



CBM ARCHIVES CO., LLC

THE COMPLETE DOCUMENT MANAGEMENT SOLUTION

APPENDIX D TO DIR CONTRACT NO. DIR-SDD-1764

CBM SOFTWARE LICENSE AGREEMENT

between

CBM ARCHIVES CO., LLC (Licensor)

and

_____ (Customer)

Limited use of the Licensed Software by Customer is hereby licensed under the terms set forth in this License Agreement (“Agreement”). By this Agreement Licensor does not sell or transfer title to the Licensed Software, or to any copies or media bearing copies of the Licensed Software, or to any rights in intellectual property embodied in the Licensed Software. Customer’s license of the Licensed Software does not commence until customer has paid the License Fee and executed this Agreement, and an Authorized representative of Licensor has accepted such payment and has received, accepted, and executed a copy of this License Agreement as executed by Customer.

1. **License.** In consideration of the payment of the Fee and Customer’s agreement to the terms set forth herein, Licensor grants Customer a nonexclusive license to use the computer software in machine-readable form, and to use related materials, including documentation and listings, identified in Exhibit A, which together constitute the “Licensed Software,” subject to the following terms and conditions.
2. **Scope of Rights.** Customer may:
 - a. Install, use and execute the Licensed Software on one computer in Customer’s own facility at the location specified in Exhibit A, for purposes of serving the internal needs of Customer’s business; and
 - b. Make one copy of the Licensed Software in machine-readable, object code form, for nonproductive backup purposes only, provided that Licensor’s proprietary legend and copyright notice are included with the copy.
3. **Payment and Acceptance of License Fee as Conditions Precedent to License.** The fee for the license granted by this Agreement is specified in Exhibit A. Pricing shall be in accordance with Appendix C, Pricing Index, DIR Contract No. DIR-SDD-1764. Customer must deliver payment of the License Fee to Licensor’s Authorized Representative and Licensor must accept such payment, as conditions precedent to (a) the grant of any rights under this Agreement, and (b) delivery of the Licensed Software to Customer. Upon Licensor’s or Licensor’s Authorized Representative’s acceptance of the payment and of this Agreement executed by Customer, the license under this Agreement commences and Licensor will deliver

the Licensed Software. Payment shall be made in accordance with Section 9C of Appendix A, DIR Contract No. DIR-SDD-1764.

As stated in Section 4.F. of the DIR Contract No. DIR-SDD-1764, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes per Section 151.309 of the Texas Tax Code. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

4. **Customer's Responsibilities.** Customer is responsible for selecting an operator who is qualified to operate the Licensed Software on Customer's own equipment and is familiar with the information, calculations, and reports that serve as input and output of the Licensed Software.

The Licensed Software is designed for use with the hardware, peripheral equipment and accessories specified in Exhibit A. Except as agreed otherwise in writing, Licensor assumes no responsibility under this Agreement for obtaining or providing such equipment. Customer is also responsible for ensuring a proper physical environment for computer equipment and proper utilities for the computer system on which the Licensed Software will operate, including an uninterrupted power supply.

Except as agreed otherwise in writing, Licensor assumes no responsibility under this Agreement for converting Customer's data files for use with the Licensed Software.

5. **Proprietary Protection and Restrictions.** Licensor retains sole and exclusive ownership of all right, title, and interest in and to the Licensed Software and all copies of the Licensed Software, including all copyrights, patent rights, trade secrets and other rights in intellectual property embodied in the Licensed Software, and all modifications and enhancements thereof, subject only to the rights expressly granted to Customer in this Agreement. This Agreement does not provide Customer with title or ownership of the Licensed Software, any copies of the Licensed Software, or any media provided by Licensor bearing copies of the Licensed Software, but only a right of limited use. This Agreement gives Customer no rights in the Licensed Software or any copies thereof that can be assigned, transferred or sublicensed except as expressly provided in this Agreement.

Customer may not use, copy, modify, or distribute the Licensed Software (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, except as expressly provided in this Agreement. Customer may not reverse assemble, reverse compile, reverse engineer, or otherwise translate the Licensed Software to human-readable or any other form. Customer may not prepare derivative works from the Licensed Software.

Customer's rights may not be transferred, leased, assigned, or sublicensed except for a transfer of the license rights granted under this Agreement to (1) a successor in interest of Customer's entire business who assumes the obligations of this Agreement; or (2) any other party who is reasonably acceptable to Licensor, enters

into a substitute version of this Agreement, and pays an administrative fee intended to cover attendant costs.

Assignments shall be in accordance with Section 4D of Appendix A, DIR Contract No. DIR-SDD-1764.

Customer may not possess a copy of or install the Licensed Software at a location not identified in Exhibit A without Licensor's express permission obtained in advance (which will not be unreasonably withheld). Customer may not install the Licensed Software on more than one computer; provided, however, that Customer may copy the Licensed Software to another computer if the computer on which the Licensed Software was originally installed is taken out of service.

If Customer exceeds the space of the license granted in this Agreement, or takes any of the actions prohibited under **Section 5**, Customer's license under this Agreement is automatically terminated.

To the extent authorized under Texas Law and constitution, Customer acknowledges and agrees that, in the event Customer exceeds the scope of the license granted under this Agreement, or takes any of the actions prohibited under this **Section 5**, Licensor will not have an adequate remedy at law, and Licensor will be entitled to an injunctive relief prohibiting further unauthorized uses or acts relating to the Licensed Software without having to prove that Licensor will suffer irreparable harm absent a grant of such relief. Licensor's right to injunctive relief will not foreclose or in any way limit its right to other remedies.

Indemnification, Infringements shall be in accordance with Section 9A of Appendix A, DIR Contract No. DIR-SDD-1764. If such a claim is made or appears possible, Customer agrees to permit Licensor to enable Customer to continue to use the Licensed Software, or to modify or replace the Licensed Software. If Licensor at its sole discretion determines that none of these alternatives is reasonable under the circumstances, Customer agrees to cease use and return all copies of the Licensed Software to Licensor upon Licensor's written request, to the extent authorized by applicable records retention laws and policies and Licensor will then compensate Customer in an amount equal to Customer's net book value for the license granted by this Agreement, determined in accordance with generally accepted accounting principles, plus a fraction of any Maintenance and Support Fee paid (if applicable), calculated by multiplying the Maintenance and Support Fee paid for the then-current term of the Maintenance and Support Agreement by the ratio of the number of days remaining in the term over 365. However, Licensor has no obligation, responsibility or liability for any claim by a third party based on Customer's modification of the Licensed Software or its combination, operation, or use with any product, data, or apparatus not specified or provided by Licensor, provided that such claim solely and necessarily is based on such combination, operation, or use and such claim would be avoided by combination, operation, or use with products, data, or apparatus specified or provided by Licensor. **This paragraph states Licensor's entire obligation to Customer with respect to any claim of infringement.**

6. **Limited Express Warranty; Disclaimer of Implied Warranties; Limitation of Remedies.** Licensor expressly warrants, for Customer's benefit alone, only that the Licensed Software conforms in all material respects to the written descriptive and/or instructive materials Licensor has issued in connection with the Licensed Software. This warranty is expressly conditioned on Customer's observance of the operating, security, and data-control procedures set forth in the User's Manual included with the Licensed Software. Licensor makes no other warranties, express or implied, and disclaims any warranties that the Licensed Software conforms with oral or written statements or descriptions by persons other than Licensor, including dealers, distributors or Authorized Representatives.

For any material nonconformity or demonstrable defect in the Licensed Software for which Licensor is responsible, discovered within **180 Days** of the date of Licensor's acceptance of this Agreement, Licensor shall attempt through reasonable effort to correct or cure such nonconformity or defect by issuing corrected instructions, a revision, a bypass or an updated build. In the event Licensor does not correct or cure such nonconformity or defect after it has had a reasonable opportunity to do so, Customer's exclusive remedy shall be the refund of the amount paid as the License Fee for the nonconforming or defective module of the Licensed Software. Licensor shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Licensed Software if Customer has made any changes whatsoever to the Licensed Software, if the Licensed Software has been misused or damaged in any respect by Customer, or if Customer has not reported to Licensor the existence and nature of such nonconformity or defect **within 30 days** after discovery thereof.

Except as expressly set forth in this Agreement, Licensor disclaims any and all statements, representations, affirmations, descriptions, promises, assurances and warranties, express or implied, with respect to the Licensed Software, including its condition, its conformity to any representation or description, the nonexistence of any latent or patent defects, any negligence, or its merchantability or fitness for a particular purpose.

The cumulative total liability of Licensor to Customer for any and all claims relating to the Licensed Software and this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of the License Fee Customer has paid. This limitation of liability is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective. This limitation of liability shall not apply to the indemnification provided in **Section 5** hereof. Licensor shall have no liability for loss of data or documentation, it being understood that Customer is responsible for reasonable backup precautions.

Under no circumstances shall Licensor be liable for any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against Customer (except as set forth in **Section 5**), even if Licensor has been advised of the possibility of such claims or demands. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

Customer may have additional rights under certain laws (e.g., consumer laws) that do not allow the exclusion of implied warranties, or the exclusion or limitation of certain remedies. If such laws apply, the exclusions or limitations set forth in this Section apply to the extent permissible under such laws, and there are no warranties or remedies under this Agreement beyond what are set forth in this Agreement or absolutely required by such laws.

7. **Term of Agreement; Termination.** This Agreement takes effect on the date of Licensor's acceptance of payment of the License Fee by Customer, and shall continue until DIR Contract No. DIR-SDD-1764 is terminated or expires if agreed to by the parties in writing. Termination shall be in accordance with Section 10B of Appendix A, DIR Contract No. DIR-SDD-1764.

At the expiration of the term or earlier termination of this Agreement, all rights granted to Customer under the Agreement will automatically terminate and revert to Licensor. Promptly upon expiration of the term or termination of this Agreement for any reason, Customer must return or destroy, as requested by Licensor, all copies of the Licensed Software (whether modified or unmodified), and all copies of works derived from the Licensed Software, and all other materials pertaining to the Licensed Software (including all copies thereof), in Customer's possession. Customer agrees to certify Customer's compliance with such restriction upon Licensor's request.

8. **Jurisdiction; Forum Selection.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States. For any action arising under or relating to this Agreement, Customer irrevocably submits to the jurisdiction of the state courts of Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

9. **Miscellaneous**

No modification of this Agreement will be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought.

In the event that any of the terms of this Agreement is or becomes or is declared to be invalid or void by any court or tribunal of competent jurisdiction, such term or terms shall be deemed severed from this Agreement and all the remaining terms of this Agreement shall remain in full force and effect.

This Agreement (and the accompanying Appendix E, Maintenance and Support Agreement, if applicable) and DIR Contract No. DIR-SDD-1764 are the complete and exclusive statement of Licensor's obligations, responsibilities and liabilities to Customer and supersedes any other proposal, representation, or other communication by or on behalf of Licensor relating to the subject matter hereof. In

the event of a conflict between this Agreement and the DIR Contract No. DIR-SDD-1764, the DIR Contract controls.

Accepted and Approved:

Customer _____

CBM Archives Co., LLC (Licensor)

By _____

By _____

Title _____

Title _____

Date _____

Date _____

(License commences upon date of acceptance by Licensor)

APPENDIX D TO DIR CONTRACT NO. DIR-SDD-1764

EXHIBIT A

1. [Identification of Licensed Software modules, accompanying documentation and specifications.]
2. [Location of licensee's facility (installation site).]
3. [License Fee.]
4. [Necessary hardware and accessories.]

APPENDIX D TO DIR CONTRACT NO. DIR-SDD-1764

CBM SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT
(To accompany CBM Software License Agreement)

between

CBM Archives Co., LLC (Licensor)

and

_____ (Customer)

For and in consideration of Customer's payment of the Maintenance and Support Fee on the terms set forth herein and Customer's acceptance of the responsibilities set forth herein, Licensor agrees as follows:

1. Customer's responsibilities: This Software Maintenance and Support Agreement is based, in part, upon Customer (a) at all times having a qualified person in Customer's employ assigned the responsibilities of a system operator, and assigned the responsibilities of acquiring and maintaining knowledge and information concerning, and operating, the CBM Software system; (b) having purchased training services appropriate under the circumstances; (c) having purchased installation services appropriate under the circumstances; (d) having in place an in-house, front-line help desk function to receive and respond to help calls on basic matters from Customer's users and to screen questions that do not relate directly to the Licensed Software; and (e) Customer installing and using the Licensed Software on the hardware identified in Exhibit A to the accompanying CBM Software License Agreement.
2. Telephone Support: Licensor will provide, through its Authorized Representative at the telephone number set forth below, telephone support for the Licensed Software during the hours of _____ (specify time zone) and days of _____, and during the term of this Maintenance and Support Agreement. Such telephone support will be available only to Customer's system operator and not to Customer's users generally. Customer will be responsible for all charges for telephone service by the telephone service provider.

Licensor's Authorized Representative: _____

Support Telephone Number: _____

Licensor reserves the right to, at any time, change the Authorized Representative who will provide telephone support. In the event of such a change, Licensor will notify Customer.

Licensor's obligation to provide telephone support hereunder relates only to the installation, operation and use of the CBM Software itself, and will not include coverage of issues relating to Customer's choices or use of hardware, peripheral

equipment and/or accessories not identified in Exhibit A to the accompanying CBM Software License Agreement. Additionally, Licensor's obligation to provide telephone support hereunder will not include responding to questions readily answered by the applicable user's manuals and/or published product information updates, or any other consultation sought as a result of Customer's failure to fulfill its responsibilities set forth in Paragraph 1. Further, Licensor's obligation to telephone support hereunder does not extend to include consultative advice on the theory and practice of implementing the software.

Fees for all calls to the Licensor's Authorized Representative relating to Customer's choices or use of hardware and/or accessories not identified in Exhibit A to the accompanying CBM Software License Agreement, to matters which are the subject of appropriate training or questions readily answered by the applicable user's manuals and/or published product information updates, or to matters not directly related to the Licensed Software, will be charged at Licensor's Authorized Representative's hourly rate of \$_____. Pricing shall be in accordance with Appendix C, Pricing Index, of DIR-SDD-1764.

3. Updated Builds: From time to time Licensor may, at its option and discretion, issue updated builds of the Licensed Software which are available for downloading via the Internet. Customer may download and install such updated builds free of additional charge.
4. New Versions: From time to time Licensor may, at its option and discretion, introduce updated and/or upgraded versions ("New Versions") of the Licensed Software. Provided that the Maintenance and Support Agreement is in effect at the time Licensor introduces any such New Version to the market, Licensor will provide such New Version, and any accompanying documentation and manuals, for installation and use by Customer, subject to and under the terms of the accompanying CBM Software License Agreement, free of additional charge.

In this Maintenance and Support Agreement has expired without renewal hereof by Customer upon the terms set forth herein, Customer will have no right to receive New Versions of the Licensed Software.

If Customer receives and installs a New Version under the Maintenance and Support Agreement, Section 6 of the accompanying CBM Software License Agreement is hereby modified to extend the term of Customer's license for use of such New Version and any other Licensed Software with such New Version is designed to be used for a period of ten years from the date of Customer's receipt of a copy of the New Version.

5. Annual Maintenance and Support Fee; Term of Agreement; Renewal: The annual Maintenance and Support Fee for this Maintenance and Support Agreement is _____. In order to be entitled to the services and benefits provided hereunder, Customer must pay this fee in advance of the commencement of the term hereof. Customer's failure to pay the Maintenance and Support Fee will render this Maintenance and Support Agreement null and void. Pricing shall be in

accordance with Appendix C, Pricing Index, of DIR Contract No. DIR-SDD-1764. Payments shall be made in accordance with Section 7C of the DIR Contract No. DIR-SDD-1764.

The term of this Maintenance and Support Agreement commences on the same date that the accompanying CBM Software License Agreement is accepted by Licensor. Provided that payment of the Maintenance and Support Fee is received by Licensor, the term of this Maintenance and Support Agreement will continue from said date for one year.

Subject to Licensor's reservations of rights set forth below, Customer may renew this Maintenance and Support Agreement at the end of each term for another one-year term, by paying another Maintenance and Support Fee at any time prior to the date of expiration of the then-current term upon Licensor issuing an invoice for the period applicable maintenance period; provided, however, that Licensor reserves the right to increase the Maintenance and Support Fee required for renewal by giving Customer at least 60 days' written notice of such increase in advance of the date of expiration of the then-current term.

Licensor reserves the right to decline to renew this Maintenance and Support Agreement, for any reason or no reason, upon giving Customer at least 60 days' written notice prior to expiration of the then-current term of Licensor's intent to decline renewal. In the event Licensor declines renewal, Licensor will return any Maintenance and Support Fee paid by Customer for renewal.

Licensor reserves the right to, at any time, discontinue support for any builds or versions of the Licensed Software that have been superseded by updated builds or New Versions.

6. This Maintenance and Support Agreement supplements, but except where expressly stated does not modify any of the terms of the CBM Software License Agreement or DIR Contract No. DIR-SDD-1764, and is subject to all of the terms of the CBM Software License Agreement and the DIR Contract No. DIR-SDD-1764.

Accepted and Approved:

Customer _____

CBM Archives Co., LLC (Licensor)

By _____

By _____

Title _____

Title _____

Date _____

Date _____