

**MCM TECHNOLOGY, LLC
SOFTWARE LICENSE AGREEMENT**

THIS SOFTWARE LICENSE AGREEMENT (this "Agreement"), dated as of the _____ day of _____, 2020 (the "Effective Date"), is made and entered into by and between **MCM Technology, LLC**, a Delaware limited liability company located at 3510 Vann Road, Suite 105, Birmingham, AL 35235 ("MCM" or "Licensor"), and **the City of Corpus Christi**, located at 1201 Leopard Street, Corpus Christi, TX 78401 ("Licensee").

1. License and Usage Rights:

1.1. **License.** Commencing on the Effective Date, and subject to payment of the license fees specified in the Project Schedule(s), Licensor grants to Licensee, and Licensee accepts from Licensor, a non-exclusive license to the rights set forth herein with respect to each of the software products ("Product(s)") described in the attached Product Schedule(s) in executable code form (the "Executable Code License") and to all user manuals and other documents relating to the Product(s) that are provided to Licensee by MCM (collectively, the "Documentation"). Such license shall continue until it or this Agreement is terminated pursuant to Section 12 hereof. Pursuant to such license, Licensee shall have the following rights:

1.1.1. **Permitted Use.** Licensee may permit the number of users specified in each Product Schedule to use, access, and benefit from the use of, the applicable Product(s) in the manner and for the intended purposes described in the Product Schedule(s) and the Documentation. Licensee may install the Product(s) in any combination, subject to the user limitations set forth in the applicable Product Schedule(s), on (i) one or more servers and permit user access thereto, or (ii) individual user workstations. All majority-owned or controlled subsidiaries and divisions of Licensee are hereby granted the use, access, and benefit of the Product(s) by Licensor, at no additional cost, so long as each such subsidiary or division is legally bound by the terms of this Agreement, the number of users authorized under the applicable Product Schedule(s) are not exceeded, and the other license restrictions set forth herein are not violated. Licensee may permit its third party subcontractors to use and access the Product(s) solely in the course of their work for Licensee, provided that Licensee agrees that Licensee shall be responsible for any breach of this Agreement by any such third party subcontractor (if the applicable act(s) or failure(s) to act of such subcontractor, if taken or failed to be taken by Licensee, would constitute a breach of this Agreement by Licensee) and any such third party contractor (i) shall not disclose or distribute any part of the Product(s), (ii) shall maintain the confidentiality of the Product(s), and (iii) shall not otherwise violate Licensor's proprietary rights described herein. In no event shall Licensee enable a third party to access the Product(s) if such third party is known by Licensee to be a competitor of Licensor at the time that access is granted by Licensee. In no event may the Product(s) be used in connection with any commercial timesharing, service bureau or other similar rental or sharing arrangements involving third parties.

1.1.2. **Right to Copy.** Licensee may make a reasonable number of copies of the Product(s) and the Documentation for its internal use, including, but not limited to, duplication for disaster recovery purposes, provided that Licensee's use of such copies shall be limited in the manner described herein and such copies shall retain Licensor's copyright and proprietary rights notices to the same extent as they appear on the original copy of the Product(s) and Documentation.

2. Title and Ownership; Data.

2.1. **Product(s) and Documentation.** The parties agree that the Product(s) and Documentation constitute valuable property, proprietary information and/or trade secrets of MCM, whether or not any portion of the Product(s) is or may be copyrighted or patented. Title, full ownership and all proprietary rights in and to the Product(s) (as they now exist or may later be modified) and the Documentation and all copies thereof shall remain solely with MCM. Licensee agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within any Product(s) or any related materials or Documentation by Licensor. Except for the license and usage rights expressly granted herein, nothing in this Agreement shall be or shall be interpreted or construed to be a transfer of any right, title or interest whatsoever in the Product(s) or the Documentation.

2.2. **Data.** All data created and/or processed by the Product(s) is and remain the sole property of Licensee and shall in no way become attached to the Product(s), nor shall Licensor have any rights in or to the data of Licensee without the prior written consent of the Licensee, provided that Licensee shall not unreasonably withhold its consent to any proposed usage of any such data by Licensor in a manner that does not violate applicable law or present a health or safety risk to the public (such as, without limitation, usage of such data to measure or predict product desirability or reliability).

3. Acceptance:

3.1. **Product(s).** Licensee shall have thirty (30) calendar days from the date of installation of each of the Products (the "Installation Date") to test such Product and determine whether it complies with this Agreement, the applicable Statement of Work ("SOW") or Engineering Project Plan ("EPP"), and any Documentation provided by MCM relating thereto. Licensee must report any perceived nonconformity in such Product to MCM in writing within such 30-day period. Any part of the Product not identified as nonconforming within such time period shall be deemed to be accepted by Licensee in all respects effective as of the end of such 30-day period, and Licensee's failure to notify MCM in writing of nonconformity within such 30-day period shall act as a waiver of any claims with respect thereto. Notwithstanding the 30-day acceptance period, if the Licensee commences using the Product in day-to-day operations, the Product shall be deemed to be accepted by the Licensee on such date of commencement of usage. The date on which a Product is accepted or deemed to be accepted by Licensee hereunder is referred to as the "Acceptance Date". In the event of the discovery and identification of any nonconforming Product, Licensee's sole and exclusive remedy, and MCM's entire liability, shall be: (i) the correction of

program errors that cause nonconformity; or (ii) if MCM cannot substantially correct such nonconformity in a commercially reasonable manner, Licensee may end its license and recover the fees paid to MCM for the license and any unused, prepaid support and maintenance fees.

- 3.2. **Services.** To the extent any installation, training or other services are performed or completed by MCM after the Installation Date, Licensee shall have thirty (30) calendar days from completion of such services within which to notify MCM in writing of any nonconformity with respect thereto. Any part of the service not identified as nonconforming within such 30-day period shall be deemed to be accepted by Licensee in all respects, and Licensee's failure to notify MCM in writing of nonconformity within such 30-day period shall act as a waiver of any claims with respect thereto.

4. **Delivery Method, Installation and Training.**

- 4.1. **Method.** Licensor shall deliver the Product(s) to Licensee by one of the following methods specified in the applicable Product Schedule: (i) Licensor shall provide Licensee with a tangible copy of each Product and applicable Documentation (in which case Licensor shall provide Licensee with a replacement copy of the Product(s) at no charge in the event of loss or damage to the copy originally delivered hereunder); (ii) Licensor shall transfer electronically to Licensee (a) a copy of each Product specified in a Product Schedule, and (b) the applicable Documentation in accordance with the delivery instructions set forth in the applicable Product Schedule (in which case the Licensor and Licensee will execute a Certificate of Delivery and Installation after the delivery has been completed); or (iii) in the event the Licensee has chosen a hosted environment by which the Products will be accessed and utilized, Licensor shall provide Licensee with remote access to the Product(s). If the Licensee and Licensor do not specify a method of delivery in the applicable Product Schedule, the applicable Product shall be delivered via a tangible copy pursuant to clause (i) above.

- 4.2. **Installation.** Licensor will provide the services relating to installation of each Product to the extent and for the fees set forth in the applicable Product Schedule.

- 4.3. **Training.** Licensor will provide Licensee with training in the use and operation of each Product to the extent and for the fees set forth in the applicable Product Schedule.

- 4.4. **Other Professional Services.** Licensor will provide other necessary professional services required to cause the Product(s) to be fully functional and operational in the Licensee's operating environment to the extent and for the fees set forth in the applicable Product Schedule, SOW or EPP (which professional services may include Data Conversion, Database Configuration, Installation Services, Business and Workflow Process Evaluation, Project Analysis and Management, Project Documentation, Business and Process Re-engineering, and Executive-Level Training), provided that Licensee is solely responsible for procuring any and all hardware and third party software necessary for the Product(s) to operate in the Licensee's operating environment.

5. **Support and Maintenance.** Support and Maintenance for the Product(s) is defined and governed by a separate Support and Maintenance Agreement.

6. **Software Updates and Upgrades.**

- 6.1. **Incremental Versions.** So long as Licensee has a Support and Maintenance Agreement in place and is current on payments, Incremental Versions shall be provided to the Licensee as soon as such Incremental Versions have been made available or offered to any of MCM's other licensees. Such Incremental Versions shall not degrade the performance, functioning or operation of the Product(s), and MCM agrees to give Licensee all reasonably necessary assistance to install the same, at no additional cost to Licensee. For purposes of this Agreement, "Incremental Version" means a specific version of a Product containing a similar set of features and functions as previous version(s), but that is incrementally improved in terms of technical stability and reliability, including, without limitation, new versions that effect patches and fixes to a Product (for purposes of clarity, Incremental Versions shall be noted by incremental rather than whole version numbers (e.g., Version 1.1, Version 1.2, Version 1.3, etc.)). If MCM releases an Incremental Version of a Product, MCM shall have no further responsibility to provide Maintenance Services with respect to the superseded version of the Product, except that MCM will continue to provide Maintenance Services for such superseded version of the Product for twelve (12) months following the published date of the Incremental Version.

- 6.2. **New Versions.** MCM shall have no obligation or responsibility to provide Licensee with New Versions that may be offered for sale by MCM in the future. For purposes of this Agreement, "New Version" means a specific version of a Product containing a significant quantity of new or improved features and functions compared to previous version(s) (for purposes of clarity, New Versions shall be noted by whole version numbers (e.g., Version 1.0, Version 2.0, Version 3.0, etc.)). If MCM releases a New Version of a Product, MCM shall have no further responsibility to provide Maintenance Services with respect to the superseded version of the Product, except that MCM will continue to provide Maintenance Services for such superseded version of the Product for the longer of (x) twenty-four (24) months following the published date of the New Version and (y) the remainder of the then current Maintenance Period.

7. **Licensee Obligations.**

- 7.1. **Selection and Use.** Licensee accepts full responsibility for the selection, implementation after installation, and use of the Product(s) and Documentation to achieve Licensee's intended results.

- 7.2. **Licensee Resources; Third Parties.** Licensee shall provide MCM with access to such personnel, hardware and third-party software as may be necessary to install the Product(s) and provide the other services contemplated hereby, and Licensee shall be responsible for and obtain all rights from third parties necessary for MCM to perform any services contemplated hereby, including, without limitation, all rights of access and rights to modify, under copyright, confidentiality agreements, the Computer Fraud and Abuse Act, and all other forms and sources of rights or restrictions.

- 7.3. **Audit Rights.** Licensee shall allow MCM to periodically audit Licensee's usage of the Executable Code License granted hereunder to determine compliance with the user limitations and other terms set forth in the Product Schedule(s).

- 7.4. **International Law.** Licensee acknowledges that each Product is subject to U.S. export laws. Licensee agrees to comply with all applicable international and national laws that apply to the Product(s), including, without limitation, end-user, end-use, and destination restrictions. Without limiting the generality of the foregoing, additional information may be available at such locations as <http://www.bxa.doc.gov> or from third party resources. MCM is not responsible for the accuracy of the information at any such websites.

- 7.5. **Derivative Works.** Licensee shall not, and shall not attempt to, create, replicate, copy, adapt, 'unlock', translate, alter, reverse engineer, revise, disclose, or make derivative works of the Product(s) or Documentation (each a "Modification"), directly or indirectly by any method. Licensee agrees not to develop any software based on any portion or function of the Product(s) or Documentation. All copies, Modifications, and derivative works (whether or not authorized) automatically upon creation (i) belong solely to Licensor, (ii) become subject to the limitations and obligations of Licensee under this Agreement, and (iii) are excluded from any warranty or other obligation by MCM.
- 7.6. **No Distribution or Sublicenses.** Licensee's license and right to use the Product(s) does not include any license or right to distribute or sublicense the Product(s) or the Documentation. Without limiting the foregoing, the Licensee shall not use, distribute or sublicense the Product(s) in any manner that would cause the Product(s) to become subject to the terms of any "open source" license or agreement or any other license, agreement, or any condition or requirement in equity, law, or contract that would or could require the Product(s) to be (i) released or distributed outside the full control and discretion of MCM, or (ii) distributed or disclosed in source code form.
8. **Warranties.**
- 8.1. **MCM Warranties.** MCM warrants that: (i) it has the right to license the Product(s) to Licensee pursuant to this Agreement; (ii) Licensee's permitted use and possession of the Product(s) and Documentation will not violate the terms or conditions of any license, confidentiality agreement, non-competition agreement, employment agreement or any other agreement to which MCM may be subject; and (iii) neither the execution of this Agreement by MCM nor the performance by MCM of its obligations hereunder shall infringe any intellectual property rights of any third party with respect to the Product(s) or Documentation. The foregoing warranties shall survive the Installation Date for a period of one (1) year.
- 8.2. **Material Defects.** MCM warrants the Product(s) shall be free from material defects and shall operate substantially in accordance with the then current applicable Documentation for a period of sixty (60) days following the Installation Date.
- 8.3. **Remedy.** In the event of a breach of Section 8.2 hereof, MCM's sole responsibility for such breach shall be, at MCM's sole election, to: (a) correct such defects or failures to operate in accordance with specifications or provide a work-around solution; (b) replace any defective Product(s); or (c) correct any errors in MCM's Documentation to substantially conform to the intended performance of the Product(s) and resubmit such Documentation to Licensee. The foregoing obligations of MCM are void if (i) MCM does not receive prompt notice in writing from the Licensee of a breach prior to the end of the applicable 60-day period or (ii) MCM's examination of the applicable Product confirms that the Product has been (x) altered or modified by or on behalf of Licensee, other than by MCM, (y) subjected to negligence or computer or electrical malfunction, or (z) used, adjusted or installed in a manner inconsistent with the Documentation or other written instructions provided by MCM to Licensee hereunder, in which event Licensee shall be invoiced for any additional services rendered by MCM to remedy the problem at the then current rates at the time such services are performed.
- 8.4. **Warranty Limitation.** The warranty provided in Section 8.2 does not cover any portion of a Product that malfunctions for reasons not connected to the logic of the Product or for reasons not under the control of MCM. The performance of MCM's obligations under Section 8.3 shall be MCM's total maximum liability and MCM's entire obligation to the Licensee as a consequence of breach of Section 8.2 hereof, and the Licensee shall have no other claims against MCM as a result of such breach.
- 8.5. **Viruses.** Each Product that is provided by Licensor to Licensee under the terms of this Agreement shall be free, at the time of receipt by Licensee, of any programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), the purpose of which is to intentionally cause the Product to cease operating, or to damage, interrupt, interfere with or hinder the operation of the Product, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating or otherwise permit the unauthorized access to Licensee systems or data; provided that the Product may contain a program that enables cessation of access to, or operation of, the Product in the event Licensee does not make timely payment of amounts owed to it by Licensee hereunder. For the avoidance of doubt, the provisions of this Section 8.5 shall apply to each delivery of a Product, in whole or in part, to Licensee including each error correction, patch, update, workaround or other similar interim or partial delivery form of the Product.
- 8.6. **Professional Services.** MCM represents that all Services to be provided by MCM hereunder will be performed by qualified workers, and in a professional and workmanlike manner, and that the services will conform to the applicable requirements and specifications and to the standards applicable in the software industry. MCM agrees that if any such service is not in material compliance with this warranty and such non-compliance is brought to MCM's attention within a reasonable time after such services are performed, then as the sole remedy for a breach of this warranty MCM will re-perform the applicable services at MCM's sole cost and expense.
- 8.7. **Enjoined Software.** MCM warrants that if substantial use of a Product for its intended purpose is enjoined through a preliminary injunction, MCM shall, in its discretion and at no expense to the Licensee, either (i) procure for the Licensee the right to continue using the Product or (ii) replace or modify the Product so that it becomes non-infringing and is of equivalent or superior functionality. If neither of the foregoing alternatives are available, the Licensee may terminate the license granted in Section 1.1 only with respect to those areas where the use of the Product is found infringing. If the license is terminated, the Licensee will be entitled to, and MCM will remit to the Licensee, a refund of a proportionate amount of the fees paid hereunder for the license to use the Product. If the injunction or action is withdrawn or a settlement of such action is reached, the affected license(s) will be reinstated under the terms of this Agreement.
9. **Warranty Disclaimer.** LICENSEE ACKNOWLEDGES AND AGREES THAT, WITH THE EXCEPTION OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 8.1, 8.2, 8.5 and 8.6 HEREOF, LICENSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EITHER ORAL OR WRITTEN, EITHER EXPRESS OR IMPLIED, CONCERNING THE PRODUCT(S) AND DOCUMENTATION LICENSED HEREUNDER OR THE SERVICES TO BE PROVIDED HEREUNDER, AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR SPECIFICALLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES CONCERNING SUCH PRODUCT(S), DOCUMENTATION AND SERVICES, BOTH EXPRESS AND IMPLIED, ORAL AND WRITTEN, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ACCURACY OF DATA, SYSTEM INTEGRATION, AND ALL WARRANTIES RELATING TO RESULTS TO BE DERIVED FROM THE USE OF SUCH PRODUCT(S), DOCUMENTATION OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT. LICENSEE ACKNOWLEDGES THAT IT IS A SOPHISTICATED PARTY TO THIS AGREEMENT AND

RECOGNIZES AND AGREES THAT THIS PROVISION IS AN INTEGRAL PART OF LICENSOR'S PRICING AND AN IMPORTANT FACTOR IN ITS WILLINGNESS TO GRANT THE LICENSE HEREUNDER AND PERFORM SERVICES HEREUNDER.

10. **Limitations of Liability.** IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR NOT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OR DESTRUCTION OF DATA, BUSINESS INTERRUPTION, COSTS OF COVER, LOSS OF USE, LOSS OF ANTICIPATED REVENUES OR PROFITS, OR DAMAGES RESULTING FROM OR RELATING TO CLAIMS BROUGHT AGAINST LICENSEE BY THIRD PARTIES, REGARDLESS OF WHETHER LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND THE LICENSEE CANNOT CLAIM, DEMAND OR SEEK RECOVERY FROM LICENSOR OR ITS REPRESENTATIVES FOR ANY OF THE FOREGOING LOSSES OR DAMAGES AND LICENSOR WILL NOT INDEMNIFY THE LICENSEE FOR ANY SUCH CLAIMS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ANY PRODUCT LIABILITY AS A CONSEQUENCE OF LOSS OR DAMAGE TO PROPERTY WHICH, IN VIEW OF ITS NATURE, IS NORMALLY INTENDED FOR COMMERCIAL USE. IN NO EVENT SHALL LICENSOR'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH OR RELATING TO THE PRODUCT(S), DOCUMENTATION, SERVICES OR THIS AGREEMENT EXCEED THE AMOUNT OF THE LICENSING FEES AND OTHER AMOUNTS ACTUALLY PAID BY LICENSEE TO LICENSOR HEREUNDER. THESE LIMITATIONS SHALL APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE. NO CLAIM ARISING IN CONNECTION WITH THE PRODUCT(S), DOCUMENTATION, SERVICES OR THIS AGREEMENT MAY BE BROUGHT AGAINST LICENSOR MORE THAN ONE (1) YEAR AFTER IT ACCRUES.
11. **Confidentiality and Non-Disclosure.** Licensee agrees that the Product(s) and Documentation are unique and valuable assets of MCM and agrees to maintain the Product(s) and Documentation and all other Confidential Information of MCM in strict confidence and to use and disclose such Confidential Information only as permitted under this Agreement. For purposes of this Agreement, "Confidential Information" shall mean all information provided to Licensee by MCM, including, without limitation, the Product(s) and Documentation, Licensee proposals, pricing information, contracts and any other information exchanged between MCM and Licensee. Licensee shall prevent disclosure of the Confidential Information to persons or entities other than Licensee's employees, agents, subcontractors or representatives of MCM, or other persons at Licensee's premises, and Licensee may disclose Confidential Information to its employees, agents, subcontractors or representatives of MCM solely for purposes related to Licensee's permitted use of the Product(s) or Documentation hereunder. The foregoing restrictions on disclosure and use shall not apply with respect to any information which: (i) was or becomes publicly known through no fault of Licensee; (ii) was rightfully known or becomes rightfully known to Licensee without confidential or proprietary restriction from a source other than MCM; (iii) is independently developed by Licensee without reference to or reliance on Confidential Information; (iv) is required to be disclosed by law. Licensee hereby acknowledges and agrees that breach of this Section 10 would result in irreparable harm to MCM. MCM acknowledges that Licensee is subject to Texas Public Information Act (the "Act"). Should the Licensee receive a request for disclosure of Confidential Information pursuant to the Act, Licensee will promptly provide MCM notice of such request so that MCM may avail itself of any opportunities to establish reasons why the information should be withheld prior to disclosing such Confidential Information. The burden of establishing the applicability of exceptions to the disclosure of Confidential Information under the Act resides with MCM. Should MCM be unable to establish a valid exception from disclosure or exclusion from the Act, then Licensee may release the information, solely to the extent necessary to comply with the Act.
12. **Fees and Charges.**
 - 12.1. **License Fee.** Licensee shall pay to Licensor the licensing fees for the Product(s) being licensed hereunder set forth in the applicable Product Schedule(s). If the Product(s) are being acquired directly from MCM, then the Licensee is obligated to pay MCM according to the Product Schedule(s). If the Product(s) are being acquired via a reseller of MCM's Products, then the Licensee is obligated to pay such reseller according to payment terms and conditions agreed-upon between the Licensee and the reseller.
 - 12.2. **Taxes.** The fees payable under this Agreement do not include sales, use or other similar taxes. Licensee shall be solely responsible for paying, and shall pay, the full amount of any and all taxes imposed concerning the Product(s), Maintenance Services or other services contemplated hereby, excluding taxes based on Licensor's income, and Licensee hereby agrees to indemnify and hold Licensor harmless from and against any such sale, use or other taxes that Licensor may be pay or be compelled to pay. MCM (or any applicable reseller of MCM's Products) may elect, in its sole discretion, to issue a separate invoice for such taxes or indicate on the invoice the amount of taxes attributable thereto, provided that no such election shall negate Licensee's obligations set forth in the immediately preceding sentence.
 - 12.3. **Payment.** All payments due and payable to MCM hereunder shall be no later than thirty (30) days after Licensee's receipt of the applicable invoice from MCM which invoice shall reference the particular Product Schedule(s) to which it relates. Any milestone payments due by the Licensee shall be payable upon the completion of such milestone(s). If the failure to achieve any particular milestone, where the fault of achieving such milestone lies with the Licensee (e.g. hardware not available or accessible (staging, configuration, IT issues, etc.), personnel not available (vacations, PTO, etc.), personnel of Licensee not engaged or not responsive to Licensor communications and requests, etc.), then Licensee shall be billed as if the milestone has been achieved. Past due amounts shall survive the termination or expiration of this Agreement.
13. **Termination.**
 - 13.1. **Termination by Licensor.** Licensor shall have the right without further obligation or liability to Licensee (i) to terminate the license granted hereunder with respect to any Product to which the applicable license fee or any portion thereof has not been paid within thirty (30) days after receipt by Licensee of written notice from Licensor that such payment is past due; (ii) to terminate the license granted hereunder with respect to any Product to which Licensee is in material breach of its obligations under this Agreement, if Licensee fails to remedy such breach within thirty (30) days after receipt of written notice from Licensor of such breach; or (iii) to terminate the Maintenance Services with respect to any Product to which the applicable Maintenance Services fee or any portion thereof has not been paid within thirty (30) days after receipt by Licensee of written notice from Licensor that such payment is past due. In no event shall termination of the Maintenance Services pursuant to the foregoing clause (iii) prevent the Licensee from continuing to use, access, and benefit from the licensed Product(s).


- 13.2. **Bankruptcy Proceedings.** Either party may terminate this Agreement without prior notice upon (i) the filing of a voluntary petition in bankruptcy by the other party, or (ii) the passage of one hundred twenty (120) days after the commencement of any involuntary proceeding against such other party seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any bankruptcy, insolvency or other similar law, if the proceeding has not been dismissed during such one hundred twenty (120) day period.
- 13.3. **Termination by Licensee.** Licensee may terminate the license granted hereunder upon thirty (30) days written notice to MCM.
- 13.4. **Effect of Termination.** In the event of any termination of this Agreement or the license granted hereunder, Licensee shall not be relieved from making payments to MCM for all amounts due hereunder, including payment in full for the Product(s) and Maintenance Services through the end of the then current Maintenance Period and for all other professional services rendered through the date of termination. In addition, upon the termination of this Agreement or the license granted hereunder with respect to any Product, the rights granted hereunder to Licensee with respect to such Product shall immediately cease, and Licensee shall (i) upon Licensor's request and at Licensor's expense, return to Licensor or destroy the applicable Product together with all Documentation, notes, and other material provided by the Licensor relating to the Product; and/or (ii) upon Licensor's request, purge all copies of the applicable Product or any portion thereof from all computer systems and from any computer storage medium or device on which Licensee has placed or permitted others to place the Product.
14. **Independent Contractor.** The relationship of Licensor to Licensee shall be that of an independent contractor. Neither party shall have any authority to execute contracts or make commitments on behalf of the other party. Nothing contained herein shall be deemed to create the relationship of employer and employee, or principal and agent, joint venturer or partner between Licensor and Licensee.
15. **Security Policies.** Licensor and Licensee agree that their respective employees, while working at or visiting the premises of the other party, shall comply with all the internal rules and regulations of the other party, including security procedures, and all applicable federal, state, and local laws and regulations applicable to the location where said employees are working or visiting.
16. **Force Majeure.** Except with respect to the obligation to pay money, neither party will be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, acts of terrorism, strikes, supplier delays, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters.
17. **Entire Agreement; Priority; Governing Law.** This Agreement and the Product Schedule(s) referencing this Agreement, along with the related SOWs and EPPs, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties with respect thereto, and there are no warranties, representations and/or agreements between the parties in conjunction with the subject matter hereof except as specifically set forth or referred to herein. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas without regard to any choice of law rules that may direct the applications of the laws of another jurisdiction.
18. **Modifications.** All amendments to this Agreement must be in writing and must be signed by both parties hereto.
19. **Headings.** Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.
20. **Enforceability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
21. **Assignment.** This Agreement and the rights and duties hereunder shall not be assignable, whether by operation of law or otherwise, by Licensee except with the prior written consent of MCM in each instance. MCM may assign this Agreement and its rights and duties hereunder to a third party that acquires MCM, whether such acquisition is structured as an asset purchase, a securities purchase, a merger or otherwise.
22. **U.S. Government Restricted Rights Notice.**
- 22.1. **U.S. Government Agency.** If the Licensee is a unit or an agency of the United States Government, the terms of this Section 21 apply. If the Licensee is a civilian agency, each Product: i) was developed at private expense and is existing computer software and no part was developed with government funds; (ii) is trade secret of MCM for all purposes of the Freedom of Information Act; (iii) is a commercial item and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR), the Government's use, duplication or disclosure of the Product is subject to the restrictions set forth in this Agreement and any applicable Product Schedule, SOW or EPP between MCM and the U.S. government agency; (iv) is in all respects proprietary data of MCM; and (v) is unpublished and all rights are reserved under the copyright laws of the United States.
- 22.2. **U.S. Department of Defense.** If the Licensee is part of the Department of Defense: Each Product is commercial computer software (and commercial computer software documentation), and pursuant to DFAR § 227.7202, use duplication or disclosure of the Product is subject to the restrictions set forth in this Agreement and any applicable Product Schedule, SOW or EPP between MCM and the U.S. Government agency. In the event any technical data are not covered by these provisions, it shall be deemed "technical data - commercial items" pursuant to DFAR § 252.227-7015(a). Any use, modification, reproduction, release, performing displaying, or disclosing of such technical data shall be governed by the terms of DFAR § 252.227-7015(b).
23. **Dispute Resolution – Arbitration.** ALL CLAIMS, DISPUTES, AND OTHER MATTERS IN QUESTION BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING THE ENFORCEABILITY OF THIS ARBITRATION CLAUSE, WHETHER SUCH CLAIMS ARE BROUGHT IN CONTRACT, TORT OR OTHERWISE, SHALL BE

DECIDED BY ARBITRATION CONDUCTED IN CORPUS CHRISTI, TEXAS, IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION THEN PERTAINING, AND SHALL NOT BE DECIDED IN THE COURTS UNLESS THE PARTIES MUTUALLY AGREE OTHERWISE.

24. **Survival.** All terms of this Agreement, which by their nature would survive the termination of this Agreement, shall survive termination.

"MCM" or "LICENSOR"

MCM TECHNOLOGY, LLC

By: 

Name: Murray Shaw

Its Vice President of Sales

"LICENSEE"

City of Corpus Christi, TX

By: _____

Name: _____

Its _____

PRODUCT SCHEDULE #1

This Product Schedule summarizes the Product(s) being licensed by the Licensor. The Executable Code License granted hereunder shall be effective as of the Effective Date.

Product Name, Description, and Version:	Commshop powered by Motiondeck
Operating System	Server: Windows 2016 or later Workstation: Windows 7 or later
Database Platform	Microsoft SQL 2016 or later (requires SSRS)
Delivery Method	<i>Please initial the applicable delivery method:</i> <input checked="" type="checkbox"/> Tangible Copy <input type="checkbox"/> Electronic Copy <input type="checkbox"/> Hosted Access
Product deliverable form:	Executable Code: Included
Licensed # Users and Details	<i>Please fill in the agreed upon number of permitted users:</i> <input checked="" type="checkbox"/> 6 Core Commshop Seat Licenses <input checked="" type="checkbox"/> 4 Light User Licenses
Hardware	Specs and recommendations in Statement of Work
First year Support & Maintenance Term begins	Sign-off/Acceptance Date: ____/____/____
Fees:	
License Fees	\$45,730.00
Professional Services and Other Fees	\$61,200.00
First-Year Maintenance Services Fees	\$ 9,146.00
Payment Terms	If to MCM: Net 30 days per Section 11.4 of the Agreement.
Special Terms and Conditions	Years 2-5 Support & Maintenance quoted as optional: Year 2 – \$9,511.84 Year 3 – \$9,892.31 Year 4- \$10,288.01 Year 5 - \$10,699.53
Customization Services	N/A

SUPPORT & MAINTENANCE AGREEMENT

THIS SUPPORT AND MAINTENANCE AGREEMENT (this "Agreement"), dated as of the _____ day of _____, 2020 (the "Effective Date"), is made and entered into by and between **MCM Technology, LLC**, a Delaware limited liability company located at 3510 Vann Road, Suite 105, Birmingham, AL 35235 ("MCM" or "Licensor"), and the **City of Corpus Christi**, located at 1201 Leopard Street, Corpus Christi, TX 78401 ("Client" or "Licensee").

WHEREAS MCM and Client agree that Client is a bonafide Licensee of certain MCM software application(s), as evidenced by the Software License Agreement dated _____ ("License Agreement"), between MCM and Client, MCM and Client agree to the following provisions with regard to Maintenance and Support to be provided by MCM to Client.

1. **Maintenance.**

- 1.1. **First-Year Maintenance and Support.** Licensee agrees to purchase maintenance and support services ("Maintenance Services") for each Product, as defined in the License Agreement for a period of five (5) years commencing on the Acceptance Date applicable to the Product (the "Maintenance Period"). At the end of the initial five-year Maintenance Period, a contract extension may be negotiated at the then current rates.
- 1.2. **Maintenance and Support Services.** MCM shall, during the Maintenance Period and subject to payment of the Maintenance Service fees specified in the Project Schedule(s) in the License Agreement, provide Licensee with the following ongoing Maintenance Services for each Product:
 - 1.2.1. **Telephone, Email and Online Support.** Reasonable telephone and email support in the form of advice and counsel on Licensee's use of the Product. Telephone support shall be provided from 8:00 a.m. to 5:00 p.m. (Central Standard Time), Monday through Friday, exclusive of those holidays observed by Licensor. Licensor's support individuals ("Support Representatives") shall be reasonably competent in the use and operation of the Product. The Support Representatives will act as primary interface to Licensor for support purposes. Licensor will make all commercially reasonable efforts to address the problem identified by the Support Representative. Additionally, Licensee shall have access to MCM's Customer Portal on its Website, giving Licensor access to training manuals, tips and tutorials, product documentation, webinars, system patches and Incremental Version Updates.
 - 1.2.2. **Material Malfunctions and Defects.** In the event of a material malfunction or defect which does not permit a Product to operate substantially in accordance with the Documentation (as defined in the License Agreement), MCM shall perform the services described in Section 8.3 of the License Agreement (entitled "Warranties-Remedy"); provided, however, that Licensee fulfills the obligations set forth therein and the malfunction or defect occur in a supported version of the Product.
 - 1.2.3. **Licensee Obligation.** As a condition to Licensor's obligation to provide the Maintenance Services, Licensee agrees to furnish Licensor with all information, materials and/or access as requested by Licensor that may be needed and reasonably required for use in replicating, diagnosing and correcting a Product(s) problem reported by Licensee.
 - 1.2.4. **Customized Product(s).** Licensor shall not be obligated to provide Maintenance Services for any software other than the Product(s) delivered to Licensee. Licensor shall have no obligation to provide Maintenance Services for Product(s) that have been customized for Licensee by any party other than Licensor unless Licensee has obtained MCM's prior written consent to such modification. Notwithstanding the foregoing, error corrections shall only be provided for customized Products if the reported error is reproducible in the unmodified version. In such event, Licensor shall correct the error in the unmodified version and Licensee shall be responsible for the integration of the error correction into the modified version.
 - 1.2.5. **Licensee-Created Support Issues.** If any problem reported to MCM pursuant to this Section 1 of the Support and Maintenance Agreement is the result of Licensee's misuse of the Product(s) or is unrelated to the Product(s), Licensee shall reimburse MCM for the services provided to correct such malfunction, defect or nonconformity at MCM's then current published standard rates for such services.
 - 1.2.6. **Incremental Versions.** Incremental Versions shall be provided to the Licensee as soon as such Incremental Versions have been made available or offered to any of MCM's other licensees. Such Incremental Versions shall not degrade the performance, functioning or operation of the Product(s), and MCM agrees to give Licensee all reasonably necessary assistance to install the same, at no additional cost to Licensee. For purposes of this Agreement, "Incremental Version" means a specific version of a Product containing a similar set of features and functions as previous version(s), but that is incrementally improved in terms of technical stability and reliability, including, without limitation, new versions that effect patches and fixes to a Product (for purposes of clarity, Incremental Versions shall be noted by incremental rather than whole version numbers (e.g., Version 1.1, Version 1.2, Version 1.3, etc.). If MCM releases an Incremental Version of a Product, MCM shall have no further responsibility to provide Maintenance Services with respect to the superseded version of the Product, except that MCM will continue to provide Maintenance Services for such superseded version of the Product for twelve (12) months following the published date of the Incremental Version.
 - 1.2.7. **New Versions.** MCM shall have no obligation or responsibility to provide Licensee with New Versions that may be offered for sale by MCM in the future. For purposes of this Agreement, "New Version" means a specific version of a Product containing a significant quantity of new or improved features and functions compared to previous version(s) (for purposes of clarity, New Versions shall be noted by whole version numbers (e.g., Version 1.0, Version 2.0, Version 3.0, etc.). If MCM releases a New Version of a Product, MCM shall have no further responsibility to provide Maintenance Services with respect to the superseded version of the Product, except that MCM will continue to provide Maintenance Services for such superseded version of the Product for the longer of (x) twenty-four (24) months following the published date of the New Version and (y) the remainder of the then current Maintenance Period.

2. **Professional Services.** MCM represents that all Support and Maintenance Services and other services to be provided by MCM hereunder will be performed by qualified workers, and in a professional and workmanlike manner, and that the services will conform to the applicable requirements and specifications and to the standards applicable in the software industry. MCM agrees that if any such service is not in material compliance with this warranty and such non-compliance is brought to MCM's attention

within a reasonable time after such services are performed, then as the sole remedy for a breach of this warranty MCM will re-perform the applicable services at MCM's sole cost and expense.

3. **Support and Maintenance Service Fees.** Licensee shall pay to Licensor the fees for Maintenance Services set forth in the applicable Product Schedule(s) as defined in the License Agreement. If Maintenance Services are acquired directly from MCM, then the Licensee is obligated to pay MCM according to the Product Schedule(s). If Maintenance Services are being acquired via a reseller of MCM's Products, then the Licensee is obligated to pay such reseller according to payment terms and conditions agreed-upon between the Licensee and the reseller.
 - 3.1. **Maintenance Period Renewal.** The Maintenance Period will automatically renew for successive one (1)-year periods at the then current rates, unless canceled by either party by written notice at least sixty (60) days prior to the expiration of the then current term of the Maintenance Period.
 - 3.2. **Maintenance Service Reinstatement Fees.** In the event Licensee allows a Maintenance Period to lapse after any Maintenance Period, or if Licensee wishes to reinstate a previously-terminated Agreement, Licensee may reinstate Maintenance Services by paying (i) fifty percent (50%) of the fees for Maintenance Services that would have otherwise been payable during the period during which Maintenance Services were not being provided, and (ii) applicable periodic fees for the Maintenance Services to be provided during the Maintenance Period.
 - 3.3. **Taxes.** The license and Maintenance Service fees payable under this Agreement do not include sales, use or other similar taxes. Licensee shall be solely responsible for paying, and shall pay, the full amount of any and all taxes imposed concerning the Product(s), Maintenance Services or other services contemplated hereby, excluding taxes based on Licensor's income. MCM (or any applicable reseller of MCM's Products) may elect, in its sole discretion, to issue a separate invoice for such taxes or indicate on the invoice the amount of taxes attributable thereto, provided that no such election shall negate Licensee's obligations set forth in the immediately preceding sentence.
 - 3.4. **Payment.** All payments due and payable to MCM hereunder shall be no later than thirty (30) days after Licensee's receipt of the applicable invoice from MCM. Past due amounts shall survive the termination or expiration of this Agreement.
4. **Termination.**
 - 4.1. **Termination by Licensor.** Licensor shall have the right without further obligation or liability to Licensee to terminate the Maintenance Services with respect to any Product to which the applicable Maintenance Services fee or any portion thereof has not been paid within thirty (30) days after receipt by Licensee of written notice from Licensor that such payment is past due. In no event shall termination of the Maintenance Services prevent the Licensee from continuing to use, access, and benefit from the licensed Product(s).
 - 4.2. **Bankruptcy Proceedings.** Either party may terminate this Agreement without prior notice upon (i) the filing of a voluntary petition in bankruptcy by the other party, or (ii) the passage of one hundred twenty (120) days after the commencement of any involuntary proceeding against such other party seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any bankruptcy, insolvency or other similar law, if the proceeding has not been dismissed during such one hundred twenty (120) day period.
 - 4.3. **Termination by Licensee.** Licensee may terminate this Agreement upon thirty (30) days written notice to MCM.
 - 4.4. **Effect of Termination.** In the event of any termination of this Agreement, Licensee shall not be relieved from making payments to MCM for all amounts due hereunder, including payment in full for the Maintenance Services through the end of the then current Maintenance Period and for all other professional services rendered through the date of termination.
5. **Warranty Disclaimer.** LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EITHER ORAL OR WRITTEN, EITHER EXPRESS OR IMPLIED, CONCERNING THE SERVICES TO BE PROVIDED HEREUNDER, AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR SPECIFICALLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES CONCERNING SUCH SERVICES, BOTH EXPRESS AND IMPLIED, ORAL AND WRITTEN, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ACCURACY OF DATA, SYSTEM INTEGRATION, AND ALL WARRANTIES RELATING TO RESULTS TO BE DERIVED FROM THE USE OF SUCH SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT. LICENSEE ACKNOWLEDGES THAT IT IS A SOPHISTICATED PARTY TO THIS AGREEMENT AND RECOGNIZES AND AGREES THAT THIS PROVISION IS AN INTEGRAL PART OF LICENSOR'S PRICING AND AN IMPORTANT FACTOR IN ITS WILLINGNESS TO PERFORM SERVICES HEREUNDER.
6. **Limitations of Liability.** IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR NOT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OR DESTRUCTION OF DATA, BUSINESS INTERRUPTION, COSTS OF COVER, LOSS OF USE, LOSS OF ANTICIPATED REVENUES OR PROFITS, OR DAMAGES RESULTING FROM OR RELATING TO CLAIMS BROUGHT AGAINST LICENSEE BY THIRD PARTIES, REGARDLESS OF WHETHER LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND THE LICENSEE CANNOT CLAIM, DEMAND OR SEEK RECOVERY FROM LICENSOR OR ITS REPRESENTATIVES FOR ANY OF THE FOREGOING LOSSES OR DAMAGES AND LICENSOR WILL NOT INDEMNIFY THE LICENSEE FOR ANY SUCH CLAIMS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ANY PRODUCT LIABILITY AS A CONSEQUENCE OF LOSS OR DAMAGE TO PROPERTY WHICH, IN VIEW OF ITS NATURE, IS NORMALLY INTENDED FOR COMMERCIAL USE. IN NO EVENT SHALL LICENSOR'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH OR RELATING TO THE SERVICES OR THIS AGREEMENT EXCEED THE AMOUNT OF THE FEES AND OTHER AMOUNTS ACTUALLY PAID BY LICENSEE TO LICENSOR HEREUNDER. THESE LIMITATIONS SHALL APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE. NO CLAIM ARISING IN CONNECTION WITH THE PRODUCT(S), DOCUMENTATION, SERVICES OR THIS AGREEMENT MAY BE BROUGHT AGAINST LICENSOR MORE THAN ONE (1) YEAR AFTER IT ACCRUES.
7. **Force Majeure.** Except with respect to the obligation to pay money, neither party will be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, acts

of terrorism, strikes, supplier delays, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters.

8. **Entire Agreement; Priority; Governing Law.** This Agreement and the Product Schedule(s) referencing this Agreement, along with the related SOWs and EPPs, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties with respect thereto, and there are no warranties, representations and/or agreements between the parties in conjunction with the subject matter hereof except as specifically set forth or referred to herein. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas without regard to any choice of law rules that may direct the applications of the laws of another jurisdiction.
9. **Modifications.** All amendments to this Agreement must be in writing and must be signed by both parties hereto.
10. **Headings.** Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.
11. **Enforceability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
12. **Assignment.** This Agreement and the rights and duties hereunder shall not be assignable, whether by operation of law or otherwise, by Licensee except with the prior written consent of MCM in each instance. MCM may assign this Agreement and its rights and duties hereunder to a third party that acquires MCM, whether such acquisition is structured as an asset purchase, a securities purchase, a merger or otherwise.
13. **Dispute Resolution – Arbitration.** ALL CLAIMS, DISPUTES, AND OTHER MATTERS IN QUESTION BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING THE ENFORCEABILITY OF THIS ARBITRATION CLAUSE, WHETHER SUCH CLAIMS ARE BROUGHT IN CONTRACT, TORT OR OTHERWISE, SHALL BE DECIDED BY ARBITRATION CONDUCTED IN CORPUS CHRISTI, TEXAS, IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION THEN PERTAINING, AND SHALL NOT BE DECIDED IN THE COURTS UNLESS THE PARTIES MUTUALLY AGREE OTHERWISE.
14. **Survival.** All terms of this Agreement, which by their nature would survive the termination of this Agreement, shall survive termination.