software, as defined in **Schedule "A" and, any additional Software, as defined in future revisions to Schedule "A"**, without Modifications, will substantially conform to the Related Materials for a period of one (1) year from the date of receipt by Licensee. Licensor warrants that the media upon which the Software is provided and the Related Materials will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt by Licensee.

(b) **LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND RELATED MATERIALS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE FOREGOING EXCLUSIONS MAY NOT APPLY TO COMPANY. COMPANY MAY HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.**

(c) During the warranty period, Licensor's entire liability and Licensee's exclusive remedy shall, at Licensor's option, be one of the following:

(i) Licensor may attempt to correct or work around Errors;

(ii) Licensor may replace the Software and Related Materials;

(d) Licensor shall not be liable for damages, direct or indirect, special, incidental, consequential, punitive or exemplary, related to Licensee's use of the Software and Related Materials, even if Licensor is advised of the possibility of such damage.

11. **Confidentiality**. All Confidential Information, including the Know-How, shall be treated as confidential by Licensee and shall be used solely to enable Licensee to use the Software in accordance with this Agreement. Nothing contained herein shall prevent Licensee from making disclosure of any of the Confidential Information to any employee of Licensee for the sole purpose of utilizing the Software and Related Materials in accordance with this Agreement, provided that Licensee shall obtain from each employee to whom such disclosure is made a covenant of non-disclosure.

12. **No Implied Waiver**. No failure or delay by Licensor in enforcing any right or remedy in this Agreement shall be construed as a waiver of any future exercise of such right or

remedy by Licensor.

13. **Conflict of Documents**. Any conflict between the terms of this Agreement and any purchase order or other document in relation to the license granted hereby shall be resolved in favor of the terms of this Agreement.

14. **Equitable Relief**. Licensee acknowledges that any breach by it of any of the terms of this Agreement is likely to result in irreparable harm or damage to Licensor and that, in the event of such breach, in addition to any and all remedies at law, Licensor shall have the right to obtain an injunction, specific performance or other equitable relief to prevent the continuous violation of the terms of this Agreement.

15. **Governing Law**. This Agreement shall be construed in accordance with the laws of the State of Texas.

16. **Entire Agreement**. This Agreement constitutes the sole and entire agreement between the parties, and supersedes any previous agreements, understandings and arrangements between the parties relating to the Software and Related Materials. Any amendments hereto are enforceable only if in writing and signed by each of the parties.

17. **Severability** If any portion of this Agreement is deemed by any court of competent jurisdiction to be illegal or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect notwithstanding.

18. **Execution**. This Agreement has been executed by an authorized signatory duly entitled to bind the party on behalf of which he or she has executed this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

Hidalgo County, Texas

By: _____
Name: Ramon Garcia
Title: County Judge

Destiny Software Inc.

By: _____
Name: Dean Dickinson
Title: Vice President

APPROVAL AS TO FORM:
Office of Criminal District Attorney
Ricardo Rodriguez, Jr.

By:_____

ATTEST:

By: _____
Hon. Arturo Guajardo, Jr.

County Clerk

Schedule "A" Software & Services Effective: October 1, 2017	
Description of Software & Services	**AgendaQuick – Web-based agenda software system (Currently Installed)**
	Video Integration with Streaming Video Provider

Schedule "B" Software License, Maintenance & Service Fee Schedule Effective: October 1, 2017	
Description of Services	• **Customer Training and Program Documentation for Purchased Software Listed in Schedule "A"** • **Customer Support for Purchased Software Listed in Schedule "A"** • **Free Updates, if applicable, to Purchased Software Listed in Schedule "A"**
Term of Agreement	**October 1, 2017 thru September 30, 2021 unless terminated by either party per agreement terms**
AgendaQuick Annual License & Maintenance Fee	**$3,800 – Beginning October 1, 2017** **$4,200 – Beginning October 1, 2018** **$4,200 – Beginning October 1, 2019** **$4,500 – Beginning October 1, 2020**
Re-install of software on new or additional client servers, including ColdFusion – *if needed or requested*	**$500 plus cost of ColdFusion license**
Custom Modifications – *if requested*	**$110 per hour or by agreed upon project cost**