

Appendix D to DIR Contract No. DIR-SDD-1623

SPILLMAN®

COMPUTER SOFTWARE END-USER

LICENSE AGREEMENT

10/09/2007

In consideration of the mutual agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

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Section 1: License

- 1.1 SPILLMAN'S LICENSED PROGRAM IS COPYRIGHTED BY SPILLMAN AND/OR ITS LICENSORS AND IS LICENSED (NOT SOLD). SPILLMAN DOES NOT SELL OR TRANSFER TITLE TO THE LICENSED PROGRAM TO LICENSEE. THE LICENSE OF THE LICENSED PROGRAM WILL NOT COMMENCE UNTIL LICENSEE HAS EXECUTED THIS AGREEMENT AND AN AUTHORIZED REPRESENTATIVE OF SPILLMAN HAS RECEIVED, APPROVED, AND EXECUTED A COPY OF IT AS EXECUTED BY LICENSEE.
1.2 In consideration of the payment of the license fees set forth in the Purchase Agreement(s) pertaining hereto, Spillman grants Licensee a nonexclusive, non-transferable license to use the package of computer program(s) and data, in machine-readable form only, and related materials, including documentation and listings, identified in the Purchase Agreement (the "Licensed Program"), subject to the terms of DIR Contract No. DIR-SDD-1623 and this Agreement (including the restrictions with respect to Utilities set forth in Section 7)

This Computer Software End-User License Agreement ("Agreement") is made and entered into effective as of the date this Agreement is signed by both parties below, and is by and between:

Spillman Technologies, Inc. ("Spillman")
4625 West Lake Park Blvd.
Salt Lake City, Utah 84120

and

Hidalgo County Sheriff
711 El Cibolo Road
Edinburg, Texas 78542

Licensee desires to license from Spillman certain software owned by Spillman, as set forth in the Sales Quote/Purchase Agreement(s) ("Purchase Agreement") executed by the parties in connection with this Agreement, and Spillman desires to grant such a license to Licensee, pursuant to the terms and conditions of DIR Contract No. DIR-SDD-1623 and this Agreement

Section 2: Scope of Rights

- 2.1 Licensee may install and use the Licensed Program only in Licensee's own facility. Licensee shall give Spillman written notice if the location of Licensee's facility changes.
2.2 Licensee may use and execute the Licensed Program only for purposes of serving the internal needs of Licensee's business, except as specifically set forth in this Agreement.
2.3 Licensee may make one copy of the Licensed Program in machine-readable, object code form, for nonproductive backup purposes only, provided that Spillman's proprietary notices are included.
2.4 Licensee may reproduce (photocopy) Licensed Program documentation according to Licensee's needs for the authorized use of the Licensed Program. To the extent consistent with the Texas Public Information Act, Licensee may not distribute any original or reproduced copy for use



outside of the Licensee's place of business and must not reveal it or any other Spillman documentation, or the Licensed Program itself, to competitors of Spillman or to any other third party unless they have a need to know such information for the proper purposes of this Agreement.

- 2.5 If Licensee and a third party entity (the "Shared Agency") desire to enter into an arrangement whereby Licensee will act as a "Host Agency" and permit the Shared Agency to access the Licensed Program through Licensee, the Shared Agency and Spillman will execute an Addendum Agreement for such arrangement and attach it to this Agreement as Attachment A. Spillman will bill Licensee directly for the applicable license fees, and Licensee agrees to be responsible for timely payment of such invoices. Licensee shall require the Shared Agency to comply with the terms of this Agreement and shall notify Spillman and cooperate as reasonably requested by Spillman in the event of any non-compliance.

Section 3: Fees and Payments

The license fee for the Licensed Program is specified in Appendix C to DIR Contract DIR-SDD-1623. Invoicing and payments will be in accordance with Sections 7.B. and 7.C of Appendix A to DIR Contract No. DIR-SDD-1623

Section 4: Support

Spillman shall support the Licensed Program in the manner specified in the "Computer Software End-User Support Agreement" between the parties (the "Support Agreement"). Licensee is required to maintain the Support Agreement in force as a condition to the license of the Licensed Program under this Agreement.

Section 5: Licensee Responsibilities

- 5.1 Licensee is responsible for selecting a Spillman Application Administrator who is qualified to operate the Licensed Program on Licensee's own equipment and is familiar with the information, calculations, and reports that serve as input and output of the Licensed Program. Spillman reserves the right to refuse assistance or to charge additional fees if the Spillman Application Administrator seeks assistance with respect to such basic background information or any other matters not directly relating to the operation of the Licensed Program.
- 5.2 Other components (hardware and/or software) may be required for the use of the Licensed Program. Spillman assumes no responsibility under this Agreement for obtaining and/or supporting such components except as expressly agreed in writing.
- 5.3 Licensee is responsible for ensuring a proper environment and proper utilities for the computer system on which the Licensed Program will operate.
- 5.4 Except as expressly agreed in writing, Spillman assumes no responsibility under this Agreement for converting Licensee's data files for use with the Licensed Program.

Section 6: Proprietary Protection and Restrictions

- 6.1 Spillman shall have sole and exclusive ownership of all rights, title, and interest in and to the Licensed Program and

all modifications and enhancements thereof (including ownership of all trade secrets, copyrights and other intellectual property rights pertaining thereto), subject only to the rights and privileges expressly granted to Licensee herein by Spillman. The Licensed Program may also include software separately licensed to Spillman from third party licensors. Such third party software is sublicensed to Licensee and protected pursuant to the terms of this Agreement, and may be used only in conjunction with Spillman's Licensed Program. This Agreement does not provide Licensee with title or ownership of the Licensed Program or any component thereof, but only a limited license. Spillman and its licensors specifically reserve all rights not expressly granted to Licensee in this Agreement. Licensee must keep the Licensed Program free and clear of all claims, liens, and encumbrances.

- 6.2 To the extent authorized by the Texas Public Information Act, Licensee may not allow any other agency, entity, or individual to use or have access to the Licensed Program in any manner other than inquire-only unless expressly authorized by Spillman. Except as specifically authorized by Spillman, queries may be conducted solely for Licensee's internal business purposes, and Licensee may not query the Licensed Program, or permit any third party to query the Licensed Program, for a third party's business purposes.
- 6.3 Licensee may not use, copy, modify, rent, share or distribute the Licensed Program (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized in writing by Spillman. Licensee may not translate, modify, reverse assemble, reverse compile, or otherwise reverse engineer the Licensed Program.
- 6.4 To the extent authorized by the Texas Public Information Act, Licensee may not utilize or permit a third party to access or utilize any part of the Licensed Program (including the Utilities) in any manner that competes, directly or indirectly, with any product or service provided by Spillman. This includes, without limitation, using the Licensed Program (or its Utilities) to develop any software, interfaces or other products that compete with Spillman's products or services, or using interfaces or other products connecting to the database of the Licensed Program in connection with a third party's competing product.
- 6.5 No service bureau work, multiple-user license, or time-sharing arrangement is permitted, except as expressly authorized in writing by Spillman. Licensee may not install the Licensed Program in any other computer system or use it at any other location without Spillman's express authorization obtained in advance (which will not be unreasonably withheld).
- 6.6 To the extent authorized by the Texas Public Information Act, Licensee shall keep confidential all non-public information provided to Licensee by Spillman ("Confidential Information"), including the Licensed Program, future product plans, price lists, financial and business information, trade secrets, etc. To the extent authorized by the Texas Public Information Act, Licensee shall not use Confidential Information for any purpose other than the authorized purposes of this Agreement. To the extent authorized by the Texas Public Information Act, Licensee may disclose Confidential Information only to its employees who need to know such information, and who are bound to keep such information confidential. Licensee shall give Spillman's Confidential Information at least the same level of protection

as it gives its own confidential information of similar nature, but not less than a reasonable level of protection.

- 6.7 Licensee hereby authorizes Spillman to enter Licensee's premises in order to inspect the Licensed Program in any reasonable manner during regular business hours, with or without prior notice, to verify Licensee's compliance with the terms of this Agreement.
- 6.8 Licensee acknowledges that, in the event of Licensee's breach of any of the foregoing provisions, Spillman will not have an adequate remedy in money or damages. To the extent authorized by Texas Law and Constitution, Spillman shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction within the state courts of Travis County, Texas immediately upon request, without the necessity of posting bond, in addition to any other remedies that may be available at law or in equity.

Section 7: License to Utilities; Restrictions on Usage

- 7.1 Spillman provides certain software utilities and tools (collectively, the "Utilities") as part of the Licensed Program. Such Utilities include Spillman's XML Query, ODBC implementation code, cperl, dbdump, and dbload as well as any other software utilities provided by Spillman in connection with the Licensed Program. Spillman may add, modify or remove Utilities from the Licensed Program during the term of this Agreement. The Utilities contain material that is proprietary to Spillman and/or its licensors, and may be used only as permitted by this Agreement.
- 7.2 Licensee is permitted to use the Utilities for read-only operations in connection with the authorized use of the Licensed Program, but may not allow third parties to use the Utilities unless an authorized official of Spillman consents in writing. Licensee is NOT permitted to utilize the Utilities or any other software tools to write to Spillman's database in any manner, due to the potential for data corruption and system slowdown or damage. Licensee also may not permit any third party to write to Spillman's database in any manner.
- 7.3 Spillman is NOT responsible for any breach of warranty, damages to the Licensed Program or its database, data corruption, support issues, security issues or performance issues arising out of Licensee's or a third party's use of the Utilities or any other software not specifically licensed in this Agreement (including any third party querying or writing to the database).

Section 8: Limited Warranty and Limitation of Liability; Indemnification

- 8.1 Spillman warrants, for Licensee's benefit alone, that the Licensed Program conforms in all material respects to the specifications for the current version of the Licensed Program as described in Spillman's Licensed Product Specification as of the date this Agreement is signed, and for a period thereafter of Fifteen (15) months for Summit.

This warranty is expressly conditioned on Licensee's observance of the operation, security, and data-control procedures set forth in the User's Manual included with the Licensed Program.

- 8.2 Spillman is not responsible for obsolescence of the Licensed Program that may result from changes in Licensee's requirements. The warranty in Section 8.1 shall apply only to the most current version of the Licensed Program issued by Spillman from time to time. Issuance of updates does not result in a renewal or extension of the warranty period. Spillman assumes no responsibility for the use of superseded, outdated, or uncorrected versions of the Licensed Program. Spillman is not responsible for any problems or errors with the Licensed Program or Licensee's system resulting from use of the cperl or dbload Utilities in any manner other than read-only. Licensee expressly acknowledges that any use of the "write" or "update" features of these Utilities may damage Licensee's database or cause other problems with its system.
- 8.3 As Licensee's exclusive remedy for any material defect in the Licensed Program for which Spillman is responsible, Spillman shall use reasonable efforts to correct or cure any reproducible defect by issuing corrected instructions, a restriction, or a bypass. In the event Spillman does not correct or cure such nonconformity or defect after Spillman has had a reasonable opportunity to do so, Licensee's exclusive remedy shall be the refund of the amount paid as the license fee for the defective or non-conforming module of the Licensed Program. Spillman shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Licensed Program if Licensee has made any changes whatsoever to the Licensed Program, if the Licensed Program has been misused or damaged in any respect, or if Licensee has not reported to Spillman the existence and nature of such nonconformity or defect promptly upon discover thereof.
- 8.4 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SPILLMAN AND ITS LICENSORS DISCLAIM ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE LICENSED PROGRAM, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, TITLE, NON-INFRINGEMENT, AND ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.
- 8.5 Limitation of Liability shall be in accordance with Section 9. K of DIR Contract No. DIR-SDD-1623.
- 8.6 IN NO EVENT SHALL SPILLMAN AND ITS LICENSORS BE LIABLE FOR ANY LOSS OF PROFITS; ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES; OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST LICENSEE BY THIRD PARTIES, EVEN IF SPILLMAN OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.
- 8.7 Infringement Indemnity shall be in accordance with Section 9.A.2. of Appendix A of DIR Contract No. DIR-SDD-1623. If a court or other legal authority finds that any part of the Licensed Program infringes a third party's intellectual property rights, or if Spillman believes that it infringes, Spillman will use reasonable efforts to obtain a license under the rights that have been infringed, to modify the Licensed Program so it is no longer infringing, or to provide to Licensee substitute software that is non-infringing; provided that if in Spillman's judgment such options are not

commercially reasonable, Spillman may terminate the license for the Licensed Program or the infringing portion thereof upon written notice to Licensee. Spillman will have no liability for infringement arising out of modification of the Licensed Program by any party other than Spillman, use of an outdated version of the Licensed Program, or the combination or use of the Licensed Program with any other software, hardware, equipment, product or process not furnished by Spillman, if use of the Licensed Program alone and in its current, unmodified form would not have been an infringement. Spillman is not liable for any infringement claims based upon third party software or hardware. .

Section 9: Term of Agreement; Termination

- 9.1 Licensee's license of the Licensed Program shall become effective upon the execution of this Agreement and shall continue perpetually unless otherwise terminated in accordance with Section 10.B of Appendix A of DIR Contract DIR-SDD-1623. This Agreement shall automatically terminate upon termination of the Support Agreement for any reason, including Licensee's failure to pay the required support fees.
- 9.2 Licensee may terminate this Agreement at any time upon written notice to Spillman, subject to any outstanding obligations and financial commitments of Licensee under the Purchase Agreement (e.g., Licensee's obligation to pay license fees is not rescinded by such termination).
- 9.3 Spillman may terminate this Agreement for Cause pursuant to Section 10. B. 4) of Appendix A to DIR Contract No. DIR-SDD-1623.
- 9.4 Upon termination of this Agreement, all rights granted to Licensee will terminate and revert to Spillman and/or its licensors. Promptly upon termination of this Agreement for any reason or upon discontinuance or abandonment of Licensee's possession or use of the Licensed Program, Licensee must return or destroy, as requested by Spillman, all copies of the Licensed Program in Licensee's possession (whether modified or unmodified), and all other Confidential Information and other materials pertaining to the Licensed Program (including all copies thereof). Licensee agrees to certify Licensee's compliance with such restriction upon Spillman's request. The terms of Sections 6, 7.3, 8.4, 8.5, 8.6, 8.7, 9.4, and 10 shall survive termination or expiration of this Agreement.

Section 10: Miscellaneous

- 10.1 DIR Contact No. DIR-SDD-1623, this Agreement, the Purchase Agreement and the Support Agreement (if applicable), together with their attachments, if any, constitute the complete agreement between the parties with respect to the Licensed Program and other subject matter hereof. No modification of this Agreement shall be binding unless it is in writing and is signed by an authorized representative of each party. In the event of any conflict between DIR Contract No. DIR-SDD-1623 and this Agreement, the DIR Contract will control.
- 10.2 Assignments shall be in accordance with Section 4.D. of Appendix A of DIR Contact No. DIR-SDD-1623.
- 10.3 This Agreement will be governed by the laws of the state of Texas. . The parties hereby submit to the exclusive jurisdiction and venue of Travis County, Texas state courts with respect to any action between the parties relating to this

Agreement. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

- 10.4 Any waiver by either party of a default or obligation under this Agreement will be effective only if in writing. Such a waiver does not constitute a waiver of any subsequent breach or default. No failure to exercise any right or power under this Agreement or to insist on strict compliance by the other party will constitute a waiver of the right in the future to exercise such right or power or to insist on strict compliance.
- 10.5 Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed, or sent by commercial overnight delivery service with provisions for a receipt.
- 10.6 If any term of this Agreement is held to be invalid or void by any court or tribunal of competent jurisdiction, it shall be modified by such court or tribunal to the minimum extent necessary to make it valid and enforceable. If it cannot be so modified, it shall be severed from this Agreement and all the remaining terms of this Agreement shall remain in full force and effect.
- 10.7 In the event export of the Licensed Program is expressly permitted by Spillman, Licensee may only export the Licensed Program (including any related materials) as authorized by U.S. law and any other applicable jurisdiction. In particular, the Licensed Program may not be exported into any country where such export is prohibited by law, regulation or governmental order.

SPILLMAN DESIRES THAT LICENSEE BE CONFIDENT THAT THE LICENSED PROGRAM WILL SUIT LICENSEE'S NEEDS. ALTHOUGH LICENSEE MUST MAKE THAT DETERMINATION, SPILLMAN IS PREPARED TO FULLY DISCUSS THE LICENSED PROGRAM WITH LICENSEE AND ANSWER QUESTIONS. BY EXECUTING THIS AGREEMENT, LICENSEE ACKNOWLEDGES THAT IT HAS BEEN GIVEN AN ADEQUATE OPPORTUNITY TO INVESTIGATE LICENSEE'S COMPUTER AND SOFTWARE NEEDS AND THAT BASED ON ITS EXAMINATION OF THE LICENSED PROGRAM, LICENSEE FINDS THE LICENSED PROGRAM TO BE SATISFACTORY.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

Title: County Judge
Date: 11/30/10

Section 11: Signatures

Accepted and Approved:

Licensee: [Signature]
By: [Signature]
Print Name: Ramon Garcia

Spillman Technologies, Inc.
By: [Signature]
Print Name: Lance Clark
Title: President
Date: 12/10/10

Approved by Commissioners' Court
on 11/30/10

Appendix E to DIR Contract No. DIR-SDD-1623

SPILLMAN®

COMPUTER SOFTWARE END-USER

SUPPORT AGREEMENT

11/1/2007

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This Support Agreement ("Agreement") is made and entered into by and between:

Spillman Technologies, Inc. ("Spillman")
4625 West Lake Park Blvd.
Salt Lake City, Utah 84120

and

Hidalgo County Sheriff
711 El Cibolo Road
Edinburg, Texas 78542

SPILLMAN'S SUPPORT OF THE LICENSED PROGRAM
WILL NOT COMMENCE UNTIL AN AUTHORIZED
REPRESENTATIVE OF CUSTOMER HAS EXECUTED THIS
AGREEMENT AND AN AUTHORIZED REPRESENTATIVE
OF SPILLMAN HAS RECEIVED, APPROVED, AND
EXECUTED A COPY OF IT AS EXECUTED BY CUSTOMER.

WHEREAS, Spillman and Customer entered into that certain DIR Contract No. DIR-SDD-1623 and Computer Software End-User License Agreement (the "License Agreement") under which Customer obtained a non-exclusive, nontransferable license to use certain computer software in object code form and related user documentation (the "Licensed Program", as further defined below) on certain terms and conditions;

WHEREAS, Spillman desires to offer Customer certain services with respect to the Licensed Program on the terms and conditions set forth herein:

NOW THEREFORE, in consideration of these recitals and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1: Definitions

For the purposes of this Agreement, the following definitions shall apply to the respective capitalized terms:

- 1.1 Coverage Hours. The hours between 8:00 AM and 6:00 PM, Central Standard time, on the days Monday through Friday, excluding regularly scheduled holidays of Spillman
1.2 Enhancement. Any modification or addition that, when made or added to the Licensed Program, changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Spillman may designate Enhancements as minor or major, depending on Spillman's assessment of their value and of the function added to the preexisting Licensed Program.
1.3 Error. Any failure of the Licensed Program to conform in all material respects to its functional specifications as published from time to time by Spillman, subject to the exceptions set forth in Section 4.
1.4 Error Correction. Either a software modification or addition that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on Customer of such nonconformity. Error Correction services are subject to the exceptions set forth in Section 4.

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- 1.5 **Licensed Program.** One or more of the computer software components and/or software interfaces developed by Spillman, as identified in one or more Sales Quote/Purchase Agreements between the parties (the "Purchase Agreement"), and which is licensed to Customer pursuant to the License Agreement. The Licensed Program specifically excludes computer software not developed by Spillman, but that might be used in conjunction with the Spillman software; such as, word processors, spreadsheets, terminal emulators, etc. The Licensed Program includes certain "Utilities", as that term is defined in Section 7.1 of the License Agreement.
 - 1.6 **Releases.** New versions of the Licensed Program, including all Error Corrections and Enhancements.
 - 1.7 **Response Time.** Within six (6) Coverage Hours, from the time Customer first notifies Spillman of an Error until Spillman initiates work toward development of an Error Correction.
 - 1.8 **Spillman Application Administrator.** An agent of Customer who has been certified on the Licensed Program by Spillman, pursuant to the procedures set forth in Section 6, and is able to communicate effectively with Spillman support personnel in the description and resolution of problems associated with the Licensed Program.
 - 1.9 **Term.** An initial period of fifteen (15) months, commencing on the date this Agreement is signed. Thereafter, the Term may be extended upon 30 day advance written notice and Customer agreement for successive periods of one year each, unless and until terminated pursuant to Section 10 B of Appendix A of DIR Contract No. DIR-SDD-1623. In no event, however, shall the Term extend beyond the term of the License Agreement.

Section 2: Eligibility For Support

- 2.1 Spillman's obligation to provide Services with respect to the Licensed Program may be terminated pursuant to Section 10.1 or suspended, at Spillman's discretion, if at any time during the term of this Agreement any of the following requirements are not met:
 - 2.1.1 Customer must have a valid License Agreement for the Licensed Program in effect at all times;
 - 2.1.2 The Licensed Program must be operated on a hardware platform approved by Spillman; and
 - 2.1.3 Customer must be current and in compliance with the payment schedule as agreed in the Purchase Agreement.
- 2.2 Spillman may require Customer to appoint a new Spillman Application Administrator if Spillman determines that the acting Spillman Application Administrator does not have the training or experience necessary to communicate effectively with Spillman support personnel.

Section 3: Scope of Services

During the Agreement Term, Spillman shall render the following services in support of the Licensed Program, during Coverage Hours:

- 3.1 Spillman shall maintain a Support Services Control Center capable of receiving from the Spillman Application Administrator, by telephone, reports of any software irregularities, and requests for assistance in use of the Licensed Program.
- 3.2 Spillman shall maintain a trained staff capable of rendering support services set forth in this Agreement.
- 3.3 Spillman shall be responsible for using all reasonable diligence in correcting verifiable and reproducible Errors when reported to Spillman in accordance with Spillman's standard reporting procedures. Spillman shall, after verifying that such an Error is present, initiate work in a diligent manner toward development of an Error Correction. Following completion of the Error Correction, Spillman shall provide the Error Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction, and Spillman shall include the Error Correction in all subsequent Releases of the Licensed Program. Spillman supports two (2) versions back from the most recent release version. However, Spillman shall not be responsible for correcting Errors in any version of the Licensed Program other than the most recent release.
- 3.4 Spillman may, from time to time, issue new Releases of the Licensed Program to its customers generally, containing Error Corrections, minor Enhancements, and, in certain instances, if Spillman so elects, major Enhancements. Spillman reserves the right to require additional license fees for major Enhancements. Spillman shall provide Customer with one copy of each new Release, without additional charge. Spillman shall provide reasonable assistance to help Customer install and operate each new Release, provided that such assistance, if required to be provided at Customer's facility, shall be subject to the supplemental charges set forth in Spillman's current Fee Schedule.
- 3.5 Spillman shall consider and evaluate the development of Enhancements for the specific use of Customer and shall respond to Customer's requests for additional services pertaining to the Licensed Program (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to in writing by Spillman and Customer.

Section 4: Services Not Covered by this Agreement

The services identified in this section are specifically **NOT** covered by this Agreement. Spillman strongly recommends that Customer secure a separate support agreement with third party vendors for all non-Spillman products. Spillman may, in its discretion, provide such services to Customer upon request, for an additional fee as the parties may agree in writing.

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- 4.1 Support for any third party products including hardware, or support for hardware failure due to the use of any third party vendor products.
 - 4.2 Any network failures or problems including, but not limited to, cabling, communication lines, routers, connectors, and network software.
 - 4.3 Restoration and/or recovery of data files and/or the operating system.
 - 4.4 Any breach of warranty, damages to the Licensed Program or its database, data corruption, or support issues, security issues, or performance issues arising out of Licensee's or a third party's use of the Utilities or any other software not specifically licensed by Spillman to Licensee for use in connection with the Licensed Program. Any assistance provided by Spillman in resolving such problems shall be charged to Customer on a time and materials basis. Additionally, any unauthorized use of the Utilities or other software in connection with the Licensed Program by Licensee (or by a third party with Licensee's knowledge) may result, at Spillman's sole option, in voidance of warranties, an increase in the annual maintenance and support fees under this Agreement, and/or loss of rights to upgrades under this Agreement. Customer acknowledges and agrees that it is not licensed to utilize the "write" or "update" features of the Utilities, as such use may damage the database or cause other problems with the operation of the Licensed Program.
 - 4.5 Support for Licensed Program problems caused by Customer misuse, alteration or damage to the Licensed Program or Customer's combining or merging the Licensed Program with any hardware or software not supplied by or identified as compatible by Spillman, customizing of programs, accident, neglect, power surge or failure, lightning, operating environment not in conformance with the manufacturer's specifications (for electric power, air quality, humidity or temperature), or third party software or hardware malfunction.
 - 4.6 Supporting, configuring, maintaining, or upgrading the operating system, including, but not limited to, backups, restores, fixes, and patches.
 - 4.7 Assistance with problems caused by operating system installation, configuration, errors, maintenance or repair, or using incorrect versions of the operating system.
 - 4.8 On-site service visits to Customer's facility.
 - 4.9 Printers connected to the back of terminals/personal computers (commonly called pass-through printing) or network printers are not supported by Spillman.

Section 5: Obligations of Customer

- 5.1 Customers using the Spillman product must maintain and provide, at no cost to Spillman, access to a dedicated voice grade local telephone line, broadband internet connectivity for VPN connection purposes and a Cisco 1811 integrated services router and data set connected directly to customer's network, with full access to the server (24 hours per day, 7 days per week) that is used with the Licensed Program.

- 5.2 Customers must provide and maintain, at no cost to Spillman, a modem and data set connected directly to the server (the modem cannot be connected to a network) 24 hours per day, 7 days per week, used with the Licensed Program being maintained by Spillman hereunder and provide access to a dedicated voice grade local telephone.
- 5.3 A representative of Customer's IT department must be present when any on-site support is provided. Customer agrees that if such representative is not present when the Spillman representative arrives on site, the Spillman representative shall notify an appropriate representative of Customer, if feasible, that there is no Customer IT representative present. If Customer's IT representative does not arrive within a reasonable time, no work will be performed and Customer will be charged for all expenses incurred and relating to the visit.
- 5.4 All communications between Customer and Spillman must be in the English language.
- 5.5 Customer is responsible for providing one or more qualified Spillman Application Administrators as described in Section 6. At least one Spillman Application Administrator must be available at all times (however, after-hours availability is required only when and if Customer is requesting after-hours support from Spillman).
- 5.6 Customer is responsible for providing all network and server security.
- 5.7 Customer must provide Spillman with information sufficient for Spillman to duplicate the circumstances under which an Error in the Licensed Program became apparent.

Section 6: Spillman Application Administrator Requirements

- 6.1 The designated Spillman Application Administrator must be certified by Spillman within one year of the agency's go-live date of the Licensed Program. The designated administrator must meet the following requirements in order to certify at the basic level:
 - 6.1.1 Attend and participate in, and successfully pass the final written and practical examinations from the following courses within one hundred twenty (120) days of installation of the Licensed Program:
 - i. System Introduction – Inquiry,
 - ii. System Introduction – Data Entry & Modification,
 - iii. Unix Fundamentals Training (AIX, or HP-UX),
 - iv. Basic System Administration, and
 - v. Spillman training applicable for the Spillman applications used by Customer.
 - 6.1.2 Pass the Basic SAA exam within one year after the agency's go-live date.
- 6.2 Customer will be responsible for the costs of such training, including any course fees, travel and lodging expenses, subject to the limits on reimbursement in

compliance with the State of Texas Travel Regulations.

- 6.3 Contact information for the Spillman Application Administrators must be recorded in Appendix A of this Agreement. Appendix A must be signed by an authorized representative of Customer. Changes to the information recorded in Appendix A will require that a new Appendix A be completed, signed and filed with Spillman.
- 6.4 Requests for support services received by anyone other than a Spillman Application Administrator as identified in the current Appendix A on file with Spillman, will be refused.
- 6.5 Each designated Spillman Application Administrator must be qualified to address, or have other support resources to address, without the aid of Spillman, all problems relating to hardware, software or operating system not directly associated with the Licensed Program.

Section 7: Fees and Charges

- 7.1 Pricing shall be in accordance with Section 4B of DIR Contract No. DIR-SDD-1623. Customer shall pay Spillman the Support Fee, as set forth in the Purchase Agreement, and any other charges or fees described herein. Spillman reserves the right to change its Support Fee, effective upon no less than 90 days prior written notice to Customer. Second-year level support fees, as referenced in the Purchase Agreement between Spillman and Customer, are charged beginning 15 months after the execution of the Purchase Agreement, regardless of date on which Customer's actual use of the Licensed Program began, except to the extent any delay in such use is due to the fault of Spillman. Additionally, adjustments to Support Fees may result from changes in (1) software prices, (2) number of software modules used, (3) an increase in Customer's size (as further described in Section 7.6) , (4) computer hardware, (5) Coverage Hours selected by Customer, or (6) violation of the restrictions set forth in Section 4.4 of this Agreement.
- 7.2 Spillman shall invoice Customer for annual Support Fees at the beginning of each contract year. In the event that additional billable work is performed, all billable charges and expenses will be invoiced to Customer at the beginning of the month following the month in which they accrued or were incurred. Payment shall be in accordance with Section 7C of Appendix A, DIR Contract No. DIR-SDD-1623.
- 7.3 Customer shall be responsible for and agrees to pay the fees and charges incurred for procuring, installing, and maintaining all equipment, telephone lines, modems, communications interfaces, networks and other products necessary to operate the Licensed Software.
- 7.4 Customer agrees to pay additional charges according to the Spillman Fee Schedule for all work required by Customer and performed outside of Coverage Hours. These charges are applicable for any work performed outside of the Coverage Hours, REGARDLESS OF THE CAUSE, even if the requested work was reported and/or initiated during normal Coverage Hours.

- 7.5 Should Customer request onsite support services, Customer shall reimburse Spillman for all labor and travel incurred by Spillman in providing such support services. Travel reimbursement shall be in accordance with Section 4G of DIR Contract No. DIR-SDD-1623.
- 7.6 Additional Support Fees are also due if there is a significant increase in Customer's size with respect to use of the Licensed Program. An increase in size may arise either out of Customer's internal growth or out of a Host Agency/Shared Agency arrangement as described in Section 2.5 and Attachment A of the License Agreement. Relevant factors include number of employees, number of dispatchers and/or number of jail beds. Payment of such additional Support Fees shall be in accordance with Section 7C of Appendix A, DIR Contract No. DIR-SDD-1623. Such fees will be prorated, based upon when during the contract year the increase in Customer's size occurred.

Section 8: Proprietary Rights

- 8.1 All Releases and any other Spillman software or materials provided by Spillman to Customer hereunder shall be deemed part of the Licensed Program and are licensed to Customer pursuant to the terms and conditions of the License Agreement.
- 8.2 The Licensed Program and all Releases thereto are and shall remain the sole property of Spillman, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid Spillman for the use of the work product. Customer agrees, from time to time, to take such further action and execute any further instrument, including documents of assignment or acknowledgment, as may be reasonably requested by Spillman in order to establish and perfect its exclusive ownership rights. Customer shall not assert any right, title, or interest in such works, except for the non-exclusive right of use granted to Customer at the time of its delivery or on-site development. Customer agrees to provide Spillman with copies of such works upon request.

Section 9: Disclaimer of Warranty & Limitation of Liability

- 9.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SPILLMAN DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED PROGRAM, RELEASES, AND THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.
- 9.2 Limitation of Liability shall be in accordance with Section 9K of Appendix A, DIR Contract No. DIR-SDD-1623.
- 9.3 No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than four (4) years after such cause of action occurred.

However, action for nonpayment may be brought within two (2) years the date of the last payment was received by Spillman, so long as authorized by Texas Law and Constitution.

Section 10: Termination

- 10.1 This Agreement shall automatically terminate immediately upon termination of the License Agreement for any reason.
- 10.2 Termination will be in accordance with Section 10.B. of Appendix A to DIR Contract No. DIR-SDD-1623. The License Agreement shall automatically terminate at the same time as termination of this Agreement, and Customer shall promptly return to Spillman the Licensed Program and all related documentation and materials, including all Releases, work and materials provided by Spillman hereunder.

Section 11: Miscellaneous

- 11.1 Spillman and Customer acknowledge that they have read this Agreement in its entirety and understand and agree to be bound by its terms and provisions. Spillman and Customer further agree that DIR Contract No. DIR-SDD-1623 and this Agreement are the complete and exclusive statements of agreement of the parties with respect to the subject matter hereof. In the event of a conflict, DIR Contract No. DIR-SDD-1623 controls. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.
- 11.2 In the event that any term or provision of this Agreement is held invalid, illegal, or unenforceable, it shall be severed and the remaining terms and provisions shall be enforced to the maximum extent permitted by applicable law.
- 11.3 Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, except to a successor of all or substantially all of its business and assets.
- 11.4 The waiver by either party of any term or provision of this Agreement shall not be deemed to constitute a

continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.

11.5 This Agreement will be governed by the laws of the state of Texas. The parties hereby submit to the exclusive jurisdiction and venue of Travis County, Texas state courts with respect to any action between the parties relating to this Agreement. In any such action, the prevailing party shall be entitled to an award of its reasonable costs and attorneys' fees from the other party. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

11.6 Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed, or sent by commercial overnight delivery service with provisions for a receipt.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

Section 12: Signatures

Accepted and Approved:

Customer

By: 

Print Name: Ramon Garcia

Title: County Judge

Date: 11/30/10

Spillman Technologies, Inc.

By: 

Print Name: Lance Clark

Title: President

Date: 12/10/10

Approved by Commissioners' Court
on 11/30/10