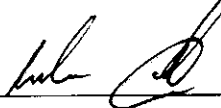


RESOLUTION NO. 1 - 2019

Moved by:

 - Ausha Greer

A Resolution authorizing the City of Harrisburg to negotiate and enter into a Licensed Software and Vendor Services Agreement with CODY Computer Services, Inc., for Record Management Services for the City of Harrisburg – Bureau of Police.

**WHEREAS**, CODY Computer Services, Inc. (CODY) is an independent contractor that provides software and Record Management Services (RMS) to public safety, law enforcement and other public sector entities; and

**WHEREAS**, CODY is a member of COSTARS, the Commonwealth of Pennsylvania's cooperative purchasing program which provides procurement savings and competitive contract pricing to local government entities; and

**WHEREAS**, the Bureau of Police desires to utilize CODY to convert and migrate data from two existing legacy RMS systems, namely METRO and In-Synch, and use the CODY platform as its sole RMS system; and

**WHEREAS**, the initial Agreement includes a one-time, up-front payment of \$230,000.00, which includes the cost of the licensed software, installation services, data conversion and migration, training, software support and maintenance for the first year; and

**WHEREAS**, the Agreement for Year Two, Year Three and Year Four is an annual amount of \$42,007.70, subject to City Council appropriation, which covers the cost of software support and maintenance services; and

**WHEREAS**, the Agreement may be renewed thereafter by written consent of both parties; and

**WHEREAS**, a copy of the form of agreement is attached as "Exhibit A" and incorporated herein as if fully set forth.

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG**, that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to negotiate and enter into a Licensed Software and Vendor Services Agreement with CODY Computer Services, Inc., for Record Management Services for the City of Harrisburg – Bureau of Police.

I second this resolution:



Passed the City Council January 9, 2019

Wanda R. Williams  
President of City Council

Attest [Signature]  
City Clerk

Approved

YEAS		NAYS
<input checked="" type="checkbox"/>	MR. ALLATT	
<input checked="" type="checkbox"/>	MS. BOWERS	
<input checked="" type="checkbox"/>	MS. DANIELS	
<input checked="" type="checkbox"/>	MS. GREEN	
<input checked="" type="checkbox"/>	MR. MADSEN	
<input checked="" type="checkbox"/>	MR. MAJORS	
<input checked="" type="checkbox"/>	MS. WILLIAMS	
Yeas	<u>7</u>	
Nays	<u>0</u>	

# **E x h i b i t “A”**

## CODY SYSTEMS

### STANDARD LICENSED SOFTWARE AND SERVICES TERMS AND CONDITIONS

#### Rev 15b

By signing any Proposal and/or Agreement with CODY, you are agreeing to be bound by these Terms. If Software is delivered on tangible media, then by opening the package containing the media you are agreeing to be bound by these Terms. If Software is delivered electronically, whether by FTP, downloading from any web page, via the unique license keys from CODY, activation of the the Software via the CODY Cloud Hosting Service (HST) or any other electronic means, then by accepting the file transfer, installation, license key email and/or HST activation for such Software you agree to be bound by these Terms. If you do not agree to these Terms, do not sign the Proposal/Agreement, open any package containing tangible media, or download, accept the license key email for, activate or install the Software or continue use any of the Software or Services.

These Terms apply to all Agreements (as defined herein) between CODY Computer Services, Inc. ("CODY") and any client for purchases of software licenses and/or services, in whatever manner such purchases are effected (i.e. signed proposals, executed Purchase Orders, on-line purchases, reseller purchases, etc.), and are incorporated by reference into and made part of said Agreement(s).

Capitalized terms used in this introduction and/or any Proposal that are defined in the following portions of the Terms will have the meanings given therein.

1. **Definitions.** Unless the context otherwise requires, the following terms when used in these terms and conditions, as well as anywhere else throughout Licensee's Agreement with CODY shall have the meanings ascribed to them in this Section 1:
  - a. "Licensee" means the entity as set forth on the Proposal document that forms the primary document within the Agreement.
  - b. "Proposal" means any document executed by both CODY and Licensee, and/or any document executed between Licensee and any CODY Reseller, that sets forth a purchase of Licensed Software and CODY Services by Licensee. Where appropriate throughout the Agreement, to ensure that all Proposals are viewed collectively, the term Proposal(s) shall be used.
  - c. "Agreement" means the overall contract between CODY and Licensee, which includes all executed Proposals, these Terms, and any supporting attachments and/or exhibits that are incorporated by reference or otherwise.
  - d. "Documentation" means all printed and/or electronic material and/or media relating to the Software provided by CODY.
  - e. "Embedded Programs" means all third party software, modules, products, interfaces, data files and/or other files and programs provided by CODY as part of or in connection with its proprietary software.
  - f. "Fees" means any fees set forth on a Proposal, including without limitation Licensed Software Fees, Project Management, Installation and Training Fees, annual Support Services Fees, Active Remote Monitoring Services Fees, Data Conversion and/or Migration Services Fees, and any Additional Services Fees, each as defined herein. The term Fees can be used to refer to one of the types of fees set forth in this definition, or collectively, as the context requires.
  - g. "Licensed Software" means (i) the Software, (ii) the Documentation, (iii) the Embedded Programs, (iv) the Updates, (v) the Work Product and (vi) all instructions, manuals, diagrams and other materials, in whatever medium or format, pertaining to the foregoing.
  - h. "CODY Public Safety System" means the CODY Software that provides for records management, computer-aided dispatch, case management, jail management and other related software modules, as configured for the Licensee's deployment, if applicable. The CODY Public Safety System expressly excludes and is distinct from COBRA.net system defined herein.
  - i. "Services" means Project Management, Installation, Training Services, Data Conversion and/or Migration Services, configuration services, annual Support Services, Active Remote Monitoring Services, and any Additional Services, each as defined herein and/or otherwise noted on a Proposal and/or Schedule. Services shall also include any and all services previously performed or provided by CODY to Licensee in connection with the Software.
  - j. "Data Conversion Services" means the process of examining Licensee's electronic data and/or data files that are in a format NOT usable in the CODY Public Safety System and CODY then converting such data and/or data files into a format which is usable in the CODY Public Safety System.
  - k. "Data Migration Services" means the process following Data Conversion Services of migrating and/or merging the Licensee's readable data and/or data files into the Licensee's existing "live" CODY Public Safety System.

l. "Software" means CODY's proprietary software applications set forth and described herein and/or in any attached Schedule or Proposal, together with any CODY software previously provided by CODY to Licensee and any CODY software that CODY licenses to Licensee in the future (under future Schedules and/or Proposals). Unless otherwise specified herein, all such software is COTS (Commercial off the Shelf).

m. "Update(s)" means Maintenance Releases and Wishlist Releases which are made generally available by CODY to CODY's active support customers with accounts that are current and in good standing.

n. "Maintenance Release" means any patches, "bug" fixes, or releases of the Licensed Software that are otherwise intended to resolve specific maintenance issues within the Licensed Software. CODY reserves the right to limit deployment of Maintenance Releases.

o. "Wishlist Release" means a software release from CODY that contains new features and functionality that are based upon specific customer requests, submitted through a secure website, which have been reviewed and approved by CODY for release to our active support customers with accounts that are current and in good standing at no extra charge. Not all requests are approved, and the availability of any Wishlist Release is at the sole, unfettered discretion of CODY.

p. "Licensee Environment" is defined as the infrastructure in which the Licensed Software will be installed and/or used, including without limitation, hardware components (server(s), desktop workstation(s), laptop(s), etc.), software components (operating systems, other 3rd party software, virtual machines, etc.), wired and wireless (where applicable) network components and infrastructure (routers, network identification cards, switches, wiring, etc.).

i. In regard to COBRA.net use, each environment that is used to house a Data Source is considered part of the Licensee Environment as well.

q. "CODY Approved Licensee Environment ("CALE")" is a document mutually executed by the parties and incorporated by reference into the Agreement, setting forth the approved environment (s) in which the Licensed Software is installed and/or used.

i. In regard to COBRA.net use, the CALE covers and includes each environment that is used to house a Data Source.

r. "Work Product" means inventions, discoveries, software, or other works of authorship and other proprietary materials or work product developed by CODY, its employees, agents or contractors in the course of CODY's performance of any services regardless of any participation, assistance or cooperation by Licensee, its employees, agents or contractors in connection therewith.

s. "Active Remote Monitoring Services" ("ARM") means the services performed by CODY in connection with providing routine monitoring coverage of a COBRA.net network, according to CODY's then-current standard ARM services practices and procedures.

t. "COBRA.net" means the CODY Software platform that provides intra and/or inter-agency data synchronization, sharing, and searching capabilities across Data Sources.

u. "COBRA.net Core" means the CODY Software that is the central hub of the COBRA.net system, in which all Segregated Data Spaces are housed and managed. Also referred to as the "Core."

v. "Segregated Data Space" means the unique, segregated space within the COBRA.net Core in which all synched data from a given Data Source is stored. Also referred to as "SDS."

w. "C.tac" means the COBRA.net Tactical Access Center -- the client application that provides integrated search access to Data Sources within the COBRA.net Core.

x. "ExpressBridge" means the suite of CODY Software that includes ExpressBridge DDB. ExpressBridge collectively is the CODY Software that connects a given Data Source to the COBRA.net Core, depending on the specific connection scenario for such Data Source. Also referred to as "EXB."

i. "ExpressBridge DDB" is the ExpressBridge tool called Direct Data Bridge that can be configured to collect a copy of data from a source of data (e.g. a DDB Data Source), prepare and transmit it for use with COBRA.net. An ExpressBridge DDB is configured to work with one DDB Data Source by applying the appropriate DDB Template, as defined herein. Also referred to as "DDB" or "EXB DDB."

y. "Data Source" generally means a source of data, as set forth on the Data Source List, which is connected to the COBRA.net Core via ExpressBridge.

i. "DDB Data Source" is a Data Source that is a specific version of a specific database engine, shared with a specific version of a named third party system (e.g. RMS provider) or the CODY Public Safety System, as well as the specific database housed therein, as set forth on the Data Source List, that will be connected to the Core via ExpressBridge DDB.

z. "Data Source List" means the list of Data Sources mutually agreed upon by CODY and Licensee, as set forth on the initial Proposal together with any amendments to such list mutually agreed upon subsequent to the execution of the initial Proposal, for which CODY will configure an ExpressBridge connection to the COBRA.net Core. The Data Source List will include, at a minimum, the

name of the Data Source, the software provider (if applicable) who provides the system that shares the Data Source, the COBRA.net Domain and Data Scope that will be used for the Data Source, the Owner of the Data Source (e.g. which agency), the location of the Data Source, and the database engine or datafile format for the Data Source (e.g. Oracle RDBMS, NIEM XML Data File).

aa. "Domain" means the specific government domain/area covered and the scope of data that is used by COBRA.net to make data available from a Data Source that uses the given Domain (e.g. the Law Enforcement RMS domain). Each Data Source included under a COBRA.net deployment will have a respective Domain. Further, each Data Source will have a data scope associated with it that covers what top level data objects CODY will map from the Data Source as part of the deployment for Licensee ("Data Scope").

bb. "Initiative" means the intra and/or inter-agency data-aggregation and/or sharing initiative/project being supported by the Licensee.

cc. "User" means a direct employee (sworn or civilian) of the Licensee and any third party contractor that is authorized to use certain Licensed Software subject to and limited by all terms and conditions in the Agreement, including Section 2 herein and the Proposals. A User can be a concurrent user or an individual named user, as relevant for a specific piece of Licensed Software, as set forth on the Schedule(s) and/or Proposal(s). In the case of a Site License, all employees of the applicable agency at the time the relevant Proposal granting such Site License is executed are considered Users, according to the licensing rules set forth herein and as set forth on the relevant Proposal.

dd. "Schedule" means the enumerated list of all Licensed Software licenses and Services purchased by the Licensee under a given purchase transaction, where the purchase transaction involves a third party reseller. A Schedule is used when the Licensed Software license (s) and/or Service that is contemplated in the related purchase transaction is not purchased directly from CODY, but rather is purchased by a third party reseller of CODY, such as Dell/ASAP.

## 2. License.

### a.

i. Non-COBRA.net – Subject to the terms and conditions hereof, for all non-COBRA.net Licensed Software listed on the Proposal(s) (including on any Schedules attached thereto), CODY hereby grants Licensee a non-exclusive, non-transferable, limited license to have up to the maximum number of either – 1.) concurrent User sessions; 2.) individual named Users;; 3.) seats; or 4.) quantity of installations (1 per each hardware device) as set forth in the Schedule(s) and/or Proposal(s), use the Licensed Software in machine-readable form (the "License"). Which of these licensing approaches and the maximum number of Users/installations that applies to a specific piece of non-COBRA.net Licensed Software is set forth on the Proposal(s) (including on any Schedules attached thereto).

ii. COBRA.net – For all COBRA.net and ExpressBridge Licensed Software listed on the Proposal(s) (including on any Schedules attached thereto), CODY hereby grants Licensee a non-exclusive, non-transferable, limited license to have up to the maximum number of either 1.) the quantity of installations of the Software (1 per hardware device); 2.) concurrent User sessions; 3.) individual named Users; or 3.) actual employees at the time of contract execution for Licensee (each a "Site License"). Which of these licensing approaches and the maximum number of Users/installations that applies to a specific piece of COBRA.net or ExpressBridge Licensed Software is as set forth on the Proposal(s) (including on any Schedules attached thereto).

iii. Licensee may obtain licenses for additional Users (for the applicable licensing scheme) in accordance with CODY's then-current rates and subject to the terms described herein and on any relevant Proposal.

iv. Subscription Term Licensing: If a Proposal expressly sets forth Subscription Term Licensing as the licensing paradigm for Licensee's deployment, or for certain elements of Licensee's deployment, the specific terms covering such Subscription, including without limitation: the length of the term, annual fixed pricing during the term, consequences of failures to make payments, and any other terms that are specific to the Subscription Term License, will supersede and control. All other licensing terms in this document will remain in full force and effect regardless of the nature of the License.

v. Prior to the use, review, examination, setup, configuration, etc. of the Licensed Software by any third party (including non-employee Users), Licensee shall cause such person or entity to execute CODY's standard Contractor's Confidentiality, Non-Disclosure and Indemnity Agreement, available upon request from CODY and shall deliver such executed agreement to CODY. Please note that the Licensee is not required to sign such an agreement. The agreement is between the third party contractor and CODY.

vi. Unless the Agreement or a Proposal expressly states otherwise, all references herein to "Licensee" shall include the Users, and Licensee shall be liable for all acts and omissions of the Users. Specifically in regard to payment terms of any kind (e.g. Section 8 herein), the Licensee is defined strictly as the entity set forth on the initial Proposal.

vii. Any and all software Licenses granted by CODY are only valid for so long as the Licensee uses the Licensed Software as Licensee's primary, active, and live system for the purpose that the Licensed Software is designed. All licenses will expire at the moment when the Licensed Software no longer is used by Licensee in that capacity. Such situations that would trigger

the expiration of a CODY license include without limitation: relegating the Licensed Software to a secondary role in favor of another software system from a third party that performs substantially the same function/role for the Licensee in a primary capacity, use of the Licensed Software as an archive or "reference" system while the Licensee uses such similar third party system as its primary system, use of the Licensed Software as a backup or otherwise passive retention role while Licensee uses another similar system as its primary system. Licensee agrees to notify CODY immediately should it cease to use the Licensed Software in a way that is covered by this license. Upon such notice, CODY reserves the right to either grant Licensee a temporary additional license to continue to use the Licensed Software in a secondary role, or to have Licensee discontinue all use of the Licensed Software and either return or destroy all copies of the Licensed Software, again at CODY's option, in accordance with Section 9 (c) herein.

b. Licensee may use the Licensed Software solely for the purpose for which it was designed, and solely for Licensee's internal business operations. Any other use of the Licensed Software and/or other Confidential Information (including without limitation timesharing, rental, leasing, facility management, provision of subscription services or service bureau usage) is strictly prohibited.

i. Products licensed under the CODY Records Anywhere license, CODY Express™ and COBRA.net C.tac and Mobility Apps are expressly licensed for use in a mobile environment. All other Licensed Software, unless otherwise specified to the contrary on a given Proposal or herein, is designed and licensed for in-house use on a desktop workstation. Licensee is not permitted to use such Software in a remote, mobile, or other-wise non-in-house or desktop environment except upon the prior, express, written consent of CODY. This restriction includes use over any remote desktop or terminal services type software, including without limitation, Citrix, Remote Administrator, Microsoft Terminal Services or Microsoft Remote Desktop Protocol.

c. Licensee shall not give, sell, lease, assign, sublicense or otherwise transfer, in whole or in part, the Agreement, the License, the Licensed Software, other Confidential Information, other CODY-provided materials, or any licenses or rights granted hereunder, except as approved by CODY in writing. If Licensee grants a security interest in the Agreement, the License, the Licensed Software or any other CODY-provided materials, or any licenses or rights granted hereunder, the secured party shall have no right to use or transfer such materials.

d. The License granted hereunder is for the object code version of the Licensed Software only. Licensee has no rights to the source code for the Licensed Software. Licensee shall not and shall not permit anyone under Licensee's direction or control to, reverse engineer, disassemble or de-compile the Licensed Software or attempt to do so. Licensee may not modify, adapt, translate or create derivative works of the Licensed Software or any other Confidential Information without CODY's express written consent. The Licensed Software is licensed as a single product. Embedded Programs may be used only in conjunction with the Licensed Software.

e. Licensee shall not copy the Licensed Software or any part thereof, or any other Confidential Information, except for a single copy for inactive backup and archival purposes only and must include on all copies of the Licensed Software and/or other Confidential Information all copyright, government restricted rights and other proprietary notices or legends included on or in the Licensed Software and/or Confidential Information as provided to Licensee.

f. Notwithstanding anything to the contrary herein, Licensee's access to and use of the Embedded Programs shall be and remain subject to all terms, conditions and licenses imposed by the manufacturers and/or third party licensors ("Licensors") of such Embedded Programs and Licensee shall comply with same.

g. Licensee shall permit CODY at any time upon reasonable notice to Licensee, to audit Licensee's use of the Licensed Software and Embedded Programs for compliance with the terms hereof and to report the results of such audit to CODY and CODY's Licensors. CODY may assign its audit rights hereunder to one or more of its Licensors.

### 3. Licensee Obligations.

a. Licensee shall provide CODY with necessary and sufficient access to technical personnel, facilities, systems, databases, Data Sources, servers, and information, as well as security clearance as necessary and sufficient for CODY to perform its obligations under the Agreement. Licensee shall appoint a Project Manager to act as primary liaison among Licensee and CODY and at least one on-site System Administrator of the Licensed Software. Licensee may assign the same person to be the Project Manager and the System Administrator.

b. Except as otherwise expressly provided herein, Licensee and Users shall have sole responsibility for acquiring and maintaining their own Licensee Environment. Licensee hereby represents and warrants to CODY that (i) the Licensee Environment meets or exceeds and at all times during the use of the Licensed Software shall meet or exceed the environment specifications set forth in the CALE, (ii) Licensee has not and will not make any material changes to the Licensee Environment, except solely for those changes required by the CALE, between the date of the execution of the CALE and the delivery and/or installation of the Licensed Software, and (iii) at all times during the use of the Licensed Software, Licensee shall maintain in full force and effect maintenance, service and support agreements with all relevant third parties with respect to the Licensee Environment and all components thereof. The Licensee Environment at all times shall meet or exceed the environment specifications set forth in the CALE. The CALE is subject to reasonable change by CODY throughout the course of the Agreement upon notice to the Licensee. Licensee shall be responsible

for making any current and future modifications and/or upgrades to the Licensee Environment necessary to remain in compliance with the then-current CALE and to successfully access or use the Licensed Software. CODY reserves the exclusive right to revise the requirements for Licensee to remain in compliance with the then-current CALE.

c. The CALE will be completed and executed by the parties prior to the purchase of any hardware, allocation of infrastructure resources (including, without limitation, virtual machines), and/or purchase or signing a contract with any cloud hosting providers (if applicable) in support of the Licensed Software implementation, and prior to installation and operation of the Licensed Software. Prior to any installation and/or operation of the Licensed Software, The Licensee shall provide CODY with advanced written confirmation, on a form and/or in a manner reasonably prescribed by CODY, that the Licensee Environment, as installed, configured, tested and prepared for CODY by Licensee, meets and/or exceeds the environment specifications set forth in the then current CALE. The Licensee is responsible to pay CODY any and all installation fees and charges set forth in the Proposal(s) where CODY determines during installation that the Licensee Environment does not meet the environment specifications set forth in the then current CALE, and as a result, CODY is unable to install the Licensed Software. The Licensee may incur Additional Services Fees in order to complete installation services at a later date. Further, should the Licensee Environment, at any time during this Agreement and/or the Licensee's use of the Licensed Software, fail to meet the requirements set forth in the then-current CALE, CODY reserves the right to suspend Licensee's license to use the Licensed Software until such time as Licensee brings the Licensee Environment back into compliance with the then-current CALE. In any event, CODY will not be responsible in any way for the Licensed Software or any use thereof in a Licensee Environment that does not comply with the then-current CALE.

d. Licensee shall be solely responsible for the supervision, management, operation and control of the use of the Licensed Software, including without limitation: (i) establishing adequate backup plans in the event of a computer or software failure or disaster, (ii) implementing sufficient procedures to provide adequate security and accuracy of data; (iii) informed use and/or output of data and (iv) security compliance, maintenance and password distribution and (v) compliance with any and all local/state/federal laws. To the extent CODY provides Licensee advice with respect to the foregoing as part of the Services or otherwise, Licensee acknowledges and agrees that CODY shall not be liable in any manner for such advice or any actions taken or not taken by any party as a result of or in reliance on such advice.

e. Licensee shall be solely responsible for ensuring that performance of its obligations and exercise of its rights (including without limitation its use of the Licensed Software) under the Agreement comply with all applicable present and future federal, state and local laws, rules, regulations and orders (collectively, "Laws"), including without limitation all present and future Laws relating to the privacy of individually identifiable, medical, financial or other information.

f. Licensee agrees to promptly report to CODY any increases in the number of actual named people using the Licensed Software, from the date of the Agreement.

g. The Agreement expressly excludes the application of the Uniform Computer Information Transactions Act.

h. Oracle Database Licensing Terms. This section is only applicable if Licensee is licensing Oracle from CODY. If the Licensee is not licensing Oracle from CODY, this section does not apply and is null.

i. Licensee acknowledges that, in connection with its license of certain Embedded Software from Oracle Corporation ("Oracle") (if applicable), CODY may be required to report to Oracle certain information about Licensee, including without limitation Licensee's name and address, the Licensed Software licensed by Licensee and the fees payable by Licensee to CODY hereunder, the location at which the Licensed Software will be installed, the applicable license metrics and quantity (including the total number of processors on which the Licensed Software will be installed and/or running and/or the total number of actual named people using the Licensed Software), certain terms of the Agreement and/or such other information about Licensee or the Agreement as Oracle may require from time to time.

ii. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ORACLE BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL, ARISING OUT OF THE USE OF ANY ORACLE SOFTWARE.

iii. Oracle will not be required to perform any obligations or incur any liability not previously agreed to between the Licensee, CODY and Oracle.

iv. Oracle is designated a third party beneficiary of the Agreement

v. The Licensee acknowledges that some Oracle programs may include any source code that Oracle may provide as part of its standard shipment of such programs, which source code shall be governed by the terms of the Agreement.

i. At no time or for any reason will any results of benchmark tests or other performance tests run on the Licensed Software, including without limitation (and if applicable) any Oracle programs, be published.

j. Licensee acknowledges that in the event the Licensee possesses its own Oracle Licensing, that the Licensee may be required to report to CODY and/or otherwise verify on a form and/or in a manner prescribed by CODY, that the Oracle Licensing meets



CODY's requirements. Further, should Licensee choose to use its own Oracle Licensing, it expressly understands that CODY will not be responsible in any way for the Oracle database, nor for any support and/or maintenance therefore. Finally, if Licensee uses its own Oracle Licensing, Licensee agrees that CODY will have sole access to the actual database(s) linked to the Licensed Software. This provision in no way unsettles the Licensee's ownership of the data within the database(s).

k. By its execution hereof, Licensee agrees that CODY may provide such information about Licensee to Oracle (if applicable) and/or any other of CODY's Licensors, as required by such Licensors.

l. Licensee will ensure that CODY's access to all data and/or Data Sources, as well as to the server and/or PC environments in which such Data Sources are housed, will be direct, unobstructed and Freely Available for connection to and collection by CODY ExpressBridge DDB:

i. "Freely Available" means unobstructed, direct and continuous connectivity to the primary database server that houses the Data Source, and unfettered direct, database-level access to the Data Source and data housed therein.

m. Licensee shall be responsible for reading, making itself aware and maintaining such awareness of all CODY Release Notes by periodically checking the CODY Customer Resource Center, especially after a CODY software update.

#### 4. Delivery.

a. CODY may, at its option, deliver the Licensed Software, in person, on tangible media (i.e., optical media, magnetic media, etc.), by sending Licensee unique license keys for the Licensed Software via email or other similar electronic means, by remote installation or by making the Licensed Software available for download. Any of these methods that CODY chooses for a given piece of Licensed Software will constitute delivery of such Licensed Software ("Delivery").

#### 5. Project Management, Installation, Training and Additional Services.

a. In connection with the Licensed Software, CODY shall provide Licensee with the Project Management, Installation, Training and any other services set forth in the Schedule(s) and/or Proposal(s).

b. From time-to-time during the term hereof, Licensee may desire to have CODY perform certain additional services ("Additional Services"). CODY shall perform such Additional Services agreed to in writing by the parties subject to the terms and conditions hereof.

c. Except as otherwise provided in this section, Licensee shall be solely responsible for installation of the Licensed Software.

#### 6. Data Conversion and Data Migration Services (applicable for CODY Public Safety System scenarios, if purchased).

a. Data Conversion and Migration Services: Myriad factors beyond CODY's control can affect our ability to, and in certain cases make it impossible or impracticable to convert and/or migrate data from a legacy database. Such factors may include without limitation, anomalies or errors in, or the age, type, accessibility or obsolescence of the source data, database, database engine, data file, or underlying system, local system/database vendor (or any other third party) interference, lack of support from Licensee, etc. As such, while CODY will make every commercially reasonable effort to successfully convert legacy data for use with the Licensed Software, we cannot and do not guarantee that we will be able to do so in every case. In the event that CODY is not able to convert any legacy data, CODY will be paid for any time and materials expended in connection with the attempt to do so, at CODY's then-current rates and subject to all relevant terms in the Agreement and Proposal(s). Licensee expressly understands, acknowledges, and accepts these conditions and parameters in regard to the Data Conversion and Migration Services and will not hold CODY responsible in the event that CODY is unable, after making commercially reasonable effort, to convert and/or migrate any or all of the data.

b. NOT APPLICABLE.

#### 7. Support Services and Active Remote Monitoring Services.

a. All technical support services provided by CODY will be provided in accordance with the terms and conditions set forth herein, as well as with CODY's Licensed Software Annual Support Services Policies and Procedures available upon request from CODY and as amended by CODY to be current at any given time. Such services are collectively referred to as the "Software Support Services" or "ASM."

b. If Licensee has purchased the ARM option and has an account in good standing, CODY will furnish the Licensee with Active Remote Monitoring Services ("ARM") in accordance with the terms and conditions set forth herein, as well as with CODY's Active Remote Monitoring Services Policies and Procedures available upon request from CODY and as amended by CODY to be current at any given time.

c. ASM and ARM (if ARM is applicable) Services will be provided free of charge during the period of time ending 365 days from the date of the initial Delivery of Licensed Software as defined in 4a herein, set forth on the initial purchase transaction (Schedule or Proposal) (the "Initial Period"). Such services are considered Initial Support Services.

d. ASM and ARM (if ARM is applicable) Services will be provided during each successive 365 day period following the Initial Period, provided that payment is made according to all relevant payment terms in the Agreement. Such services are considered General Support Services. Licensee understands and agrees that CODY is the only entity capable and authorized to support the Licensed Software.

e. Support Services or ARM for Licensed Software purchased AFTER the initial purchase transaction shall be provided upon installation of the additional Licensed Software and shall run concurrently with the existing Licensed Software support term, provided that payment is made according to all relevant payment terms in the Agreement.

f. Licensee shall be solely responsible for providing and maintaining the Licensee Environment necessary and sufficient to run the Licensed Software. Licensee shall also be solely responsible for providing and maintaining the Licensee Environment necessary and sufficient to allow CODY to connect to the Licensee Environment by high speed Internet connection for diagnostic and provision of General Support Services. All telephone, Internet, network and connection arrangements and charges from Licensee's facility to CODY shall be Licensee's responsibility.

g. Any services requested by Licensee and provided by CODY outside the scope of the ASM and/or ARM shall be billable on a time and materials basis at CODY's then current rates and Licensee shall pay all such amounts in accordance with the provisions of Section 8 hereof.

h. CODY may, in its sole discretion, require and direct Licensee to install certain Updates, as well as, without limitation, updates of third party software products such as operating system software, connectivity software, etc., within a specified time period after their release and may modify, suspend or terminate the ASM or ARM, in whole or in part, upon Licensee's failure to timely do so, without liability or obligation to Licensee. Nothing herein shall be construed as requiring CODY to support more than the most recent release of the Licensed Software. Should Licensee refuse, decline or otherwise fail to accept and install any Update that CODY requires and directs Licensee to install, Licensee's License granted under this Agreement will end immediately.

i. Licensee shall provide necessary and sufficient assistance to CODY in documenting or replicating any alleged error or defect in the Licensed Software. In the event that CODY determines that such error or defect was not caused by the Licensed Software, but was the result of negligence on the part of Licensee or Licensee's third party contractor(s) (including without limitation, IT contractors), a failure of the licensee's environment or any other reason that was or should have been known to Licensee, CODY reserves the right to demand reimbursement from Licensee for time and materials expended by CODY in identifying and rectifying such error or defect and, if so demanded, Licensee shall pay all such amounts invoiced by CODY in accordance with the terms of Section 8 hereof. CODY shall have no liability for any materials provided by Licensee to CODY in connection with this paragraph.

j. In addition to any other remedy available to it, CODY may suspend or terminate the ASM or ARM, in whole or in part, upon Licensee's failure to timely pay the Support and/or ARM Fees, without liability to Licensee or others. If Licensee fails to pay Support Fees and/or ARM Fees or otherwise terminates Support Services and/or ARM and later wishes to resume Support Services and/or ARM, Licensee may be required to, as a condition to resumption of Support Services and/or ARM, pay all unpaid Support Fees and/or ARM Fees for the intervening periods (from the last date of paid support), as well as for the current support period.

k. Further, in conjunction with any termination of Support Services and/or ARM, and upon resumption of such services, CODY may require the Licensee to certify, on a form and/or in a manner reasonably prescribed by CODY, that the Licensee Environment continues to meet or exceed the environment specifications set forth in the then current CALE. Licensee acknowledges that CODY may charge a fee for such re-certification and the Licensee agrees to pay such fee, prior to the resumption of Support Services and/or ARM.

#### 8. Fees; Payment.

a. Licensee agrees to pay CODY any and all Fees as set forth on a Proposal executed by Licensee.

i. In the case of a purchase transaction involving a CODY reseller, such as Dell/ASAP, the Fees are not paid directly to CODY, but rather to the reseller who makes payment to CODY. In such a scenario, the grant of the License for Software set forth on a related Schedule is conditioned upon timely payment from Licensee to such reseller and timely payment to CODY for the License by such reseller. Further, nothing herein eliminates CODY's ultimate need to be paid for Services rendered or Software licenses delivered.

ii. Any deposit payments made by the Licensee for Data Conversion and/or Data Migration Services are NON REFUNDABLE, pursuant to Section 6 herein.

b. Licensee shall pay CODY for Additional Services, if any, in accordance with CODY's then-current rates, or as otherwise agreed in writing between CODY and Licensee (the "Additional Services Fees").

c. Initial Support Services (as defined in Section 7 herein) shall be provided free-of-charge, or in the case of Subscription Term Licenses, will be included under such annual subscription license. CODY shall have the right to modify the Support and/or ARM Fees upon not less than sixty (60) days prior written notice to Licensee.

d. Fees and additional terms and conditions for Support Services or ARM associated with additional Licensed Software purchased after the initial purchase transaction (whether it involves a Schedule or Proposal) shall be set forth on the additional Schedule and/or Proposal on which such additional Licensed Software, Support Services and /or ARM are set forth. Fees for such Support Services and/or ARM associated with such additional Licensed Software shall be pro-rated based upon the date of Delivery of such additional software.

e. Any terms set forth on any Invoice issued by CODY are incorporated into this Agreement by reference.

f. Except as otherwise may be provided on a Proposal, Licensee shall pay all Fees and Expenses within thirty (30) days of the date of CODY's invoice therefore. All payments shall be made in U.S. currency. Any sum not paid by Licensee when due shall bear interest until paid at a rate of 1.5% per month (18% per annum), or the maximum rate permitted by law, whichever is less. Licensee shall be responsible for the costs, including without limitation, attorneys' fees and court costs, incurred by CODY in connection with CODY's collection of any past-due amounts under the Agreement. Licensee shall bear and be solely responsible for the payment of all taxes levied or assessed in connection with the License, the Services and/or the Agreement, if any, including, but not limited to, all sales, use, rental receipt, personal property, import and value-added or other taxes (but excluding taxes based solely upon CODY's income).

g. Subscription Term License - failure to make required payment(s): should Licensee fail to make any of the required payments, including the ISD and/or any annual Subscription Payment within a commercially reasonable period of time after the respective payment date as noted on a Proposal (but in any event no longer than 60 days after the payment date, or as otherwise discussed with and acceptable to CODY), Licensee will be in default, and CODY reserves the right to demand and immediately receive all future subscription payments still remaining on the multi-year term.

#### 9. Term and Termination.

a. The term of the Agreement shall commence on the earlier of the dates appearing on the signature block on the initial Proposal and shall continue until terminated in accordance with Section 9.b. hereof.

b. The Agreement may be terminated as follows:

i. By either party, in the event of a material breach hereof by the other party, which breach remains uncured thirty (30) days after written notice thereof is given to the breaching party; provided, however, that the Agreement shall terminate immediately upon a breach by Licensee of any provision of Sections 2, 10, 14 or 15 hereof;

ii. By Licensee, effective immediately upon written notice to CODY, in the event the Licensee ceases to actively conduct its business;

iii. By either party, effective immediately upon written notice to the other party, should the other party admit in writing its inability to pay its debts generally as they become due; make a general assignment for the benefit of creditors; institute proceedings to be adjudicated a voluntary bankruptcy, or consent to the filing of a petition of bankruptcy against it; be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; seek reorganization under any bankruptcy act, or consent to the filing of a petition seeking such reorganization; or, have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such party's property or providing for the liquidation of such party's property or business affairs; or

iv. By CODY, in whole or in part, immediately if CODY ceases providing the Licensed Software and/or the Services to its customers generally.

c. Upon termination of the Agreement pursuant to Section 9 (b), or the triggering of the license expiration contemplated in Section 2 (a)(vi) or the end of an applicable Subscription Term License, Licensee shall immediately (i) discontinue all use of the Licensed Software, and (ii) at CODY's option, return or destroy all copies of the Licensed Software and all other CODY-provided materials. In such event, the License and rights granted hereunder shall expire and Licensee shall have no further rights or access to the Licensed Software. Further, Licensee will be removed as beneficiary on any and all of CODY's software escrow agreements, if any such apply, and will have no further rights connected thereto. Licensee acknowledges and agrees that in contemplation of its performance hereunder, upon execution hereof, CODY will incur certain irrevocable obligations to its Licensors and others. If Licensee terminates the Agreement prior to payment, it will promptly reimburse CODY for all such irrevocable obligations incurred on Licensee's behalf.

#### 10. Proprietary Rights; Confidentiality.

a. CODY and its Licensors (as applicable) own all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names, trade secrets and other proprietary rights) in and to the Licensed Software and all components, reproductions, modifications or derivative works thereof, in whole or in part. CODY may utilize all ideas, suggestions, feedback, improvements, data, reports or the like that Licensee provides to CODY with respect to the Licensed Software without any obligation to Licensee. Licensee shall not publish any results of any benchmark or performance tests of any kind run on the Licensed Software or any portion thereof.

b. Although copyrighted, the Licensed Software is unpublished and contains proprietary, trade secret and confidential information of CODY and its third party licensors ("Licensors"). Further, CODY has information (in hard-copy, machine-readable, or any other format), including without limitation, CODY's business practices, technological processes and/or practices, technical methodologies (especially in regard to Licensed Software architecture, ExpressBridge configuration and COBRA.net processes), project management methodologies, documentation, formulas, processes, database schema, database metadata, and other elements of confidential and proprietary information that has been developed by CODY at a significant investment of time and/or significant expenditure of money and/or resources, whether or not such elements are covered by copyright, trademark, patent, and whether or not such elements are considered trade secrets under applicable law. (such elements are collectively referred to as "Confidential Information"). Licensed Software and Documentation is considered Confidential Information as defined herein. Licensee agrees to maintain the Confidential Information in confidence and to use its best efforts to protect the confidentiality of the Confidential Information (and the Embedded Programs). Further, the Licensee agrees to only use the Confidential Information for the limited and express purpose set forth in the Agreement.

c. Licensee acknowledges and agrees that any violation by it, its Users, employees, agents or contractors of the provisions or covenants of the Agreement contained in Sections 2 (License), 10 (Proprietary Rights; Confidentiality), 14 (Export) or 15 (U.S. Government Restricted Rights) will cause immediate and irreparable harm to CODY for which money damages will not constitute an adequate remedy. Therefore, Licensee agrees that, in the event of a breach or threatened breach of said provisions or covenants, CODY shall be entitled to injunctive and/or other preliminary or equitable relief, in addition to any other remedies available at law or in equity, without having to prove actual damages or to post a bond.

d. In keeping with the Licensee's obligations throughout the Agreement, if, at any time, the Licensee wishes to use the Licensed Software concurrently with another public safety software system that CODY considers competitive to the Licensed Software, the Licensee will adhere to any and all provisions in the Agreement regarding confidentiality and restrictions on use and/or access by third parties, will inform CODY prior to the installation and/or use of such third party software system, and will follow CODY's reasonable instructions and rules for such concurrent use. Nothing in this section is intended to undo any provisions of Section 2.a.vi. For the avoidance of doubt, should any conflict arise between these two sections, Section 2.a.vi will control. This section is intended to only contemplate the very limited scenario in which CODY agrees to provide the temporary license contemplated in Section 2.a.vi.

#### 11. Limited Warranty.

a. CODY warrants the media on which the Licensed Software is provided, if any, to be free from defects in materials and workmanship for ninety (90) days after Delivery. Defective media may be returned for replacement without charge during the ninety (90) day warranty period unless the media have been damaged by accident or misuse. In addition, CODY warrants, for the same ninety (90) day period, that the unaltered Licensed Software substantially conforms to the Documentation (CODY expressly reserves the right to provide the Documentation on the same media as the Licensed Software) and will function substantially in accordance with how CODY designed it to function. CODY's entire liability, and Licensee's exclusive remedy, for breach of the foregoing warranties shall be correction of the program errors that cause the breach of warranty, or if CODY cannot substantially correct a breach in a commercially reasonable manner, Licensee may terminate the License and recover the Fees paid by Licensee for the nonconforming portion of the Licensed Software (subject to the limitations in Section 11.b. hereof). This limited warranty is void if failure of the Licensed Software has resulted from accident, misuse or for any other reason not solely the responsibility of CODY. Any replacement software will be warranted for the remainder of the original ninety (90) day period or thirty (30) days, whichever is longer. By installing Software (including Updates) and commencing use of the Software in a production environment, Licensee acknowledges having examined and tested the Software to Licensee's satisfaction, including all features and functions, whether referred to in any accompanying Release Notes and agrees that the Software is acceptable to Licensee in all respects and meets CODY's warranties herein.

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c. CODY shall have no liability for any claim of infringement based on the (i) use of Licensed Software which has been altered or modified by persons other than CODY, if such infringement could have been avoided by the use of the unaltered Licensed Software, (ii) use of other than the then latest release of the Licensed Software from CODY, if such infringement could have been avoided by the use of the latest release of the Licensed Software and such latest version had been made available to Licensee, or (iii) use or combination of the Licensed Software with software, hardware or other materials not provided by CODY.

d. THIS SECTION 12 STATES THE ENTIRE LIABILITY OF CODY AND ITS LICENSORS WITH RESPECT TO INFRINGEMENT BY THE LICENSED SOFTWARE OR ANY PART THEREOF AND CODY NOR ITS LICENSORS SHALL HAVE ANY ADDITIONAL LIABILITY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

13. Indemnification by Licensee. To the extent permitted by Law, Licensee shall defend, indemnify and hold CODY harmless from and against any claims, losses, liabilities, damages, demands, penalties and expenses (including, without limitation, court costs and attorneys' fees) arising out of or in connection with (a) Licensee's or Users' use of the Licensed Software, (b) access to and/or use of the Licensed Software by or through the Licensee Environment or any portion thereof, even if such access or use was not authorized by Licensee, (c) any infringement claim described in Section 12.c hereof, or (d) any breach by Licensee, its Users, employees, agents or contractors of any representation, warranty or covenant of Licensee hereunder.

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16. Force Majeure. CODY shall not be liable to Licensee for any failure or delay caused directly or indirectly by events beyond CODY's reasonable control, including, without limitation, Licensee's failure to furnish necessary information or equipment; sabotage; failure or delays in transportation or communication; third party interference and/or delays or failures, failures or substitutions of equipment; labor disputes; accidents; shortages of labor, fuel, raw materials or equipment; or technical failures (including without limitation defects in any Embedded Software).

a. NOT APPLICABLE

17. Miscellaneous.

a. The Agreement, including these terms and conditions, all Proposals and all Exhibits attached hereto, supersedes all prior discussions, understandings and agreements (whether verbal or in writing) between the parties with respect to the subject matter hereof, and constitutes the entire agreement between the parties with respect to the matters contemplated herein. Without limiting the generality of the foregoing, the Agreement supersedes all previous license or similar agreements with respect to software and services previously provided by CODY to Licensee, which agreements are hereby terminated; provided, however, that Licensee shall continue to pay all fees and other amounts payable pursuant to such prior agreements, which payment provisions shall survive termination thereof. With the exception of the payment obligations referenced in the preceding sentence, all rights and obligations of CODY and Licensee with respect to the Software and related Services shall be defined exclusively by the Agreement. The Agreement shall not be modified or amended except in a writing executed by both parties hereto. The Exhibits to the Agreement may be supplemented from time to time by written agreement of the parties to incorporate additional Software, Services, or otherwise.

b. NOT APPLICABLE

c. The Agreement is made under and shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to conflict of laws provisions thereof. Any dispute arising out of or in connection with the Agreement shall be adjudicated exclusively in the state or federal courts located in Montgomery County, Pennsylvania, and all parties consent to personal jurisdiction and venue therein.

d. CODY's Licensors shall be third party beneficiaries of the Agreement to the extent of the Embedded Programs provided by them. Except as otherwise expressly provided herein, the Agreement will not be construed as conferring any rights on any other persons.

e. All notices, consents, waivers or other communications which are required or permitted hereunder will be sufficient if given in writing and delivered personally, by overnight mail service, by facsimile or electronic mail or by registered or certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth above (or to such other addressee or address as will be set forth in a notice given in the same manner). All such notices will be deemed to have been given three (3) business days after mailing if sent by registered or certified mail, one (1) business day after mailing if sent by overnight courier service, or on the date received if delivered personally or sent by facsimile or electronic mail.

f. Neither party will by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of the Agreement. Further, the waiver by either party of a particular breach of the Agreement by the other party will not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of the Agreement.

g. CODY reserves the right to change these Terms and apply them to a Licensee upon notice to the Licensee by issuance of updated Terms in connection with any Software or Update, or upon notice to Licensee, or by inclusion in Release Notes. Upon notice of modified Terms in any manner, Licensee's continued use of the Software will operate as consent to such modified terms and conditions.

h. If any provision of the Agreement will be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over the Agreement, the validity of the remaining portions or provisions hereof will not be affected

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i. The Agreement, including any Proposal or other incorporated document requiring execution, may be executed in one or more counterpart copies, each of which will be deemed an original and all of which will together be deemed to constitute one agreement.

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