

AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of October, 2017, hereinafter referred to as "Effective Date", by and between Webb County Court at Law II, an organization located and existing under the laws of the State of Texas, located at 1110 Victoria St. Suite 404, Laredo, TX, 78040, hereinafter referred to as "LICENSEE," and Advanced Computer Technologies, LLC, "ACT", of 101 Market Place, Montgomery, AL 36117 hereinafter referred to as "Licensor." Office of the Governor State Grant No. 2056406

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** LICENSEE agrees to hire Licensor as an independent contractor to provide web hosting and maintenance of the case management tool, DCCM, for use by LICENSEE.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate in one (1) year from the date of execution. This agreement shall be renewable at the end of the current term for a successive one (1) year term unless either party gives written notice of its intention not to renew before expiration of the current term.

3. **Scope of Work:** The Licensor shall license the software and provide the services outlined in Attachment A - Software License, Maintenance and Support, as well as Schedule A - Scope of Work and Schedule B - Maintenance and Support Procedures, These documents are attached hereto and by this reference are incorporated herein. In performing these services, the Licensor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

4. **Acceptance of Deliverables:** Except where this Contract provides different criteria, work will be accepted if it has been performed in accordance with the applicable scope of work ("services") for Licensor's work in Schedule A of Attachment.

5. **Payment:** in consideration of the services required by this Agreement, LICENSEE hereby agrees to pay to Licensor a total fee of \$12,500 (twelve thousand five-hundred dollars) for a period of one (1) year. This payment of \$12,500 (twelve thousand five-hundred dollars) will be due and payable upon execution of this agreement. In the event both parties renew this agreement, each subsequent year renewal, LICENSEE hereby agrees to pay Licensor a fee of \$10,000 (ten thousand dollars) for a period of one (1) year.

The Licensor shall be compensated on a fixed price basis.

6. **Warranty:** Licensor shall indemnify LICENSEE against any loss or expense arising out of any breach of any specified Warranty.

A. *Period of Coverage.* The Warranty period for software license and system design components covered under this Contract will begin on the date of execution, and will terminate one (1) year after agreement execution.

B. *Patent and Other Proprietary Right Indemnity.* The Licensor shall warrant all materials, products, and/or services produced pursuant to the contract. LICENSEE shall not infringe upon or violate any patent, copyright, trade secret, or other proprietary right of any third party: All executable programs, and all programming documentation relating thereto, including specifications developed by Licensor under any Service Order, shall be the property of Licensor provided, however, if Licensor grants LICENSEE the right to use such programs and documentation in accordance with the License set forth in Section 2 of Attachment A. Licensor may use without restriction any and all ideas, concepts, methods, know-how, or techniques related to the programming and processing of data discovered or developed by Licensor during the performance of professional services under any Service Order.

C. *Warranty of No Surreptitious, Malicious or Unauthorized Code.* The Licensor warrants that software provided hereunder will be free from any "Surreptitious, Malicious or Unauthorized Code." "Surreptitious and Malicious Code" means any back door, time bomb, or drop-dead device or other routine designed to disable a computer program with the passage of time or under the positive control of a person or party other than LICENSEE. Excluded from this prohibition are identified and LICENSEE-authorized features designed for purposes of maintenance or technical support. "Unauthorized Code" means any virus, Trojan horse, worm or other software routine or component designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data, or to perform any other such actions.

D. *Indemnification.* The Licensor shall defend, indemnify, and hold harmless LICENSEE and its agents, employees, and assigns against any loss, damages, expenses, or liability, including attorney fees, arising out of any breach, intentional or unintentional, of the Licensor's representations and warranties contained in this section.

7. **Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth *the* items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

8. **Liaison:** LICENSEE's designated liaison with Licensor is Arnold Lozano and Licensor's designated liaison with LICENSEE is Jim Binion.

9. **Confidentiality:** All financial, statistical, personal, technical and other data and information relating to LICENSEE's operations which are designated confidential by LICENSEE and made available to the Licensor to carry out this Contract, or which become available to the

Licensors in carrying out this contract, shall be protected by the Licensor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to LICENSEE. Licensor shall comply with all Federal, state and local confidentiality laws including but not limited to HIPAA and CFR42. Licensor shall not be required to keep confidential any data or information, which is, or becomes publicly available, is already rightfully in the Licensor's possession, is independently developed by the Licensor outside the scope of this Contract, or is rightfully obtained from third parties,

10. **Ownership of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by the Licensor in connection with the services rendered under this Agreement shall be the property of the Licensor whether the project for which they are made is executed or not. Use of the software by LICENSEE is solely for the purpose specified in this agreement. The Licensor shall preserve the confidentiality of all LICENSEE documents and data accessed for use in Licensor's *work* product.

11. **Independent Contractor Status:** The parties agree that Licensor is an independent contractor for purposes of this *Agreement* and is not to be considered an employee of LICENSEE for any purpose. Licensor is not subject to the terms and provisions of LICENSEE's personnel policies handbook and may not be considered a LICENSEE employee for workers' compensation or any other purpose. Licensor is not authorized to represent LICENSEE or otherwise bind LICENSEE in any dealings between Licensor and any third parties.

12. **Insurance: Licensor shall provide LICENSEE with proof of Commercial General liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$500,000 per claim, and in an amount not less than \$1 million per occurrence.**

13. **Taxes, Licenses and Permits:** Licensor is solely responsible for payment of all applicable taxes from the funds to be received under this contract. Licensor's federal tax identification number is 63-1142085. Licensor is further solely responsible for securing and maintaining all licenses and permits, and paying any inspection fees required for working in the State of Alabama.

14. **Right to Audit:** Licensor grants to the Office of the Legislative Auditor, Inspector General's Office, the Federal Government, and any other duly authorized agencies of the State of Alabama where appropriate the right to inspect and review all books and records pertaining to services rendered under this contract. Licensor shall comply with federal, state and/or local laws authorizing an audit of Licensor's operation as a whole, or of specific program activities.

15. **Record Retention:** Licensor agrees to retain all books, records, and other documents relevant to this contract *and the* funds expended hereunder for at least three years after project acceptance, or as required by applicable Federal or State law.

16. **Amendments In Writing:** Any alteration, variation, modification, or waiver of provisions of this contract shall be valid only when they have been reduced to writing, duly signed. No amendment shall be valid until all parties have executed it.

17. **Fund Use:** Licensor agrees not to use funds received for services rendered under this Contract to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Alabama Legislature or any local governing authority This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Alabama Legislature or any local governing authority.

18. **Nondiscrimination:** Licensor agrees that all hiring by Licensor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

19. **Governing Law and Venue:** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

20. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon LICENSEE and the Licensor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

21. **Successors and Assigns:** Neither LICENSEE nor the Licensor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

22. **Notice:** Any notice required or permitted to be given under this Agreement will be deemed properly made if given in writing and delivered in person, sent overnight courier, or mailed by certified or registered mail, postage prepaid to the addresses identified above,

23. **Headings:** Descriptive headings in this contract are for convenience only and shall not affect the construction or meaning of contractual language.

24. **Entire Agreement:** This contract, and any attachments specifically incorporated herein by reference, constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

WEB COUNTY LICENSEE

ADVANCED COMPUTER
TECHNOLOGIES, LLC LICENSOR

By: _____
The Honorable Victoria Villarreal
Webb County Judge

By: _____
Authorized Representative

ATTEST:

By: _____
Webb County Clerk

APPROVED AS TO FORM:

By: _____

Webb County Attorney*

*By law, the County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

ATTACHMENT A

Software License, Maintenance and Support

LICENSEE: DWI Court Program

License No.: P1010002

Address: 1110 Victoria St Suite 404
Laredo, TX, 78040

License Date: October 1, 2017

Advanced Computer Technologies, LLC, ("Licensor"), of 101 Market Place, Montgomery, AL 36 117 grants the software license set forth below to the "LICENSEE" named above under the following terms and conditions:

I. LICENSED SOFTWARE

The software covered by this Agreement ("Software") is identified on Schedule A to this Agreement. Additional software may be licensed hereunder from time to time by written agreement of LICENSEE and Licensor in the form of an amendment to Schedule A (Schedule A-1, A-2, etc.).

The term "Software" as used herein includes program object code and systems and operations documentation in their standard versions and as customized for LICENSEE by Licensor.

The *term* "Permitted Users" as used herein means the maximum number of individual users permitted to use the Software, whether at the Server location or by remote access. The term "Server" as used herein means to the server hosted by Licensor or a hosting company approved by Licensor. Under no other circumstances may the software be operated at the same time on more than the number of computers for which a separate license fee has been paid to Licensor.

2. LICENSE GRANT

2.1 Licensor grants LICENSEE the limited, non-exclusive and non-transferable right and license ("License") to **use** the Software identified on Schedule A (as may be amended from time to time) pursuant to the terms of this Agreement. All rights not expressly granted to LICENSEE are hereby reserved to Licensor. LICENSEE agrees that the Software is valuable, confidential and copyrighted property belonging solely to Licensor, and that LICENSEE has not purchased or been sold any interest in the Software except as expressly provided herein.

2.2 LICENSEE agrees that the Software will only be used, or copied for use, on computers located at the Server location(s) set *forth* on Schedule A to this Agreement. Subject to the terms of this Agreement, LICENSEE shall have the right to use the Software in the version set forth on Schedule A for LICENSEE's internal business purposes as set forth on Schedule A.

- 2.3 All data entered and stored in the software database by LICENSEE is the property of LICENSEE. LICENSEE understands that Licensor will have access to data collected by LICENSEE for the purpose of making any necessary system modifications, to provide technical support, generate descriptive reports, and to manage and maintain a repository of data that can be used to evaluate programs and policies. Licensor agrees to take all reasonable efforts to safeguard the data and protect the identity of persons entered into the database. Licensor agrees to comply with all state and federal statutes and regulations and contractual conditions with regard to the protection of client confidentiality.
- 2.4 LICENSEE agrees to prevent any unauthorized persons other than those intended for use of Software from using or having access to any part of the Software.
- 2.5 Any changes, additions, and enhancements in the form of new or partial programs or documentation as may be provided by Licensor under the maintenance and support services specified in Section 4 of this Agreement shall be part of the Software and shall remain the proprietary property of Licensor.
- 2.6 LICENSEE shall not distribute, sublicense, sell, rent, lease, lend, give, assign, transfer, modify, translate, disassemble, reverse engineer, or decompile the Software, or any portion thereof, or create any derivative works based thereon without Licensor's prior written consent.

3. LICENSE TERM

- 3.1 The License shall remain in effect unless and until terminated in accordance with this Section or Section 14. LICENSEE may terminate this License by destroying or returning to Licensor the Software, including all documentation and any copies thereof, and so notifying Licensor in writing. No such termination shall entitle LICENSEE to a refund of any fees or sums paid hereunder,
- 3.2 LICENSEE may not assign, deliver, sublicense or otherwise transfer this License or any of LICENSEE'S rights or obligations under this Agreement without the prior written consent of Licensor and any attempt by LICENSEE to do any of the foregoing without such consent will be void and will automatically terminate this Agreement, except that LICENSEE may, without Licensor's consent, assign this Agreement and all of LICENSEE's rights and obligations hereunder to any entity with which LICENSEE may be merged or consolidated, or any entity which acquires **all** or substantially all of LICENSEE'S assets, so long as the entity to which this Agreement is assigned is not an entity which licenses or sells software in direct competition with Licensor.

4. PROFESSIONAL SERVICES

- 4.1 Licensor agrees to perform those professional services which LICENSEE authorizes from time to time during the term hereof. Professional services included in the license fee for the Software are outlined in Schedule A. Professional services that are not included in the license fee for the Software may be provided by Licensor at the then-current rates, Professional services may include installation and demonstration of additional Software, implementation services, education and training and customization services, all as more fully described in a Service Order.

- 4.2 Upon LICENSEE'S request, Licensor will prepare a Service Order, substantially in the form attached as Schedule A, *containing, among other provisions, a description of the professional services to be performed and an estimate of the personnel services effort, processing charges, and other related costs.* A Service Order shall become binding upon execution of the Service Order by LICENSEE and Licensor. All such professional services shall be subject to the terms and conditions of this Agreement, including, without limitation, the provisions of Section 5 and 9 hereof.
- 4.3 All executable programs, and all programming documentation relating thereto, including specifications developed by Licensor under any Service Order, shall be the property of Licensor provided, however, if Licensor grants LICENSEE the right to use such programs and documentation in accordance with the License set forth in Section 2. Licensor may use without restriction any and all ideas, concepts, methods, know-how, or techniques related to the programming and processing of data discovered or developed by Licensor during the performance of professional services under any Service Order.
- 4.4 Prepaid services must be utilized within one year from the date of prepayment.
- 4.5 Unless otherwise set forth on a particular Service Order with respect to professional services performed on a fixed fee basis, all additional services performed at the specific request of LICENSEE or with LICENSEES' agreement hereunder will be billed on a time and materials basis, plus reasonable out of pocket expenses incurred by Licensor reimbursed to Licensor as provided under Schedule A hereof.

5. **LIMITED WARRANTY**

- 5.1 Licensor warrants that the Software will function in accordance with the documentation provided to LICENSEE therewith, Licensor further warrants *that the professional services and the maintenance and support services provided hereunder will be performed in accordance with the standard of care generally applicable in the industry.* If Licensor is notified of an error in the Software within ninety (90) days after delivery of the Software or is notified of a deficiency in the services within ninety (90) days of the performance of the services, Licensor shall provide the warranty services set forth in Section 9.1.
- 5.2 Except as set forth above, Licensor makes no other warranties of any kind, whether express or implied, with respect to the services and the software, including the documentation, or any updates, enhancements or releases thereto, or any other services or goods provided by Licensor to LICENSEE in connection with the agreement, including without limitation any warranties of merchantability or fitness for a particular purpose. Licensor does not warrant that either the functional specifications or the functions contained or to be contained in the software shall meet the LICENSEE's requirements or shall operate in the combination which LICENSEE selects for use, or that the operation or use of the software shall be uninterrupted or error free. LICENSEE assumes the responsibility for the selection of the software to achieve LICENSEE's intended results, and for the installation, use and results obtained from the software.

6. PROGRAM CHANGES

All program changes to the Software covered by this Agreement that are or have been developed for LICENSEE by Licensor shall automatically become part of the Software and all intellectual property rights in connection therewith shall automatically vest in Licensor and be subject to the terms and conditions of this Agreement. Any additions or modifications to the Software not programmed by Licensor shall not be subject to Licensor's warranty and Licensor shall have no duty to correct any errors associated therewith.

7. MAINTENANCE AND SUPPORT SERVICES

7.1 During the term of this Agreement and provided LICENSEE's maintenance and support fee has been paid, Licensor will:

- a. Supply LICENSEE with any improvements or modifications to the Software that Licensor does not charge for generally as options or as separate products.
- b. Provide off site communications such as telephone, facsimile and e-mail support between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday (excluding Licensor holidays), Central Standard Time, to the extent technically feasible to cause the Software to perform substantially in accordance with the documentation provided to LICENSEE therewith. Any required correction, replacement or services will be promptly accomplished after LICENSEE has identified and notified of any such error in accordance with the procedures, which are attached hereto as Schedule B. For purposes of providing the maintenance and support services, Licensor agrees to implement the maintenance and support procedures attached hereto as Schedule B and incorporated herein by reference. If LICENSEE specifically requests Licensor to visit LICENSEE's site in connection with the correction of one or more errors not covered by Licensor's maintenance and support services, LICENSEE shall reimburse Licensor for any out of pocket expenses incurred in connection therewith as described in Schedule A.

7.2 Any corrections or alterations to or new versions of the *Software* that Licensor may deliver to LICENSEE under this Agreement shall be limited to one copy of the Software set forth on Schedule A to this Agreement.

7.3 LICENSEE shall inform Licensor in writing of any changes, additions or modifications made to the *Software* by LICENSEE, or by any agents or consultants of LICENSEE that Licensor has agreed may have access to the Software. Although Licensor shall not be responsible for maintaining portions of the Software changed, added or modified by LICENSEE or for maintaining portions of the Software affected by LICENSEE's changes, additions or modifications, Licensor may, at its option, include some or all of such changes, additions or modifications in the Software in such a manner that these same changes, additions or modifications will be reproduced by Licensor for LICENSEE in subsequent releases of the Software. Licensor reserves the right to incorporate any such changes, additions or modifications into the Software for distribution to LICENSEEs in general, without any duty to pay a royalty or other fee associated therewith.

7.4 LICENSEE agrees to pay Licensor for time spent and expenses incurred if analysis and maintenance of a problem indicates it was not the result of a nonconformance in the Software with the documentation provided to LICENSEE therewith and if: (a) the Software has been modified, changed or altered by anyone other than Licensor unless authorized by Licensor in writing; (b) LICENSEE is not operating the then-current (or the immediate prior) release of the Software; (c) the computer hardware used in the operation of the Software is not in good operating order or is not installed in a suitable operating environment; (d) the computer hardware and hardware configuration used in the operation of the Software does not meet Licensor's recommended specifications; (e) the failure to perform substantially in accordance with the standard documentation is caused by LICENSEE or its agents, servants, employees or contractors (including, without limitation, by LICENSEE's failure to follow all instructions contained in such standard documentation); or (f) LICENSEE fails to notify Licensor promptly of such failure after *it is discovered*. These charges will be invoiced at Licensor's then-current rates plus reasonable out of pocket expenses. Licensor shall have no duty to provide error identification or correction if all sums then due to Licensor under this Agreement have not been paid or LICENSEE is otherwise in material breach of its obligations under this Agreement. Maintenance and Support Services will be provided for the then-current and immediate prior releases of the Software as specified by Licensor.

8. LICENSEE'S OBLIGATIONS

- 8.1 LICENSEE agrees to inform Licensor in writing of any perceived programming error in *the* Software that requires correction, together with such supporting file/record dumps and output reports/copies of screen displays as may be necessary or reasonably requested by Licensor to examine and trace the perceived programming error.
- 8.2 On request, LICENSEE agrees to provide Licensor with sufficient support and test time on LICENSEE's computer system to duplicate the error, certify that the error is with the Software and to certify that the error has been fixed.
- 8.3 LICENSEE shall bear the cost of error identification and correction, if any, at then prevailing rates, plus *any* out-of-pocket expenses, if after investigation by Licensor, Licensor determines that such error occurred as a result of one of the reasons listed in Sections 7,4(a) through (f) above.
- 8.4 LICENSEE shall bear any additional cost incurred or mandated by the State of Alabama to support and maintain this agreement.

9. LIMITATIONS ON REMEDIES;DISCLAIMER OF CONSEQUENTIAL DAMAGES

- 9.1 In the case of a breach of the warranty concerning the Software as set forth in Section 5 above, LICENSEE's sole and exclusive remedy and Licensor's only obligation shall be to cause the Software to operate substantially in accordance with the applicable functional specifications as stated in the standard documentation, In the case of a breach of the warranty concerning the services as set forth in Section 5 above, LICENSEE's sole and exclusive remedy and Licensor's only obligation is to re-perform the services. In the case of an alleged breach of the Software warranty, LICENSEE must give Licensor notice during the warranty period. In the case of an

alleged breach of the services warranty, LICENSEE must give Licensor notice within thirty (30) days after performance of the services or receipt of the deliverable resulting from the services, whichever is later.

- 9.2 Neither Licensor nor any distributor, LICENSEE or agent through whom LICENSEE obtained the software shall be liable for any lost profits or any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever suffered or incurred by LICENSEE as a consequence of the use or performance of the software, the documentation, the underlying algorithm or otherwise, even if Licensor has been advised of the possibility of such damages and whether or not any limitation on remedies is deemed to have failed in its essential purpose. In any event, under no circumstances shall Licensor be liable for any loss, cost, expense or damage to LICENSEE in an amount exceeding the initial license fee paid by LICENSEE to Licensor under this agreement, whether arising as a result of: (a) any breach of this agreement by Licensor; (b) any act or failure to act of Licensor; (c) Licensor's negligence or gross negligence; (d) any claim made against LICENSEE by any other party; or (e) otherwise; even if Licensor has been advised of the claim or potential claim. LICENSEE agrees that it shall not assert any claims against Licensor based on any theory of strict liability.
- 9.3 LICENSEE acknowledges that the Software is not intended for use by computer users in general but is intended for use only by business professionals and shall not in any form or manner substitute for the exercise of their professional or business judgment. LICENSEE agrees to bear full and exclusive responsibility and liability for the accuracy and appropriateness of the input and the use of the output of the Software by LICENSEE, LICENSEE's personnel, clients and customers.

10. INTELLECTUAL PROPERTY INDEMNITY

- 10.1 Licensor agrees to defend or, at its option, settle, at its expense, any action brought against LICENSEE to the extent that such action is based upon a claim that LICENSEE's use of the Software, including the related documentation, infringes upon or violates any U.S. copyright, trade secret, trademark or other proprietary right of any third party or patent known to Licensor.
- 10.2 If the Software or related documentation is held to constitute such an infringement or violation of any third party's proprietary rights and LICENSEE'S use thereof is or may reasonably be expected to be enjoined, Licensor shall, at its option, either secure for LICENSEE the right to continue to use such Software or documentation, or replace and modify such Software or documentation to make it non-infringing. If either option is not commercially reasonable, Licensor reserves the right to terminate the License and refund a pro rata share of the license and maintenance and support fees.
- 10.3 Notwithstanding the forgoing, Licensor in no event shall be liable for any claim under this Section which is based on: (a) LICENSEE's continued use of the Software after it has become aware of the existence of any claim or potential claim of the type referred to above or after it has been notified by of the existence of such a claim and has been requested to cease all use of the Software;

(b) the use or combination of the Software with any other software or hardware not supplied to LICENSEE by Licensor (c) any change, modification, addition or enhancement to or of the Software not made by or at the direction of or (d) LICENSEE's use of any but the latest available (or the immediately prior) release of the Software. **THE FOREGOING STATES THE ENTIRE LIABILITY OF Licensor AND LICENSEE REGARDING INTELLECTUAL PROPERTY RIGHTS CLAIMS BY THIRD PARTIES.**

11. INDEMNIFY

LICENSEE shall indemnify and hold Licensor harmless from and against any and all costs, claims, damages, expenses and liabilities of any kind with respect to any claims or suits brought by any third party arising out of LICENSEE's use of the Software (other than claims covered by Section 10), including, without limitation claims brought by LICENSEE's customers, LICENSEE agrees that the fee structure contained in this Agreement has been fixed in reliance upon the indemnity, limitation of liability and limitation of remedy provisions contained in this circumstances.

12. CONFIDENTIALITY

LICENSEE will, and will direct its employees, officers, directors, members, managers, agencies, sub-agencies, agents and affiliates to, keep the Software, including related documentation, and all information and materials concerning or related thereto secret and confidential at all times, to protect Licensor's proprietary rights therein, and not to disclose, disseminate or permit to be disclosed or disseminated any such information or materials to any person, except as expressly authorized hereunder to enable LICENSEE to carry out its obligations pursuant to this Agreement. LICENSEE will use the same degree of care to avoid disclosure or dissemination of any such confidential information as it employs with respect to its own information which it does not desire to have disclosed or disseminated.

13. NONSOLICITATION

Each party agrees that it will not, for the term of this Agreement and for a period of one year after any termination hereof, directly or indirectly, cause, induce or attempt to cause or induce any of the other party's employees or consultants to leave the employ of such party or to accept employment or engagement with the other party or any other employer, without the prior written consent of the other party hereto. In the event that either party breaches or attempts to breach any of the provisions of this Section, the

non-breaching shall have the right, in addition to such other remedies which may be available to it, to injunctive relief enjoining such breach or attempt to breach, it being acknowledged that legal remedies are inadequate.

14. TERMINATION

14.1 The initial term of this Agreement shall be for a period of one year. LICENSEE shall have the right to renew on each anniversary date for an additional year. LICENSEE shall give Licensor written notice sixty (60) days in advance of such anniversary date of its Intent to renew.

14.2 Licensor shall have the right to terminate this Agreement in its entirety if: (a) LICENSEE fails to pay any license fees, maintenance *and* support *fees* or any other fees or sums that it is required to pay under this Agreement or any Service Order and such failure continues for a period often (10) days after gives written notice of such nonpayment to LICENSEE; or (b) LICENSEE materially breaches any of its obligations under this Agreement and such breach continues for a period of thirty (30) days after gives written notice of such breach to LICENSEE. Licensor's right to terminate this Agreement hereunder shall not be *affected* in any way by its waiver of or failure to take action with respect to any previous failure or breach.

14.3 Upon any termination of this Agreement, pursuant to Section 14.2, LICENSEE shall cease using the Software, including the related documentation, and LICENSEE shall return to Licensor, or, if so directed by Licensor, destroy the Software and related documentation and all copies thereof, all at LICENSEE'S *sole cost and* expense. Simultaneously with such return or destruction, LICENSEE shall deliver to Licensor an affidavit certified by a duly authorized officer of LICENSEE stating that the original and all copies of all materials required to be returned to Licensor, or destroyed hereunder have been so returned or destroyed.

14.4 In no event shall any termination of this Agreement excuse either party from any breach or violation of this Agreement and full legal and equitable remedies shall remain available therefore, nor shall it excuse LICENSEE from making any payment due under this *Agreement* with respect to any period prior to the date of termination. Notwithstanding any provisions of this Agreement to the contrary, Sections 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, and 20 hereof shall *survive any* termination of this Agreement.

15. CUMULATIVE RIGHTS AND REMEDIES

All rights and remedies herein conferred upon or reserved to the parties in this Agreement shall be cumulative and concurrent and shall be in addition to all other rights and remedies available to such parties at law or in equity or otherwise. Such rights and

remedies are not intended to be exclusive of any other rights or remedies and the exercise by any party of any right or remedy herein provided shall be without prejudice to the exercise of any other right or remedy by such party provided herein or available at law or in equity.

16. GOVERNING LAW AND JURISDICTION

16.1 This Agreement and the validity, construction and performance hereof shall be governed by and construed in accordance with the laws of the State of Alabama, without giving effect to Alabama choice of law principles.

16.2 In the event that the parties are unable to resolve, within a reasonable time, any controversy, dispute or claim arising out of or relating to this Agreement, or its interpretation, performance, breach or termination, the parties agree to first discuss the dispute informally at the corporate officer level. In the event that a resolution is not achieved at that level, the parties shall each designate one member of senior management to negotiate the dispute directly. In the event that such negotiation is not successful in achieving the resolution of the dispute, then either of the parties may submit such dispute to binding arbitration in Montgomery, Alabama, before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitrator shall have the right and authority to determine how the decision or award as to each issue and matter in dispute may be implemented or enforced. The arbitrator may not amend this Agreement. Any decision or award shall be final and conclusive on the parties. There shall be no appeal other than for bias, fraud or misconduct. Judgment upon any decision or award may be entered in any court of competent jurisdiction. The arbitrator shall have no authority to award punitive damages against Licensor.

17. FORCE MAJEURE

Neither party shall be deemed to be in breach or default of this Agreement if there is any total or partial failure in the performance by it of its duties and obligations hereunder occasioned by any acts of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, priorities, strike, labor disputes or whatever nature and any other reason beyond such party's reasonable control.

18. SUCCESSORS AND ASSIGNS

This Agreement, and all rights and powers granted hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

19. NOTICES

All notices, requests, demands and other communications required or permitted to be made hereunder shall be in writing and shall be deemed duly given if hand delivered against a signed receipt therefore, sent by registered or certified mail, return receipt requested, first class postage prepaid, or sent by nationally recognized overnight delivery service, in each case addressed to the party entitled to receive the same at the address specified below:

- a. If to Licensor, then to:

Advanced Computer Technologies
101 Market Place
Montgomery, AL 36117

- b. If to LICENSEE, then to:

Any party may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice.

20. MISCELLANEOUS

- 20.1 Waivers. Any delay of forbearance by either party in exercising any right hereunder shall not be deemed a waiver of that right.
- 20.2 Amendments. This Agreement may not be amended, modified, varied or supplemented except by a writing signed by duly authorized representatives of both parties.
- 20.3 Limitation of Actions. Any arbitration by either party for breach of this Agreement must be commenced within two years after the complaining party knew or should have known of such breach.
- 20.4 Severability. The provisions of this Agreement are independent of and severable from each other. No provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any one or more of the other provisions hereof may be invalid or unenforceable in whole or in part.
- 20.5 Titles. The titles of the Sections and subsections of this Agreement are for convenience or reference only and are not in any way intended to limit or amplify the terms or conditions of this *Agreement*.
- 20.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement.
- 20.7 Entire Agreement. This Agreement and the schedules hereto, together with any Service Orders executed by the parties, shall constitute the full and entire understanding and agreement between the parties with regard to the *subject matter* hereof and thereof, and supersede all prior agreements, understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof shall control and supersede any course of performance and/or usage of trade inconsistent with any of the terms hereof.

The license will become effective upon LICENSEE'S execution and delivery of this Agreement and receipt by Licensor of the initial license fee, whereupon all of the terms and provisions of this Agreement shall become binding upon LICENSEE and Licensor.

SCHEDULE A

Scope of Work

"Services", "Tasks" and other terms referenced *below for* purposes of the Software License and Services Agreement ("Agreement") by and between Licensor and LICENSEE shall mean and include the following:

Server Location(s): Advanced Computer Technologies

Product Name	Version	No. of Licensed Locations
DCCM	3.0	1

Licensed Location:

DWI Court Program LICENSEE

SCOPE OF WORK ("SERVICES"):

Licensor shall provide professional services to LICENSEE **as** requested by LICENSEE consisting of:

- Basic modifications to the application that do not require re-programming. This includes changes to the wording of items and help menus, as well as minor changes to cut-offs. LICENSEE will provide complete list of basic modifications (see attached) requested within 10 working days of execution of agreement.

Initial Training of the personnel and supporting staff. Licensor will schedule training within 30 working days of receipt of complete basic modifications list from LICENSEE.

- Hosting and maintenance of the product website.
- Maintenance of a "help desk" by phone or online messages to answer substantive questions about the intent of the items and how to administer the application.

*Any additional work, such as re-programming or generation of new reports or data analyses, will be billed separately at Licensor's customary hourly rate. Currently, the hourly rate for Licensor is \$145.00 (one hundred and forty-five dollars). In addition, if onsite trainings are requested after the initial training, additional costs will be charged for time and travel-related expenses of Licensor staff. Licensor will submit a monthly invoice and work breakdown detailing the number of hours worked and services rendered.

SCHEDULE B

Maintenance and Support Procedures

LICENSEE shall reasonably determine the Severity Level of errors and will make commercially reasonable efforts to provide a resolution designed to solve or by-pass a reported error, pursuant to the below protocols. If such error has been corrected in a maintenance release, LICENSEE must install and implement the applicable maintenance release; otherwise, the update may be provided in the form of a temporary fix, procedure or routine, to be used until a maintenance release containing the permanent update is available. In all cases, resolution of issues by Licensor will require the LICENSEE to assist in the documentation and reproduction, of the error, provision of a LICENSEE contact person with whom Licensor can maintain contact to arrange for analysis, testing, systems, and other resources and other tasks in support of resolution of the LICENSEE's error and to whom status reports and requests for resources can be addressed.

Severity Level 1 (High/Urgent): Licensor promptly initiates the following procedures: (1) assigns Help Desk representative to correct *the* error on an expedited basis; (2) provides ongoing communication on the status of an update; and (3) begins to provide a temporary workaround or fix. A Severity Level One error means the (i) system is severely impacted or completely shut down, or (ii) system operations or mission-critical applications are down.

Severity Level 2 (Medium): Licensor assigns a Help Desk representative to begin an update, and provides additional, escalated procedures as reasonably determined necessary by Licensor support staff. Licensor exercises commercially reasonable efforts to provide a workaround or include a fix for the Severity Level 2 errors in the next maintenance release. A Severity Level Two error means (i) the system is functioning with limited capabilities, or (ii) is unstable with periodic interruptions, or (iii) mission critical applications, while not being affected, have experienced system interruptions.

Severity Level 3 (Low/Future): Licensor may include an update in the next maintenance release. A Severity Level Three error means there (i) are errors in the application, (ii) is a need to clarify procedures or information in documentation, or (iii) is a request for a product enhancement.

Severity Level	Targeted First Response	Targeted Resolution Time	Targeted Status Report	Management Notification
Level 1	Within 1 business hour	Continuous effort until resolved	LICENSEE Agreement	Within 1 business Day
Level 2	4 business hours	Workaround or include fix in next maintenance	Every other working day	Within 2 business days
Level 3	8 business hours	Update may be included in next maintenance release.	N/A	N/A