

Appendix D
AgileAssets® Software License and Maintenance Agreement
DIR-SDD-2176

This Software License and Maintenance Agreement (hereinafter referred to as this "Agreement") is made and entered into as of this ____ day of _____ 200__ (the "Effective Date") by and between:

Client

Address 1

Address 2

(hereinafter called "Client")

- and -

AgileAssets Inc.
3144 Bee Caves Road
Austin, Texas 78746

(hereinafter called "AgileAssets")

IN CONSIDERATION OF the mutual covenants contained herein, the parties hereto agree as follows:

1. SCOPE

DIR Contract No. DIR-SDD-2176 and this Agreement shall apply to the license of certain AgileAssets proprietary computer software product(s) (and certain corresponding documentation), and certain support, maintenance and other services related thereto, as specified in Exhibit A.

2. DEFINITIONS

In addition to any terms defined elsewhere in this Agreement, the following capitalized terms shall have the following respective meanings for purposes of this Agreement:

- A. AgileAssets Materials – AgileAssets Materials has the meaning ascribed to that term in Section 9.
- B. Annual Hours Allotted for Enhancements – The maximum number of hours available from AgileAssets to implement Enhancements during an Annual Maintenance Period, the cost of which is covered by the Annual Maintenance Fee for such Annual Maintenance Period. The Annual Hours Allotted for Enhancements are specified in Exhibit C. Hours spent by AgileAssets to correct Defects do not count against the Annual Hours Allotted for Enhancements unless the Defect is attributable, in whole or in part, to an Excluded Cause. Annual Hours Allotted for Enhancements are only available during periods in which AgileAssets is providing Maintenance Services to Client and for which Client has paid the Annual Maintenance Fee. No Annual Hours Allotted for Enhancements apply during the Initial Maintenance Period. The licensing of additional modules to Client under this Agreement after the Effective Date shall not increase the Annual Hours Allotted for Enhancements. Hours not utilized during the applicable Annual Maintenance Period are not carried over to subsequent periods. References in this Agreement

to Annual Hours Allotted for Enhancements refer to the remaining unused hours for the relevant Annual Maintenance Period.

- C. Annual List of Enhancements – A list of all Enhancements that Client desires to have AgileAssets implement during any Annual Maintenance Period pursuant to this Agreement.
- D. Annual Maintenance Fee – Annual Maintenance Fee has the meaning ascribed to that term in Exhibit B.
- E. Annual Maintenance Period – Annual Maintenance Period has the meaning ascribed to that term in Section 5. For the avoidance of doubt, the term “Annual Maintenance Period” does not include the Initial Maintenance Period.
- F. Business Days – Days on which AgileAssets is open for business.
- G. Client Data and Results – Client Data and Results has the meaning ascribed to that term in Section 3.H.
- H. Defect – A verifiable and reproducible failure of the System to perform in all material respects the functions described in the specifications for the System that are contained in the applicable System User Manual and System Technical Manual. All Defects shall be categorized by AgileAssets into one of the following classifications:
 - i. "Level 1 Defects" are Defects that (x) completely prevent the System from operating or (y) are of a severity that prevent the System from being used without significant disruption to Client's business operations and with respect to which no workarounds exist that would enable the System to be so used until corrections can be made.
 - ii. "Level 2 Defects" are Defects that are of a severity that prevent the System from being used without significant disruption to Client's business operations but with respect to which a workaround exists.
 - iii. "Level 3 Defects" are Defects that are not Level 1 Defects and are not Level 2 Defects.
- I. Designated Support Personnel – Employees of Client who are Named Users and who are designated by Client to be the exclusive points of contact for all technical and operational issues relating to this Agreement.
- J. Enhancements – Modifications to the System, to any subsequent modification thereto, or to any subsequent derivative work thereof.
- K. Error – A Level 1 Defect or Level 2 Defect.
- L. Excluded Causes – Excluded Causes has the meaning ascribed to that term in Section 5.H.
- M. Initial Maintenance Period – Initial Maintenance Period has the meaning ascribed to that term in Section 5.
- N. Initial System Installation – The point at which Client is first granted access to the System and before any Client specific System configuration begins.
- O. Maintenance Period – Maintenance Period has the meaning ascribed to that term in Section 5.
- P. Maintenance Services – The support and maintenance services specifically described in Section 5.
- Q. Named Users – Employees of Client (and other individuals approved in writing from time to time by AgileAssets) (i) who have been designated as Named Users by Client, (ii) with respect to whom Client has provided AgileAssets with such information in writing as AgileAssets may reasonably request from time to time (including the identity, location and employer of each Named User), (iii) with respect to whom Client has paid the relevant license fees under Section 17 of this Agreement, and (iv) who utilize the System (and any documentation licensed hereunder) only on behalf of Client.

- R. Person – Any individual, corporation, partnership, trust, unincorporated organization, government (or any department or agency thereof) or any other form of association or entity.
- S. Services – All Maintenance Services or other services provided or to be provided by AgileAssets pursuant to this Agreement.
- T. Supported Database – A relational database management system (RDBMS) brand and that is certified by AgileAssets to work with the System.
- U. Supported J2EE Server – A Java application server brand and version that is certified by AgileAssets to work with the System.
- V. System – The AgileAssets proprietary software program(s) described in Exhibit A above. Except as may be specifically provided herein, the term "System" shall include any Version to the extent that it is made available by AgileAssets to Client in accordance with this Agreement. For the avoidance of doubt, Client shall have no right to receive, have access to or use any Version except (i) any Version provided by AgileAssets to Client as part of AgileAssets' provision of Maintenance Services; (ii) any Version made available to Client pursuant to Section 5.B of this Agreement; (iii) any Enhancements made available to Client pursuant to Section 6 or Section 8 of this Agreement; or (iv) any Version that AgileAssets may specifically agree in writing from time to time after the date of execution of this Agreement to provide to Client.
- W. System Acceptance – Milestone of initial System implementation services at which point the System as initially delivered and configured has substantially conformed to the requirements of an acceptance test plan agreed upon in advance in writing by Client and AgileAssets that certifies the System is ready for System Go-Live.
- X. System Go-Live – Milestone of initial System implementation services, specified by Client to be either at the same time as or later than System Acceptance, at which point Client may begin using the System for production work activities.
- Y. Version – A current or future version, release, update or upgrade of the System or a portion thereof, including its components stored in a Supported Database (tables, functions and procedures), developed by or on behalf of AgileAssets. For the avoidance of doubt, the term "Version" includes Enhancements but does not include any modules of AgileAssets' software other than the modules specifically listed in Exhibit A of this Agreement or any additional modules specifically licensed to Client under this Agreement after the Effective Date (which licensing of additional modules, if not expressly provided for in Exhibit B of this Agreement, shall only be made with the prior written consent of AgileAssets).

3. LICENSE

- A. AgileAssets hereby grants to Client, and Client hereby accepts, subject to all of the terms and conditions of DIR Contract No. DIR-SDD-2176 and this Agreement, a nontransferable and nonexclusive license to use (i.e., to load, execute and display) the System (in compiled form only) on a Supported J2EE Server and Supported Database during the term of this Agreement, but only (i) for Client's internal business purposes, and (ii) on hardware/computing equipment and systems operated by Named Users.
- B. The System may be used by Client on any networked computer connected to a Supported J2EE Server and Supported Database on which the System is installed provided that each individual user accessing any portion of the System is a Named User. Client shall provide AgileAssets with such information regarding each Named User (including the identity, location and employer of each Named User) as AgileAssets may reasonably request from time to time, and shall promptly provide AgileAssets with updates to such information in the event of any changes.

- C. Client assumes full responsibility, at Client's expense, for the selection, acquisition, maintenance, condition and effectiveness of the computer and networking hardware, operating systems, Supported J2EE Server, Supported Database, other application software and other aspects of the operating environments in which the System is to function.
- D. Client shall use the System for internal business purposes only. Client shall not directly or indirectly copy or duplicate, or allow any other Person to directly or indirectly copy or duplicate, the System or any portion thereof without the prior written consent of AgileAssets, except that Client may make up to two (2) copies of the System, in compiled form only, for use solely as backup copies (which shall be subject to all of the restrictions of this Agreement) if the original copies are lost or damaged, provided that each such copy shall contain AgileAssets' name and all copyright, trademark and other proprietary rights notices contained in any manner on any portion of the software being copied. Client shall not (and shall not permit any other Person to) directly or indirectly provide, transfer, assign, sublicense or otherwise make available the System or any portion thereof or any copies of any thereof in any form to any Person on a temporary or permanent basis, or otherwise utilize or allow any Person to utilize any portion of the System, except as may be specifically permitted in writing by AgileAssets. Client also shall not, and shall not allow any other Person to, directly or indirectly modify, translate, decompile, disassemble, create derivative works of, or reverse engineer any portion of the System.
- E. AgileAssets hereby grants to Client, and Client hereby accepts, subject to all of the terms and conditions of DIR Contract No. DIR-SDD-2176 and this Agreement, a non-transferable, non-exclusive license to use any System documentation (e.g. manuals, publications, specifications or other documentation) provided by AgileAssets to Client for use in connection with any portion of the System during the term of this Agreement, but only (i) for Client's own internal business purposes in connection with its authorized use of the System, and (ii) by Named Users. Client shall not directly or indirectly copy or duplicate (or allow any other Person to copy or duplicate) any such documentation or any portion thereof without the prior written consent of AgileAssets, except that Client shall have the right, without additional license fees or royalty, to make a limited number of copies (not to exceed the total number of Named Users in effect from time to time) of such documentation solely for delivery to Named Users solely for use on behalf of Client and in strict accordance with this Agreement; provided, however, that Client shall reproduce and include the AgileAssets name and all copyright, trademark, and other proprietary rights notices contained in any manner on any portion of the documentation being reproduced on any such copies, including partial copies. Client shall not (and shall not permit any other Person to) directly or indirectly provide, transfer, assign, sublicense or otherwise make available any such documentation or any portion thereof or any copies of any thereof in any form to any Person on a permanent or temporary basis, or otherwise utilize or allow any Person to utilize any portion of such documentation, except as may be specifically permitted in writing by AgileAssets. Client also shall not, and shall not allow any other Person to, directly or indirectly modify, translate or create derivative works of any portion of any such documentation.
- F. In the event that Client's employment of any Named User terminates, or upon a decision by Client not to allow any Named User to continue to have access to any portion of the System, Client may, by notice to AgileAssets and after providing AgileAssets with such information as AgileAssets may reasonably request, transfer such Named User's rights to another specified individual employed by Client.
- G. The rights granted by this Agreement shall not extend to any parent, subsidiary or other affiliate of Client or any other Person. Client shall not permit any Person to utilize the System or any documentation licensed hereunder (unless such Person is a Named User, and then only in strict

accordance with the terms and conditions of this Agreement) or to exercise any of the other rights granted to Client under this Agreement.

- H. Client is responsible for supplying all data for use by the System and, if AgileAssets agrees to provide data conversion or other implementation services, for delivering it to AgileAssets in such form as AgileAssets may reasonably request from time to time and in a manner consistent with any and all applicable laws and regulations. Without limitation of the foregoing, Client shall not supply any data which is not authorized for publication or dissemination or which (or AgileAssets' use of which in connection with this Agreement) infringes or misappropriates any intellectual property or proprietary rights of any Person. Notwithstanding anything to the contrary in this Agreement, AgileAssets shall have access to and the right to directly or indirectly copy and otherwise use such data for purposes of (i) providing the Services; (ii) testing or modifying the System (or any Version); and (iii) otherwise complying with AgileAssets' obligations under this Agreement. Client is responsible for all data supplied by or on behalf of Client to AgileAssets and for any results or conclusions drawn from use of such data or the System (collectively, "Client Data and Results").
- I. A user name and password is required to access the System. AgileAssets or Client shall provide each Named User with a user name and each Named User shall choose a password. Each Named User is the only authorized user of such Named User's user name and password. Client is entirely responsible for maintaining the confidentiality of each user name and password. Client is also entirely responsible for any and all acts or omissions that occur under any such user name or password. Client shall ensure that no Named User shares its password with any other Person other than a limited number of IT personnel of Client selected by Client. Client agrees to notify AgileAssets immediately of any unauthorized use of any user name or password, any improper disclosure or any loss of a password, or any other breach of security with respect to the System.

4. TERM; SURVIVAL

The term of this Agreement shall commence on the Effective Date and shall remain in effect until terminated as provided herein. However, Sections 2, 3.H, 4 (this sentence only), 5I, 5J, 9-13, 14 (second paragraph), 15, 16 and Exhibit B, any accrued rights to payment, and any remedies for a prior breach of this Agreement, shall continue in full force and effect and shall survive the termination of this Agreement.

5. MAINTENANCE AND TECHNICAL SUPPORT SERVICES

AgileAssets shall provide to Client the Maintenance Services described below in this Section 5 for the Initial Maintenance Period (as defined below). For purposes of this Agreement, the term "Initial Maintenance Period" shall mean (i) with respect to the software modules described in Exhibit A of this Agreement and licensed to Client under this Agreement as of the Effective Date, an initial period beginning on the date of Initial System Installation and continuing for one (1) year thereafter and (ii) with respect to any additional modules licensed to Client under this Agreement after the Effective Date (which licensing of additional modules, if not expressly provided for in Exhibit B of this Agreement, shall only be made with the prior written consent of AgileAssets), an initial period beginning on the date of initial installation of such additional modules and continuing until the expiration of the then current Initial Maintenance Period or Annual Maintenance Period (as defined below), as applicable, for the modules originally licensed under this Agreement, even if such initial period is less than one (1) year. The cost of Maintenance Services during the Initial Maintenance Period is identified in Exhibit B of this Agreement.

After the expiration of the Initial Maintenance Period, Client may request Maintenance Services for subsequent twelve (12) month periods (each being an "Annual Maintenance Period"), provided that AgileAssets' obligation to provide Maintenance Services for any such period is expressly contingent upon and subject to (i) Client's payment of the Annual Maintenance Fee applicable to such subsequent Annual Maintenance Period; (ii) Client incorporating into the System any Version that AgileAssets has made available to Client within eighteen (18) months after the date such Version was first made available to Client by AgileAssets; (iii) AgileAssets' written agreement, which agreement may be withheld by AgileAssets in AgileAssets' sole discretion, prior to the commencement of any such subsequent Annual Maintenance Period to continue to provide Maintenance Services requested by Client; **provided that no such written agreement shall be required for the first five (5) consecutive Annual Maintenance Periods immediately following the expiration of the Initial Maintenance Period**; and (iv) Client's requesting Maintenance Services for all modules that Client has licensed or agreed to license under this Agreement (regardless of the number of licenses then in effect or the number of modules then utilized by Client). Client agrees to provide remote access to Client's data center to allow AgileAssets to provide Maintenance Services. Further, if Maintenance Services are not renewed for any period, then Client may not obtain subsequent Maintenance Services unless Client pays to AgileAssets, prior to the resumption of Maintenance Services, the amount that would have been payable by Client for Maintenance Services during the period in which Maintenance Services were not obtained. The Initial Maintenance Period and any subsequent Annual Maintenance Periods are referred to collectively herein as the "Maintenance Period."

Subject to payment of the applicable Annual Maintenance Fee in any Annual Maintenance Period and Client's compliance with the other requirements of DIR Contract No. DIR-SDD-2176 and this Agreement, the following additional terms shall apply during the Maintenance Period:

- A. AgileAssets shall furnish to Client a telephonic "Help Desk" for use by Client's Designated Support Personnel concerning installation, use, and problem resolution with respect to the System, accessible via a toll free telephone number between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, Austin, Texas time (except for holidays observed by AgileAssets, a list of which will be provided by AgileAssets to Client upon request). The Help Desk shall be staffed with one or more individuals who have an understanding of the System and the ability to offer basic troubleshooting information/solutions.
- B. Client shall have a license to use any Version of the System (to the extent that such Version is authorized for general release by AgileAssets to licensees of the System who are receiving Maintenance Services and who receive copies of the Version for installation on their own computer systems at no additional charge) under the same terms as Client's rights and obligations with respect to the System as such are set out in this Agreement.
- C. Client shall have a license to use any revisions to the System documentation associated with any Version referred to in Section 5.B (to the extent such revised documentation is authorized by AgileAssets for general release to licensees of the System who are receiving Maintenance Services and who receive copies of the Version for installation on their own computer systems at no additional charge) under the same terms as Client's rights and obligations with respect to System documentation as such are set out in this Agreement.
- D. AgileAssets shall furnish to Client membership in the AgileAssets System Users Group. AgileAssets shall arrange and pay for reasonable travel and lodging expenses and conference fee for one (1) employee of Client to attend the System Users Group conference. Client may send additional attendees and pay the then current conference registration fee, lodging, meals, and travel costs for each additional attendee. For every Client attendee at the conference, including

additional attendees, ten (10) Annual Hours Allotted for Enhancements will be credited to the Client's remaining unused hours for the then current Annual Maintenance Period.

- E. AgileAssets shall designate two (2) employees of AgileAssets that shall be the primary and backup points of contact for Client on maintenance and technical support services issues relating to this Agreement.
- F. In the event of an Error, Client shall immediately notify AgileAssets in writing, detailing the specific nature of the Error. Within two (2) Business Days after notification, AgileAssets shall attempt to reproduce the Error and identify its cause, and shall respond to the Client's written notification. If AgileAssets is able to reproduce the Error, AgileAssets' response shall include a written plan detailing the steps it proposes to take to address the Error and an estimated timetable (not to exceed two (2) weeks total duration, if commercially practicable) for correction of the Error.
- G. AgileAssets shall endeavor to investigate and correct Errors at AgileAssets' offices. If AgileAssets is unable to correct an Error at AgileAssets' offices, and the suspected Error is not attributable, in whole or in part, to any Excluded Causes, then upon Client's request, AgileAssets may travel to Client's location to investigate Errors with travel and other out-of-pocket expenses included in the applicable Annual Maintenance Fee. If after AgileAssets travels to the Client location the suspected Error is determined to be attributable, in whole or in part, to any Excluded Causes, then Client shall pay all AgileAssets investigative (and, if undertaken by AgileAssets, correction) costs on a time and materials basis in accordance with Exhibit B.
- H. Notwithstanding anything to the contrary contained herein, if AgileAssets is not able to reproduce the reported Error or if the suspected Error is attributable, in whole or in part, to (i) any modifications to the System that were not created by AgileAssets and provided to Client by AgileAssets, (ii) any combination, operation or use of any portion of the System with any product, data, apparatus or materials not provided by AgileAssets, (iii) any failure of Client to utilize any Version previously made available by AgileAssets to Client, or (iv) any other cause not confined solely within the System, including any defect, deficiency or other difficulty with other hardware or software (including Client or third party systems or networks) or resulting from accident, neglect, misuse, or failure of power, air conditioning, or humidity control ((i)-(iv) collectively, "Excluded Causes"), then AgileAssets shall have no responsibility with respect to the Error, but may, in its discretion, offer to attempt to investigate and correct the Error upon Client's payment of AgileAssets' investigation and/or correction work on a time and materials basis in accordance with Exhibit B.
- I. If AgileAssets is unable to correct an Error (within sixty (60) days after notice by Client to AgileAssets, specifying the Error in reasonable detail and specifically indicating Client's intention to terminate this Agreement if the Error is not corrected during such period), Client may, as its sole and exclusive remedy, terminate the Maintenance Services by notice to AgileAssets and receive a refund of that portion, if any, of the Annual Maintenance Fee actually received by AgileAssets that is allocable to the period following the termination date.
- J. AgileAssets shall have no responsibilities for maintenance or support with respect to the System except as specifically provided in this Section 5.
- K. **[Client may request AgileAssets staff to provide on-site Maintenance Services at the Client's location for one (1) session during the Initial Maintenance Period and each subsequent Annual Maintenance Period. A session provides up to four contiguous Business Days of on-site Maintenance Services by AgileAssets as needed by Client. Any on-site Maintenance Services**

provided under this Section 5.K shall be in addition to the Annual Hours Allotted for Enhancement and shall be at no additional cost to Client.]

6. ADDITIONAL SERVICES

To the extent allowable by DIR Contract No. DIR-SDD-2176 and subject to payment of the amounts described DIR Contract No. DIR-SDD-2176, Appendix C Pricing Index, , AgileAssets may, upon written agreement with Client on a case by case basis (which may be in the form of a written supplement to this Agreement executed by AgileAssets and Client), furnish the following additional services to Client:

- A. Initial implementation services including discovery, business process review and development, user familiarization, data conversions, system interfaces, system configuration and other relevant services which may be mutually agreed to during initial implementation of the System.
- B. Training in System operation at one or more sites selected by Client and agreed to by AgileAssets at dates and times as may be mutually agreeable to AgileAssets and to Client.
- C. Enhancements to the System (other than Enhancements covered by the Annual Hours Allotted for Enhancements).
- D. Implementation or training Services on any future Version.
- E. Implementation of any additional Modules of the System licensed by Client.
- F. Hosting services to host the System on behalf of Client.

7. CLIENT RESPONSIBILITIES

In addition to its other obligations under this Agreement, Client shall perform as follows:

- A. Designate in writing to AgileAssets one (1) employee of Client who shall be the point of contact for Client on all contractual issues relating to this Agreement.
- B. Designate in writing to AgileAssets a group of no more than two (2) Designated Support Personnel to be the exclusive points of contact for all technical and operational issues relating to this Agreement and the System.
- C. Bear the cost of travel for Client personnel/representatives in all activities **[except for any amounts to be paid by AgileAssets with respect to the System User Group Conference as specified in Section 5.D of this Agreement]**.
- D. Maintain the accuracy of Client data files.
- E. Provide a full copy of the Client database elements associated with System to AgileAssets (i) no less than once annually in the form of a dump file, and (ii) upon AgileAssets' request, to allow AgileAssets to perform the Maintenance Services.
- F. Be responsible for the cost of all forms, papers and other supplies used for and from the Client files.
- G. Provide, upon AgileAssets' request from time to time, AgileAssets with reasonable assistance in connection with AgileAssets' obligations under this Agreement, including a convenient, safe and comfortable work area at Client's site(s), access to Client's relevant personnel, facilities and records (including computer files and including remote access to Client's data center), and access to telephones, telephone lines and pertinent computer equipment.

8. SYSTEM ENHANCEMENTS

To the extent allowable by DIR Contract No. DIR-SDD-2176 and from time to time following the start of the Initial Maintenance Period, Client may request by notice to AgileAssets that AgileAssets prepare Enhancements for the System.

Upon Client's request for any Enhancements, which Client must make by delivering an Annual List of Enhancements to AgileAssets during the first sixty (60) days of any Annual Maintenance Period, if AgileAssets desires to prepare the Enhancements, AgileAssets shall determine in AgileAssets' sole judgment the effort required to develop and deliver the Enhancements and shall respond by providing Client with a delivery schedule for the Enhancements plus an estimate of the effect of the Enhancements on the System as then licensed to Client and the estimated costs of incorporating the Enhancements into the System as then licensed to Client. All proposed work (or, with respect to any Annual Maintenance Period, all proposed work that exceeds the Annual Hours Allotted for Enhancements for such Annual Maintenance Period) shall be quoted in accordance with DIR Contract No. DIR-SDD-2176, Appendix C Pricing Index. AgileAssets shall not be required to prepare any Enhancements unless AgileAssets, in its sole discretion, agrees in writing to do so with respect to any particular Enhancements.

Except as may be otherwise agreed in writing by AgileAssets and Client from time to time, once Enhancements are created and incorporated into the System by AgileAssets for use by Client, Maintenance Services with respect to the Enhancements shall be provided by AgileAssets under the provisions of Section 5 of this Agreement. Except as may be expressly provided otherwise in this Agreement (or by the parties in writing in connection with the development of specific Enhancements), (i) Client shall have no right to use any Enhancements until such Enhancements have been incorporated into the System by AgileAssets for use by Client and (ii) Client's rights and obligations with respect to its use of any Enhancements incorporated into the System by AgileAssets for use by Client are governed by the terms of this Agreement with respect to the System.

9. TITLE, ETC.

As between AgileAssets and Client, title to the System, every Version, all information or materials related thereto, related to AgileAssets or supplied to Client under this Agreement (including System documentation and the results of any performance tests on the System), any reproductions of any portion of any thereof (collectively, the "AgileAssets Materials"), and all patent, copyright, trade secret, trademark and other intellectual property or proprietary rights with respect to any thereof are and shall remain the sole property of AgileAssets. All rights not specifically granted to Client are reserved by AgileAssets. AgileAssets and Client expressly agree that in no event shall any Enhancements or anything created in the performance of Services be considered a work for hire, and Client hereby assigns to AgileAssets any and all rights worldwide (including but not limited to United States and international copyrights) that Client may now have or hereafter acquire in any of the foregoing.

10. NON-DISCLOSURE

To the extent allowable by the Texas Public Information Act, Client understands and agrees that the AgileAssets Materials constitute and/or contain confidential and/or proprietary information and trade secrets of AgileAssets. Client agrees to use the AgileAssets Materials only for the limited purposes specified in this Agreement and to keep confidential and to prevent and protect the AgileAssets Materials from disclosure (in whole or in part) to any Person other than Client's employees having need for disclosure incident to Client's authorized use of the AgileAssets Materials. To the extent allowable by the Texas Public Information Act, Client agrees to ensure that those individuals that have access to the AgileAssets Materials do not otherwise use or disclose such AgileAssets Materials or otherwise violate this provision, including requiring each such individual to have executed, prior to receiving such

access, a written agreement with Client containing terms at least as protective of the AgileAssets Materials as those set forth in this Section 10 (but with no further rights of disclosure or use on their own behalf). Client shall promptly notify AgileAssets regarding any use or disclosure of any AgileAssets Materials in violation of this Agreement (including any breach of any such written agreement or any use of any of the System by any Person other than a Named User), and shall promptly take such action with respect to the same, including enforcement of such written agreement, as allowable by DIR Contract No. DIR-SDD-2176. In order to prevent unauthorized use, and to the extent allowable by DIR Contract No. DIR-SDD-2176, AgileAssets may utilize and/or install such security devices or program encryption as it deems necessary from time to time; Client agrees not to take (or permit to be taken) any action that would disable, impair or alter any of such devices or encryption and further agrees to implement, or allow AgileAssets to implement, any new devices and encryption as AgileAssets may reasonably request from time to time.

11. DISCLAIMERS

AGILEASSETS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, WITH RESPECT TO ANY OF THE AGILEASSETS MATERIALS, ANY OF THE SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED OR TO BE PROVIDED HEREUNDER, AND DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES OF MERCHANTABILITY, AND ANY WARRANTIES REGARDING TITLE OR AGAINST INFRINGEMENT. AGILEASSETS DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF ANY OF THE AGILEASSETS MATERIALS, AND DOES NOT WARRANT THAT THE SYSTEM WILL RUN UNINTERRUPTED OR BE ERROR FREE.

12. LIMITS OF LIABILITY

Limitation of Liability Terms are detailed in DIR Contract No. DIR-SDD-2176, Appendix A, Section 9.K. Limitation of Liability.

13. INDEMNITY

Indemnity Terms are detailed in DIR Contract No. DIR-SDD-2176, Appendix A, Section 9.A. Indemnification.

14. ADDITIONAL RESTRICTIONS ON USE

The System may be used by Client only to process or analyze data collected within the jurisdiction of Client (i.e., the roadway network owned and/or maintained by Client) and only for the purposes permitted by this Agreement. Under no circumstances shall Client use (or permit any other Person to use) any portion of the System in the operation of a service bureau, or to process records or generate output data for the benefit of or for purposes of rendering services to any third party.

U.S. Government Restricted Rights. The System and any documentation licensed hereunder are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013(c)(1)(ii) or the Commercial Computer Software-Restricted Rights clause at 48 CFR 52.227-19(c)(2), or clause 18-52.227-86(d) of the NASA Supplement, as applicable. Contractor/Manufacturer is AgileAssets Inc., 3144 Bee Caves Road, Austin, Texas 78746.

15. TERMINATION

Termination Terms are detailed in DIR Contract No. DIR-SDD-2176, Appendix A, Section 10.B. Termination.

16. GENERAL PROVISIONS

- A. Force Majeure Terms are detailed in DIR Contract No. DIR-SDD-2176, Appendix A, Section 10.C. Force Majeure.

- B. The failure of either party in any one or more instances to insist upon strict performance of any of the terms or conditions of this Agreement shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasions. No waiver shall be valid unless in writing and signed by the party to be charged thereby.
- C. DIR Contract No. DIR-SDD-2176 and this Agreement constitute the entire agreement and understanding between the parties hereto with respect to its subject matter and supersedes all prior or contemporaneous negotiations, proposals, commitments, agreements and understandings, whether written, oral, or otherwise, with respect to such subject matter. The parties agree that the use of pre-printed forms, including purchase orders, acknowledgements, invoices, and similar documents, is for convenience only and all terms and conditions stated therein, except for any information expressly permitted by this Agreement, are void and of no effect. No representation or statement not contained in this Agreement shall be binding upon AgileAssets as a warranty or otherwise. Any schedules, exhibits or attachments to this Agreement shall constitute an integral part of this Agreement. In the event of a conflict in terms, the terms of DIR Contract No. DIR-SDD-2176 will have precedence.
- D. This Agreement may not be modified in any way except by a written instrument signed by a duly authorized representative of each of the parties.
- E. Assignment Terms are detailed in DIR Contract No. DIR-SDD-2176, Appendix A, Section 4.D. Assignment.
- F. The laws of the State of Texas shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity. Any notice that is required or permitted to be given under this Agreement must be in writing and shall be effective (i) when delivered, if sent by registered or certified mail (return receipt requested), (ii) when delivered, if delivered personally, (iii) when transmitted, if sent by facsimile if a confirmation of transmission is produced by the sending machine, or (iv) when delivered, if sent by overnight mail or overnight courier; to the address specified at the beginning of this Agreement, or such other address for notice as may previously have been provided to the notifying party by notice from the party to receive notice.
- G. The headings in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement. Whenever the context requires, the gender of all words used herein shall include the masculine, the feminine and the neuter, and the number of all words shall include the singular and the plural. This Agreement has been negotiated by the parties and their respective counsel, if any, and shall be interpreted in accordance with its terms and without any strict construction in favor of or against either party. As used in this Agreement, the term "including" means "including without limitation" and, unless otherwise specified, the term "days" means calendar days. Unless otherwise specified, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, paragraph, subparagraph, schedule, exhibit, addendum or other subdivision. Similarly, unless otherwise specified, the words "therein," "thereof" and "thereunder" and other words of similar import refer to a particular agreement or other instrument as a whole and not to any particular article, section, paragraph, subparagraph, schedule, exhibit, addendum or other subdivision.
- H. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement, or the

application thereof to any Person or under any circumstances, shall be invalid or unenforceable to any extent under applicable law, then such provision shall be deemed severed from this Agreement with respect to such Person or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other Persons or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the parties hereto as evidenced by the provision so severed.

- I. Client shall comply with all applicable governmental laws, statutes, ordinances, administrative orders, rules and regulations with respect to export of products or technical data. Without limitation of the foregoing, Client shall not export any of the AgileAssets Materials or any related technical data without the prior written consent of AgileAssets.
- J. To the extent allowable by DIR Contract No. DIR-SDD-2176,, Client shall provide AgileAssets with a written certification of all locations at which any of the System is stored, maintained, used or accessed (or any licensed documentation is stored, used or accessed), the number of copies of any portion of the AgileAssets Materials made by or on behalf of Client, and the names of all Persons who are using or have access to any of the same. To the extent allowable by DIR Contract No. DIR-SDD-2176, Client shall permit AgileAssets (or its agents and representatives) to inspect such locations and to review the records and procedures of Client in order to confirm its compliance with its obligations under this Agreement, and Client shall otherwise cooperate reasonably with such request. In the event that any such inspection discloses any breach of this Agreement, then without limitation of any other rights or remedies as may be available to AgileAssets as a result of such breach, Client shall pay to AgileAssets the full cost of such inspection.
- K. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- L. Any dispute, controversy or claim arising out of or relating to this Agreement, the parties' performance under it, or its breach, shall be resolved in accordance with the dispute resolution provisions detailed in DIR Contract No. DIR-SDD-2176, Section 10.A. Enforcement of Contract and Dispute Resolution.

{Signature page follows}

IN WITNESS WHEREOF, the parties hereto have executed and accepted this Agreement as of the Effective Date.

Client:

AgileAssets:

AgileAssets Inc.

Signature of Authorized Representative

Signature of Authorized Representative

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

Title of Authorized Representative

Date

Date

Exhibit A – AgileAssets System Components

A detailed list of software modules to be licensed under this agreement shall be provided.