

**Courthouse Technologies, Ltd.**  
**Software Subscription and Service Agreement**

The **Hidalgo County District Clerk (the "Customer")** and **Courthouse Technologies, Ltd. ("CHT")** agree that this Agreement and the Attachments hereto (which Attachments are incorporated by reference to this Agreement) is made in accordance with the Texas Department of Information Resources (DIR) contract # **DIR-TSO-4037** the terms and conditions of which are herein incorporated by reference. These documents form the complete and exclusive statement of the agreement between the parties and supersedes any prior oral or written communications between the parties relating to the subject matter of this Agreement

The Customer accepts the terms of these documents by 1) signing the Agreement, 2) using the products and services provided in respect of this Agreement, or allowing others to do so, or 3) making any payment in respect of this Agreement. Additional or different terms in any written communication from the Customer (such as an order) are void.

Any references to the "CHT Customer Agreement" or "this Agreement" indicated in Attachment shall be to this Software Subscription and Service Agreement together with the Attachment and all Exhibits (as such term is defined in the Attachment).

**Courthouse Technologies, Ltd.**  
#310 – 601 West Cordova St.  
Vancouver, BC V6B 1G1  
Canada  
Facsimile No.: (604) 685-2991

**Hidalgo County District Clerk**  
100 N Closner Blvd.  
Edinburg, TX 78539  
USA  
Facsimile No:

\_\_\_\_\_  
Name: Scott Kerr  
Title: President

Date: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

## **TERMS AND CONDITIONS**

### 1. CHT Software, Supplied Products, and Services - Definitions

1.1. CHT Software. The term "CHT Software" means the computer programs in machine-readable, object code form that are licensed by CHT to Customer as provided for in this Agreement, which CHT Software does not include "Supplied Products" being third party software that is separately licensed to Customer by the third party provider thereof but, for the purposes of this Agreement, as appropriate, the term CHT Software shall include all manuals and other documentary materials provided to Customer by CHT hereunder.

1.2. Services. The term "Services" means those system support services that CHT delivers or otherwise makes available to the Customer including those Services that are standard to all customers or customized to Customer specific requirements.

1.3. CHT Deliverables. The "CHT Deliverables" are collectively the CHT Software, Supplied Products, and Services that CHT agrees to provide to the Customer. The CHT Deliverables as well as CHT's responsibilities and performance period are described in "Exhibits" which include but are not limited to statements of work, supplements, schedules, addenda, and change authorizations, which are also part of this Agreement. If there is a conflict among the terms in the various documents, those of an Exhibit prevail over those of this Agreement.

1.4. Customer Materials. The term "Customer Materials" means, collectively, any materials or information including, but not limited to, customer data, software programs, database designs, documentation, reports, drawings and similar works that the Customer may own or license from third parties and that the Customer provides to CHT for the purpose of performing the Services.

### 2. Charges and Payment

2.1. All fees and charges including Subscription Fees are described in Exhibit A, "Statement of Work" and Exhibit B "Statement of Work". Charges for Services, Supplied Products, or changes to the CHT Software, not described in either Exhibit, if any, shall be charged at CHT's prevailing, published rates.

2.2. Fifty percent (50%) of Year 1's Subscription Fees detailed in Exhibit A are payable upon the commencement of the project. The remaining Year 1's Subscription Fees (50%) are payable upon the first summons mailing via the SummonsDirect service. All subsequent Annual Subscription Fees as set out above are payable upon the anniversary of Year 1's first summons mailing. All charges as set out above are payable within thirty days of receipt of an invoice from CHT. All duties, sales, use and personal property taxes, or similar charges, excluding those based on CHT's net income, upon any transaction under this Agreement, will be in addition to the fees and shall be paid by Customer as specified in the invoice. Unless CHT specifies otherwise, all amounts are in United States Dollars (US\$).

2.3. Customer agrees with Courthouse that in the event of a failure by the Customer to achieve a Milestone set out in the agreed Project Implementation Schedule (as referred to in the Statement of Work), which results in a delay beyond the originally agreed Project Implementation Schedule, Courthouse will be entitled to charge an additional management extension fee for each week (or part thereof) of delay. The management extension fee shall be in an amount equal to a weekly pro rated portion of HALF the Annual Subscription Fee, which shall be calculated with reference to the period contemplated by the Project Implementation Schedule and be invoiced monthly commencing from the scheduled end of the Project Implementation Schedule and be chargeable until the project is completed.

### 3. Grant of License

3.1 Subject to the terms and conditions of this Agreement and compliance therewith by Customer, CHT hereby grants to the Customer a non-exclusive, nontransferable, license to access and use the CHT Software. The CHT Software is licensed to Customer on a County-wide subscription basis. This license specifically includes all facilities, departments, agencies, and courts operated in whole or in part by the Customer and all 3<sup>rd</sup> party vendors under contract to the Customer to provide information technology services of any kind. Except as otherwise provided in this Agreement, the Customer will not, by itself or through any affiliate, agent or third party, directly or indirectly:

3.1.1. reverse engineer, decompile, disassemble alter or tamper with the CHT Software, in whole or in part, or otherwise obtain or attempt to obtain the source code for the CHT Software;

3.1.2. sell, lease, loan, exhibit, donate or otherwise transfer any CHT Deliverables or allow access to the CHT Software by any party;

3.1.3. permit any party to benefit from the use or functionality of the CHT Software via a timesharing, service bureau or other arrangement;

3.1.4. transfer any of the rights granted to Customer under this Agreement or license granted hereunder including without limitation, by way of sublicense; or

3.1.5. obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or other confidential or proprietary notices or legends on or encoded in the CHT Software or otherwise on the CHT Software.

3.2 The Customer warrants to CHT that the Customer is the proper corporate and legal authority to provide Customer Materials and that the provision of Customer Materials to CHT does not infringe on a patent or copyright or violate any trade secret or license or other trade agreement of any third party.

3.3 CHT shall have the right to periodically conduct audits at the site of Customer upon reasonable advance written notice to verify the Customer's compliance with the terms of this Agreement. CHT shall also have the right at any time it reasonably suspects or believes the Customer may be in non-compliance with

the restricted use provisions of this Agreement or limitations of scope of license granted hereunder to require a sworn statutory declaration, certificate, or affidavit of a senior representative of the Customer regarding compliance by the Customer to the terms of this Agreement, in form and substance satisfactory to CHT, which certificate will be provided in forty-eight hours of written request therefor from CHT.

- 3.4 The CHT Deliverables provided hereunder and, where applicable, all copies thereof, are proprietary to CHT and title thereto remains in CHT. Other than the rights in and to the CHT Deliverables granted to Customer under this Agreement, Customer acquires no rights in the CHT Deliverables, or any part thereof, including without limitation, any patents, copyrights, trademarks, trade secrets or other intellectual property embodied therein. Customer acknowledges that CHT claims that the CHT Deliverables contain valuable proprietary information and trade secrets developed by CHT. All rights not expressly granted to Customer under this Agreement are reserved by CHT and or its licensors.
- 3.5 Customer shall be responsible for entering into and complying with the terms of all license agreements with third party suppliers in connection with the Supplied Products.

#### 4. Term and Termination

The term of this Agreement, the "Term", and the license set forth in paragraph 3 shall commence on the date of this Agreement and shall continue for a period of three (3) years from the date the first summons is mailed with two (2), one (1)-year options to renew in accordance with the following provisions.

- 4.1 At any time during the Term, the Customer may elect to purchase the CHT Software at CHT's prevailing, published rates;
- 4.2 Upon the conclusion of the Term, the Customer may elect to renew the Subscription for an additional term at CHT's then prevailing, published rates;
- 4.3 CHT may terminate this Agreement and the license of the CHT Software:
- 4.3.1 if the Customer defaults in the performance of or compliance with any of its obligations under this Agreement other than those set out in section 4.3.3 below, and such default is not remedied or cured within thirty (30) days after CHT delivers notice specifying the default; or
  - 4.3.2 immediately if the Customer files a petition in bankruptcy or under any insolvency act; makes an assignment for the benefit of its creditors; consents to the appointment of a receiver of itself or of the whole or any substantial part of its property; is adjudicated as bankrupt; files a petition or answer seeking reorganization or arrangement under applicable bankruptcy laws or any other applicable law or statute; becomes subject to a final order, judgment or decree appointing a receiver of Customer; or if the Customer ceases to conduct business in the normal course; or
  - 4.3.3 immediately if Customer fails, intentionally or unintentionally to abide by the restricted use or confidentiality provisions of this Agreement or exceeds the scope of the license granted hereunder.
- 4.4 CHT may also terminate this Agreement pursuant to section 6.3.

4.5 Customer may terminate this Agreement:

4.5.1 immediately if CHT files a petition in bankruptcy or a petition to take advantage of any insolvency act; makes an assignment for the benefit of its creditors; consents to the appointment of a receiver of itself or of the whole or any substantial part of its property; is adjudicated as bankrupt; files a petition or answer seeking reorganization or arrangement under the bankruptcy laws or any other applicable law or statute; becomes subject to a final order, judgment or decree appointing a receiver of CHT seeking reorganization or arrangement of CHT under the bankruptcy laws or any other applicable law or statute; or ceases to conduct business in the normal course; or

4.5.2 CHT commits a breach of this Agreement, unless CHT cures the breach within thirty (30) days after delivery of the notice of breach by Customer to CHT.

4.5.3 Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County pursuant to the provisions of Tex. Loc. Govt. Code Ann. ' 271.903 (Vernon Supp. 1996).

4.5.4 Without cause at the end of any subscription year upon thirty (30) days written notice.

4.6 Upon termination of this Agreement for whatever reason the license granted pursuant to paragraph 3 hereunder shall immediately terminate. The Customer shall immediately cease use of the CHT Software and destroy (and in writing certify such destruction) or return to CHT all copies of the CHT Software then in the Customer's possession or control within five (5) days after termination, and, unless termination is as a result of the provisions of section 4.5, shall immediately pay CHT all outstanding fees then owing under this Agreement.

5 Force Majeure

CHT and Customer shall not be liable in damages or have the right to terminate this Agreement for any delay or default in performance under this Agreement if such delay or default is caused by conditions beyond that party's reasonable control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license) strikes, labor disputes, war, missile attacks, civil commotion, accidents, explosions, falling aircraft, equipment deliveries, shortages of materials, labor or transportation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement.

6 Patent and Copyright Matters

6.1 The Customer will promptly notify CHT of any claim or suit involving the Customer in which infringement is alleged and cooperates fully with CHT and permits CHT to control completely the defense, settlement or compromise of any such allegation of infringement.

6.2 CHT shall have no liability to the Customer with respect to any claim of patent or copyright infringement or violation of any trade secret or license or other trade agreement, which is based upon the combination, or utilization of the CHT Deliverables with Customer Materials or which arise out of the Supplied Products or any breach by Customer of third party license for such Supplied Products to the extent permitted under the law. In any claim against CHT, or a claim against Customer (the "Claimee"), the Claimee will notify the other party promptly regarding the circumstances of the claim.

6.3 If after final adjudication, the CHT Software is found to be infringing of any third party intellectual property right, then CHT will have the right, at its option, to:

- 6.3.1 alter the CHT Software to make it non-infringing, provided that such altered non-infringing software will fulfill substantially the same function as the CHT Software fulfilled prior to such alteration;
- 6.3.2 obtain a third party license or settlement for the continued use by the Customer of such infringing CHT Software; or
- 6.3.3 terminate this Agreement and the license granted hereunder, provided that, in the case of termination, CHT agrees that it will refund to Customer all one-time fees paid by Customer to CHT pursuant to section 2.1.

## 7 Confidentiality

The Customer acknowledges that the CHT Deliverables contain valuable trade secrets of CHT. CHT developed the CHT Deliverables through the expenditure of substantial time, effort and money. CHT wishes to, and the Customer agrees to, maintain in strict confidence and withhold from disclosure to unauthorized persons any data or information concerning the CHT Software. The Customer hereby agrees that the CHT Software and any information, knowledge and factual data related to the CHT Software which may be imparted to the Customer by CHT at any time, or from time to time, will not be copied (except one back-up copy of the CHT Software is permitted) or communicated to any third party, except for information required by employees of the Customer for use only in performing their duties on behalf of the Customer and which is to be retained in confidence by such employees. This Agreement creates in the Customer a license to obtain and utilize the CHT Software for the limited purposes provided herein, but confers no right, title or interest in or to the CHT Software, which title shall continue to vest solely in CHT.

## 8 Warranty, Exclusion of Warranties

8.1 CHT warrants to the Customer that it has the right to license the CHT Software to the Customer as contemplated herein. The sole remedy of the Customer with respect to this warranty is as set out in section 6.3.

8.2 CHT warrants that the delivered software will function in accordance with the specifications described in the Exhibits that form part of this Agreement.

8.3 In the event of significant malfunction of the CHT Software, provided that the Customer promptly notifies CHT hereof, CHT will use all commercially reasonable efforts to correct any fault occurring in the CHT Software, other than faults caused by the intentional or negligent acts of the Customer or the Customer's employees or independent contractors, or by the malfunction of the Customer's equipment, or Customer Materials.

8.4 THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, AND CHT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE CHT DELIVERABLES INCLUDING, WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CHT DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE CHT SOFTWARE WILL MEET CUSTOMER REQUIREMENTS OR THAT THE OPERATION OF THE CHT SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE CHT SOFTWARE IS WITH CUSTOMER. THE REMEDIES PROVIDED FOR IN THIS AGREEMENT ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

## 9 Limitation of Liability

To the extent permitted under the law, in no event shall CHT be liable, whether based on breach of warranty or contract, in tort or strict liability or otherwise, for (a) any damages arising from performance or nonperformance of the CHT Software, (b) any lost profits, loss of use, or other consequential or incidental damages, even if CHT has been advised of the possibility of such damage, or (c) any claim against the Customer by any other party with respect to infringement of the rights of others. In no event shall CHT's liability to the Customer for any cause related to this Agreement or the CHT Software exceed the license fee paid by the Customer to CHT pursuant to this Agreement.

## 10 Independent Contractor/Personnel

CHT, in the performance of this Agreement, is acting as an independent contractor and both parties assume full responsibility for their acts and for compliance with any applicable employment, tax laws and with respect to employees. Without limiting the generality of the foregoing, each party is responsible for the supervision, direction, and control of their respective personnel. CHT reserves the right to determine the assignment of its personnel. CHT may subcontract a Service, or any part of it, to subcontractors selected by CHT.

## 11 Severability

In the event any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof and such remaining provisions shall be valid, legal and enforceable.

## 12 Entire Agreement

This Agreement constitutes the entire understanding of the relationship between the parties. No prior or contemporaneous representation or agreement outside of this Agreement shall have any effect whatsoever on the terms hereof.

13. No Assignment

This Agreement may not be assigned by the Customer without the prior written consent of CHT.

14. Notices.

All notices required or permitted under this Agreement will be in writing and sent to the other party at the address specified below or to such other address as either party may substitute from time to time by written notice to the other and shall be deemed to be validly given upon receipt of such notice given by personal or courier delivery or by facsimile to the addresses and facsimile numbers set out on page 1 of this Agreement.

15. Data Security

CHT will keep the data secure in accordance with industry standards.

16. Ownership and Use of Data

All juror information, records, documents, files, data, and other items relating to the business of the Customer, including but not limited to the Michigan Secretary of State data file, qualified juror and contact list, and juror history, coming into the possession of CHT in connection with performing the services or otherwise during the term of this Agreement shall remain the exclusive property of Customer. Upon termination of this agreement, all juror data, including but not limited to qualified jurors and juror payment and attendance history, will be returned to Customer in CSV format or other mutually agreeable format.

17. Governing Law

All actions arising from this Agreement are governed by and subject to the laws of the State of Texas. The parties submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the Courts of Hidalgo County, TX.

18. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.