



## **SOFTWARE LICENSE AGREEMENT**

THIS SOFTWARE LICENSE AGREEMENT (the “**Agreement**”) is made as of the effective date of the City’s Integration Agreement for Annual Contract for Vital Records Management System RFCSP No. 23-102; 6100016954 (the “**Effective Date**”) and is as set out therein, by and between **Genesis Systems, Inc.** a Pennsylvania corporation with an address of 2400 Park Drive, Suite 102, Harrisburg, PA 17110 (“**Licensor**” or “**Genesis**”) and the **City of San Antonio**, a home-rule municipal corporation in the State in Texas (“**Licensee**”) (each, individually, a “**Party**” and both, collectively, the “**Parties**”).

WITNESSETH:

WHEREAS, Licensor makes available for license computer-related software systems and related products and intends to create and develop a system referred to as San Antonio Vital Records System (“SAVRS”) for the recording, processing, registering, and/or reporting of vital events.

WHEREAS, Licensee desires to utilize such a System for the recording, processing, registering, and/or reporting of vital events;

WHEREAS, the Software and Source Code is proprietary and highly confidential information of Licensor of the utmost importance; and

WHEREAS, as set out in City’s Integration Agreement for Annual Contract for Vital Records Management System RFCSP No. 23-102; 6100016954, and concurrent with this Software License Agreement, the Parties are entering into a Database License Agreement, dated as of the date hereof as set out in City’s Integration Agreement for Annual Contract for Vital Records Management System RFCSP No. 23-102; 6100016954 (the “**Database License Agreement**”);

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree, intending to be legally bound, as follows:

### **1. DEFINITIONS**

A. “**Authorized Purpose**” shall mean the use of the Software listed above, for the recording, processing, registering, and reporting of vital events subject to the jurisdiction of the Licensee.

B. “**Authorized User**” shall mean a named individual employee or someone on behalf of Licensee who uses the Licensed Intellectual Property solely for the Authorized Purpose.

C. “**Derivative Work**” has the meaning as defined in the Copyright Act, 17 U.S.C. 101 (2000).

D. “**Documentation**” shall mean the user manual or other documentation, specifications, written instructions or explanatory material related to the Source Code, or the Software, and any

subsequent versions thereof, that Licensee may receive from Licensor. Nothing contained herein will be construed as requiring Licensor to create any new or different Documentation.

E. **“Intellectual Property Rights”** shall mean any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

F. **“Licensed Intellectual Property”** shall mean the Software, the Source Code, the Documentation, and any portion of thereof.

G. **“License Term”** shall mean the term commencing on the date hereof and terminating upon the termination of this Agreement. For clarification, the license granted herein shall terminate at the end of the License Term.

H. **“Modification”** shall mean any addition, change, manipulation, translation, or alteration to the Source Code.

I. **“Open Source Software”** means any software, programming, or other intellectual property that is subject to (i) the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, or any similar license, including, but not limited to, those licenses listed at [www.opensource.org/licenses](http://www.opensource.org/licenses) or (ii) any agreement with terms requiring any intellectual property owned or licensed by Licensor (including the Licensed Intellectual Property) to be (a) disclosed or distributed in source code or object code form; (b) licensed for the purpose of making derivative works; or (c) redistributable.

J. **“Person”** shall mean an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

K. **“Software”** shall mean the executable code as delivered by Licensor to Licensee.

L. **“Source Code”** shall mean computer programming code in human readable form for the Software that is not suitable for machine execution without the intervening steps of interpretation or compilation, which is delivered by Licensor to Licensee, all Modifications made by Licensor that are delivered to Licensee and all Modifications made by Licensee.

M. **“Trade Secrets”** shall mean any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords Licensor a competitive advantage over its competitors, and shall include the Licensed Intellectual Property, system design and specification, programming sequences, algorithms, flowcharts, screen layouts and formats pertaining to the Software. “Trade Secrets” shall also include all trade secrets of Licensor, as such term is used under Texas law.

## **2. LICENSE GRANT AND OWNERSHIP; RESTRICTIONS ON USE**

A. Licensor hereby grants to Licensee, during the License Term, a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable, license to use the Licensed Intellectual Property in each case for the Authorized Purpose only, in and for use by the Licensee at its principal place(s) of business only, and subject to the terms and conditions hereof.

B. Any use of the Licensed Intellectual Property not expressly authorized in this Agreement is strictly prohibited. Without limiting the generality of the foregoing or anything else contained herein, Licensee is expressly prohibited from: (i) sublicensing, transferring, assigning or reselling the Licensed Intellectual Property to any Person; (ii) granting access to the Licensed Intellectual Property to any Person, either within or outside Licensee's company, except to Authorized Users; (iii) using the Licensed Intellectual Property in any service or product, in any manner in competition with or to the detriment or commercial disadvantage of Licensor, or any other manner whatsoever or for any purpose whatsoever, except for the Authorized Purpose; (iv) using the Licensed Intellectual Property in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable law; (v) removing, obscuring, altering or hiding any identification markings, including copyright notices and trademarks, from the Licensed Intellectual Property; (vi) making any Modification, enhancement, or Derivative Work of the Licensed Intellectual Property, or any portion thereof, other than Modifications expressly permitted hereby and in accordance with the terms and conditions hereof; (vii) using the Licensed Intellectual Property, any portion thereof, or any Modification to develop, sell or distribute any software product with similar functionality or design; (viii) granting or attempting to grant a security interest in the Licensed Intellectual Property or this Agreement, or recording or permitting to be recorded any such security interest (including for patents, trademark or copyright registrations) with respect to the Licensed Intellectual Property with any governmental authority in Israel, the U.S. or any other jurisdiction; (ix) using the Licensed Intellectual Property for any purpose not contemplated by the Documentation; (x) using the Licensed Intellectual Property or any Confidential Information of Licensor to dispute or contest Licensor's intellectual property rights in the Licensed Intellectual Property; and (xi) using the Licensed Intellectual Property in a production environment.

C. Licensee acknowledges that all rights (including all Intellectual Property Rights), title and interest to the Licensed Intellectual Property, regardless of the form of media in which it is contained, shall be retained by Licensor, subject to the license expressly granted to Licensee hereunder. For clarification, Licensor shall exclusively own all rights (including all Intellectual Property Rights), title and interest in all Modifications, whether created by Licensor or Licensee, subject to the license expressly granted to Licensee hereunder. Licensee agrees to take any actions reasonably requested by Licensor in connection with Licensor's maintenance of its rights in the Licensed Intellectual Property.

D. Licensee hereby unconditionally and irrevocably assigns to Licensor its entire right, title and interest in and to any Intellectual Property Rights that Licensee may now or hereafter have in or relating to the Licensed Intellectual Property or any portion thereof (including any rights in

Modifications, Derivative Works or patent improvements relating to either of them), whether held or acquired by operation of law, contract, assignment or otherwise.

E. Licensee acknowledges that Licensor has created, and from time to time will create, other computer software programs that may be based upon or related to the Software and that those other programs are not licensed to Licensee under this Agreement. Licensee further acknowledges that except for the Source Code and the Software no other source code or software owned by Licensor is being licensed to Licensee hereunder.

F. Notwithstanding any other provision in this Agreement, Licensor shall have the unconditional and irrevocable right to use any ideas, information, understandings, communications (including all suggestions, comments, feedback, ideas or know-how, whether in oral, written or electronic form), Modification, and concepts derived from Licensee's use of the Licensed Intellectual Property without restriction and without compensation.

G. The Licensed Intellectual Property is licensed and not sold, and Licensor reserves all rights not expressly granted to Licensee in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any third party any Intellectual Property Rights or other right, title, or interest in or to any of the Licensed Intellectual Property.

H. All orders entered into the system for any certified copy of a vital record must either directly import into the system through Licensor created functionality or manually keyed by Licensee personnel. Use of tools in the system including, but not limited to, "keyboard emulators" is prohibited and deemed a violation of the license. Only Licensor or one of its related entities may use keyboard emulators in the system.

### **3. SCOPE OF LICENSED USE; AUTHORIZED USERS; MODIFICATIONS**

A. Except as expressly required for the licensed use of the Licensed Intellectual Property, Licensee shall not make any copy of the Licensed Intellectual Property.

B. Licensee acknowledges and agrees that an Authorized User does not acquire individual rights in the Licensed Intellectual Property, other than the right to use the Licensed Intellectual Property on Licensee's behalf and pursuant to the rights granted to Licensee and subject to the terms and conditions herein.

C. Licensee acknowledges and agrees that Licensee is responsible for all use of the Licensed Intellectual Property as accessed by Licensee and its Authorized Users and for ensuring that all use of the Licensed Intellectual Property is for the Authorized Purposes only and complies fully with the provisions of this Agreement, including assuring that only Authorized Users are accessing and using the Licensed Intellectual Property and creating Modifications.

D. Without limiting anything else contained herein, in no way does this Agreement confer any right in Licensee to license, sublicense, sell, distribute or transfer in any manner or form, in

whole or in part, or otherwise authorize the use of the Licensed Intellectual Property, whether in executable form, source code or otherwise, by any third parties.

#### **4. REPRESENTATIONS AND WARRANTIES**

A. Each Party warrants and represents to the other Party that (i) it has the necessary power and authority to enter into and perform its obligations under this Agreement; (ii) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; (iii) this Agreement, as set out in City's Integration Agreement for Annual Contract for Vital Records Management System RFCSP No. 23-102; 6100016954, does not conflict with or violate any other agreement to which such Party is a party or by which it is bound; and (iv) when executed and delivered by both Parties, the City's Integration Agreement for Annual Contract for Vital Records Management System RFCSP No. 23-102; 6100016954 will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms. The foregoing, however, shall not be construed as a warranty of non-infringement by Licensor.

B. Licensor further warrants and represents that Licensor has no actual knowledge as of the Effective Date that the licensed use of Licensed Intellectual Property infringes upon any Intellectual Property Rights of any third party.

C. Except for those warranties previously set forth above, the Licensed Intellectual Property is licensed on an "AS IS" basis without warranties or guarantees of any kind, and Licensor does not guarantee (i) that the Licensed Intellectual Property will meet the Licensee's requirements absent those specifically agreed to; (ii) that it will operate in combination with Licensee's systems or equipment; (iii) that it is compatible with any software, hardware, system or network; (iv) that it is secure, accurate, complete or free of harmful code; or (v) that its operation will be error-free or without interruption. EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 4, AND TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, OF MERCHANTABILITY, OR WARRANTY OF NO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE ANY ADDITIONAL WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF LICENSOR'S OBLIGATIONS HEREUNDER.

D. Licensee further warrants and represents that Licensee has no actual knowledge that its services infringe upon any Intellectual Property Rights of any third party. EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, LICENSEE MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF MERCHANTABILITY.

## **5. LICENSEE OBLIGATIONS**

- A. Licensee shall maintain a system of controls that will: (i) protect the integrity of the Licensed Intellectual Property; (ii) control access to the Licensed Intellectual Property and prevent access by non-Authorized Users and by third parties; (iii) prevent unauthorized usage of the Licensed Intellectual Property; and (iv) otherwise ensure compliance with this Agreement.
- B. Licensee shall not combine the Licensed Intellectual Property in any way with Open Source Software, including using any Open Source Software in any Modifications.
- C. Licensee shall use, and shall ensure that all Authorized Users use, the Licensed Intellectual Property in strict compliance with all applicable federal, state and local laws, rules and regulations, including all applicable export laws, restrictions and regulations. Without limiting anything contained herein, Licensee agrees that Licensee will not export, or allow the export or re-export of the Licensed Intellectual Property in violation of any such laws, restrictions and/or regulations.
- D. Licensee shall promptly notify Licensor of any unauthorized use or disclosure of the Licensed Intellectual Property or any other Confidential Information of Licensor or any other breach of this Agreement and, without limiting any remedy available to Licensor, Licensee shall use its best efforts and shall cooperate with Licensor to prevent further unauthorized use or disclosure or further breach.

## **6. TERM AND TERMINATION**

- A. This Agreement shall be effective as of the effective date of the City's Integration Agreement for Annual Contract for Vital Records Management System RFCSP No. 23-102; 6100016954 and in conjunction with an active Support and Maintenance Agreement as set out in City's Integration Agreement for Annual Contract for Vital Records Management System RFCSP No. 23-102; 6100016954.
- B. This Agreement and the license granted hereunder shall terminate immediately and automatically upon the earlier of the following:
- i. The termination of the Database License Agreement;
  - ii. The mutual agreement of the parties to terminate this Agreement in a written instrument executed by both Parties; or
  - iii. If either Party (i) is dissolved or liquidated, discontinues or dissolves its business, or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any jurisdiction's bankruptcy or insolvency laws; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.



C. Without limiting the foregoing, either Party may terminate this Agreement and the license granted hereunder on a 30 days' written notice to the other Party in the event of a breach of any provision of this Agreement by the other Party, provided that, during such thirty-day period, the breaching Party fails to reasonably cure such breach. For the avoidance of doubt, Licensee's breach of Sections 2, 3, 5, or 7 shall constitute a material, non-curable breach of this Agreement, entitling Licensor, among other remedies, to immediately terminate this Agreement and the license granted hereunder.

D. Upon the termination of this Agreement, all rights and license granted to Licensee under this Agreement shall automatically terminate and immediately revert to Licensor and Licensee shall immediately (i) discontinue all use of the Licensed Intellectual Property; (ii) destroy the Software, Source Code (including, for the avoidance of any doubt, all Modifications created by Licensee, and all Modifications created by Licensor that were delivered to Licensee or are otherwise in Licensee's possession or control), and all Documentation in electronic form, including all copies of the foregoing; (iii) return to Licensor all Documentation in physical form, if any; and (iv) upon request of Licensor, execute by an authorized officer of Licensee a certificate provided by Licensor of its compliance with this Section.

E. Except as otherwise provided in this Agreement, the remedies contained in this Agreement are in addition to all other remedies available to either party at law or in equity.

## 7. CONFIDENTIALITY

A. Licensee acknowledges and agrees that the Licensed Intellectual Property is the proprietary and highly confidential property of Licensor, contains substantial Trade Secrets. Licensee represents and warrants that Licensee does not currently have (i) the Licensed Intellectual Property nor any portion thereof, (ii) any proprietary knowledge with respect to the functionality, design and purposes of the Software, or (iii) any similar software or product that it has developed or acquired, or that it has provided or intends to provide to its customers.

B. Without limiting anything contained in any applicable Non-Disclosure Agreement between the Parties, the Database Agreement, or herein, Licensee further agrees to take all reasonable precautions to preserve the confidentiality of the Licensed Intellectual Property as required hereby and shall assume responsibility that its employees, affiliates, officers, directors, agents, subcontractors and representatives ("**Representatives**") will similarly preserve and protect the Licensed Intellectual Property against third parties and will not use, disclose or access the Licensed Intellectual Property except as permitted hereby.

C. Licensee shall not disclose the Source Code, any portion thereof or any other Trade Secrets of Licensor in any litigation, arbitration or claim that Licensee may bring against Licensor or any third party, even if Licensee would be required by law to make such disclosure in order to support its allegations – except for disclosure only to any judge and/ or arbitrator and/ or other certified entity subject to obligation of confidentiality.

D. Without limiting the foregoing, if Licensee becomes compelled, upon advice of legal counsel licensed in the applicable jurisdiction, under court order or applicable law or regulation, to disclose the Licensed Intellectual Property or any portion thereof, it shall (i) give Licensors prompt and timely written notice so that Licensors may take steps to oppose such disclosure, (ii) use its reasonable best efforts to oppose such disclosure and cooperate with Licensors in its attempts to oppose such disclosure, (iii) in case of failure of such opposition despite such efforts, Licensee (x) may only disclose such information or portion under seal or otherwise on a confidential basis, (y) shall use its reasonable best efforts to obtain a protective order and shall cooperate with Licensors in obtaining a protective order or other remedy, and (z) shall acknowledge in connection with such required disclosure that the Licensed Intellectual Property or such portion is a trade secret of Licensors of the utmost importance and shall not contest such fact or make any representation to the contrary.

**8. RESERVED**

**9. RESERVED**

**10. GOVERNING LAW AND JURISDICTION**

A. This Agreement shall be interpreted, enforced, and governed by the laws of the State of Texas.

**11. MISCELLANEOUS**

A. **RELATIONSHIP OF PARTIES.** This Agreement does not create a joint venture or partnership between Licensors and Licensee, and each will act independently of the other.

B. **NO CIRCUMVENTION.** The Parties shall not take any action, and shall cause their respective Representatives not to take any action, directly or indirectly, the effect of which is to circumvent or avoid any provision of this Agreement.

C. **EQUITABLE REMEDIES.** Licensee acknowledges that any violation, breach or other failure on Licensee's or its Representatives to comply with this Agreement shall materially and irreparably injure Licensors and its business in a manner inadequately compensable in damages, and that Licensors shall be entitled to seek and obtain equitable relief, including by way of preliminary and/or permanent injunction and specific performance against the breach or threatened breach of this Agreement, without posting any bond, in addition to any other legal remedies that may be available.

D. **SURVIVAL.** Sections 1, 2 (except 2.A), 3, 4, 5, 6.E, 7, 7, 8, 9, and 10, and any other section, right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.



E. NOTICES.

i. Any notice required to be given under this Agreement shall be in writing and delivered personally to the other Party at the above stated address or mailed by certified, registered or Express mail, return receipt requested or by Federal Express.

ii. Either Party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this Section.

F. AGREEMENT BINDING ON SUCCESSORS. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their administrators, receivers, liquidators, trustees, successors and assigns.

G. ASSIGNABILITY. Neither Party may assign this Agreement, assign any rights or delegate any obligations hereunder to any third party, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the express prior written approval of the other Party, which shall not be unreasonably withheld.

H. WAIVER. No waiver by either Party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

I. SEVERABILITY. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from this Agreement.

J. NO THIRD-PARTY BENEFICIARIES. Except as set forth in Section 9 (*Indemnity*), this Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

K. INTERPRETATION. For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; and (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa. Unless the context otherwise requires, references in this Agreement: (x) to sections mean the sections of this Agreement; and (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.



L. COUNTERPARTS. This Agreement may be executed in counterparts, each of which will constitute one and the same instrument. Facsimile and .PDF format signature pages shall be legally sufficient for all purposes hereof.