

AGREEMENT made this 6<sup>th</sup> day of Sept, 2011 by and between the Tooele County Sheriff's Office (the "Licensee"), having its principle place of business at 47 South Main Street, Tooele, Utah and Zuercher Technologies LLC ("Licensor"), having its principal place of business at 3720 W 69<sup>th</sup> St, Ste 200, Sioux Falls, South Dakota.

## SOFTWARE LICENSE AND SERVICE AGREEMENT TERMS AND CONDITIONS

### 1. License

#### 1.1 Grant of the License

Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee, and Licensee accepts, a limited, non-transferable and non-exclusive license to use only for Licensee's own business purposes, the computer programs in object code form and any updates, enhancements, modifications, revisions, additions, replacements or conversions thereof (collectively, the "Software") as set forth or identified in Addendum A.

#### 1.2 Copies and Modifications

Unless otherwise agreed to in writing by Licensor, no identifying marks, copyright or proprietary right notices may be deleted from any copies of the Software made by Licensee. Licensee shall not decompile, or create by reverse engineering or otherwise, the source codes from the object code supplied hereunder, or adapt the software in any way or use it to create a derivative work. Licensor shall not be responsible in any way for Software performance if the Software has been modified.

### 2. Delivery, Fees Payment

#### 2.1 Delivery of Software to Licensee

The Software shall be delivered in executable object code form only. Licensor shall initially deliver and install copies of the Software as set forth in Addendum A. Except as stated in Addendum C, Licensor shall not be responsible for providing any updates, enhancements, modifications, revisions, additions, replacements, conversions or maintenance to the Software.

#### 2.2 Fees

Upon execution of the Agreement, Licensee shall pay Licensor the fees on the due dates set forth in Addendum B.

### **2.3 Payment**

Licensee shall pay invoices received from Licensor by the date due according to the terms of this Agreement. If Licensee fails to pay any amount due within thirty (30) days of invoice date, Licensee shall pay late charges of one and one half percent (1.5%) or the highest allowed by law, whichever is lower, per month on such balance, together with all of the Licensor's expenses, collection costs and reasonable attorneys' fees incurred in enforcing this Agreement.

### **2.4 Installation and Acceptance**

Licensee acknowledges that the Software shall be deemed accepted on the date of notification in writing by the Licensor that the installation is complete, unless Licensee notifies Licensor in writing within thirty (30) days after delivery thereof of any material non-conformity in the Programs as compared with the Documentation. In the event that Licensee does so notify Licensor, Licensor shall promptly begin to use its reasonable efforts to correct non-conformity in the Programs and will again send notification in writing that the installation is complete. The acceptance will be dated at the new notification. Acceptance can also be acknowledged by putting the software system into production.

## **3. Other Rights and Obligations**

### **3.1 Proprietary Rights**

Licensor represents that it is the owner of or otherwise has the rights to the Software and that it has the right to grant the License. Licensor retains title to the Software and any other deliverables hereunder, including, without limitation, all copies and audiovisual aspects thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto. Licensee shall not, by virtue of this Agreement or otherwise, acquire any proprietary rights whatsoever in the Software or in any other deliverables hereunder, which shall be confidential information of Licensor and the sole and exclusive property of Licensor. Licensor hereby expressly reserves any right not expressly granted to Licensee by this Agreement. No identifying marks, copyright or proprietary right notices may be deleted from any copy of the Software provided to or made by Licensee.

### **3.2 Trademarks and Trade Names**

Any and all trademarks and trade names, which Licensor uses in connection with the License granted hereunder, are and shall remain the exclusive property of Licensor. Nothing contained in this Agreement shall be deemed to give Licensee any right, title or interest in any trademark or trade name of Licensor.

### 3.3 Confidentiality

Except as otherwise provided in this Agreement, Licensee shall not sell, transfer, publish, disclose or otherwise make available any portion of the Software to others. Licensee shall use its reasonable best efforts to cooperate with and assist Licensor in identifying and preventing any unauthorized use, copying or disclosure of the Software or any portion thereof or any of the algorithms or logic contained therein.

### 3.4 Termination for Breach

Licensor may immediately terminate this Agreement, including all license rights granted herein, in the event Licensee breaches any of its material confidentiality obligations regarding the Software.

### 3.5 Non-Confidential Information

Confidentiality obligations of the parties shall not extend to information that: is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party;

- (a) was known to the receiving party at the time of its disclosure and such knowledge can be proven by documentation;
- (b) is independently developed by the receiving party;
- (c) is subsequently learned from a third party not under a confidentiality obligation to the providing party; or
- (d) is required to be disclosed pursuant to court order, subpoena, or government authority, whereupon the receiving party shall provide notice to the other party prior to such disclosure.

### 3.6 Indemnity of Licensee

The Licensor agrees to defend, indemnify, and hold the Licensee, its employees and officials harmless from any claims, demands, actions or causes of action including reasonable attorney's fees and expenses arising out of any act or omission on the part of the Licensor, or its subcontractors, partners or independent contractors or any of their agents or employees in the performance of or with relation to any of the work or services to be performed or furnished by the Licensor or the subcontractors, partners, or independent contractors or any of their agents or employees under the agreement.

### 3.7 Disclaimer of Warranty

The warranty set forth in Addendum C is a limited warranty and it is the only warranty made by licensor. Licensor expressly disclaims, and licensee hereby expressly waives, all other warranties, express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose. Licensor's limited warranty is in lieu of all liabilities or

obligations of licensor for damages arising out of or in connection with the delivery of the software or related services. Except for the limited warranty in Addendum C, the entire risk as to the quality and performance of the software is with the licensee.

### **3.8 Legal Relationship**

It is expressly understood by the Licensee and Licensor that the Licensor shall not be construed to be, and is not, an employee of the Licensee. Licensor shall provide services to the Licensee as an independent contractor with control over the time, means and methods for accomplishing the services outlined in this Agreement. Licensor agrees to be solely responsible for the payment of any federal, state, social security, Medicare, local or other applicable taxes from the funds received under this Agreement. The Licensor also accepts total responsibility for any liability protection or other insurances as required by law and this Agreement. The Licensor further acknowledges that he/she is not entitled to such benefits as holiday time, vacation time, sick leave, retirement benefits, health benefits, or other benefits usually associated with employment.

### **3.9 Insurance Provision**

Licensor, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

#### **Commercial General Liability Insurance**

Licensor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

#### **Professional Liability Insurance or Miscellaneous Professional Liability Insurance**

Licensor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

#### **Business Automobile Liability Insurance**

Licensor shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$200,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

At Licensee's request, Licensor shall provide properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days prior written notice to the Licensee.

#### **4. Limitation of Liability**

The aggregate liability of licensor for any reason and upon any cause of action of claim, including, without limitation, licensor's obligation to indemnify and hold harmless under this agreement, shall be limited to twice the amount of the fees paid for the portion of software giving rise to such claims in the aggregate, including, without limitation, breach of contract, breach of warranty, indemnity, negligence, strict liability, misrepresentations, and other torts.

#### **5. Termination**

##### **5.1 By Licensor**

In addition to various other express rights of Licensor to terminate this Agreement set forth herein, Licensor shall also have the right to terminate this Agreement immediately and cancel any unfulfilled portion of it by written notice to Licensee if: (i) Licensee becomes bankrupt or insolvent or enters into any arrangement or composition with its creditors or if a receiver is appointed to direct the business of Licensee, or (ii) if Licensee sells or assigns its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer or assets, sale of stock, operation of law or otherwise, of (iii) upon Licensee's breach of the License or confidentiality and nondisclosure provisions contained herein, or (iv) upon a violation of Licensor's proprietary rights hereunder. Licensor shall have the rights to terminate this Agreement upon thirty (30) days prior notice upon any breach of any other material provision of this Agreement by Licensee. The termination of this Agreement shall automatically terminate and extinguish the License.

##### **5.2 Termination for Cause**

Licensee may terminate this Agreement for cause based upon the failure of Licensor to comply with the terms and/or conditions of the Agreement; provided that the Licensee shall give the Licensor written notice specifying the Licensor's failure. If within thirty (30) days after receipt of such notice, the Licensor shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the Licensee may, at its option, place the Licensor in default and the Agreement shall terminate on the date specified in such notice. Licensor may exercise any rights available to it under South Dakota law to terminate for

cause upon the failure of the Licensee to comply with the terms and conditions of this Agreement; provided that the Licensor shall give the Licensee written notice specifying the Licensee's failure and a reasonable opportunity for the Licensee to cure the defect.

### **5.3 Post-Termination Obligations**

All provisions hereof relating to Licensor's proprietary rights, confidentiality, non-disclosure and non-solicitation shall survive the termination or expiration of this Agreement. Any fees due as per Addendum B for work completed prior to termination shall still be paid by Licensee.

## **6. Miscellaneous**

### **6.1 Entire Agreement**

This agreement, and any exhibits specifically incorporated therein by reference, constitutes the entire agreement between the parties with respect to the subject matter. These documents supersede and merge all previous proposals of sale, communications, representations, understandings and agreements, whether oral or written, between parties with respect to the subject hereof.

This Agreement may not be modified except by a writing subscribed to by authorized representatives of both parties.

### **6.2 Force Majeure**

Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to cause beyond its reasonable control. Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.

### **6.3 Governing Law**

This Agreement and performance hereunder shall be governed by the law of the State of South Dakota, without giving effect to the principles of conflict of law of such state or international treaties.

### **6.4 Assignment**

This Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their permitted successors in interest and permitted assigns. Licensee may not assign, without the prior written consent of Licensor, which consent shall not be unreasonably withheld, Licensee's rights, duties or obligations under this Agreement to any person or entity, in whole or

in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement.

#### **6.5 Notice**

Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (i) if by hand delivery, upon receipt hereof; (ii) if mailed, 7 days after deposit in the U.S. mails, postage prepaid, certified mail, return receipt requested. All notices shall be addressed to the parties at the addresses set forth on the first page hereof.

#### **6.6 Survival**

All provisions of this Agreement relating to proprietary rights, confidentiality, non-disclosure or to payment of fees by Licensee shall survive the termination of this Agreement.

#### **6.7 No Waiver**

The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.

#### **6.8 Enforceability**

If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect.

#### **6.9 Remedies**

Unless otherwise specified herein, the rights and remedies of both Parties set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it at law or in equity.

#### **6.10 Headings**

The headings of the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

#### **6.11 No Third Party Beneficiaries**

The Parties agree that this Agreement is for the benefit of the Parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third party beneficiaries as to this Agreement or any part of specific provision of this Agreement.

#### **6.12 Limitation of Actions**

No action, regardless of form, arising out of or relating to this Agreement or the subject matter hereof may be brought by either party more than two (2) years after the cause of action has

initially arisen, with the exception of either party's breach of its confidentiality or non-disclosure obligations herein or Licensee's violation of Licensor's proprietary rights in the Software or any other software owned or licensed by Licensor.

#### **6.13 Taxes**

Licensee shall, in addition to the payments required hereunder, pay all applicable sales, use, transfer or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transactions contemplated hereby, excluding, however, income taxes on net profits which may be levied against Licensor. Licensee shall reimburse Licensor for the amount of any such taxes or duties paid or accrued directly by Licensor as a result of this transaction.

#### **6.14 Non-Discrimination**

Licensor agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and Licensor agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Licensor agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation, disabilities, or because of an individual's sexual orientation. Any act of discrimination committed by Licensor, or failure to comply with these obligations when applicable shall be grounds for termination of this Agreement.

#### **6.15 Change Orders**

Change orders and out-of-scope work will be defined by written agreement. Unless otherwise agreed to by the parties, hourly out-of-scope work will be priced and billed in accordance with Addendum B of this Agreement.

Licensee has read and agrees to all of the attached and incorporated terms and conditions.

Tooele County

Frank Park  
Sheriff

Frank Park Date: 9-7-11

Colleen Johnson  
Commission Chairperson

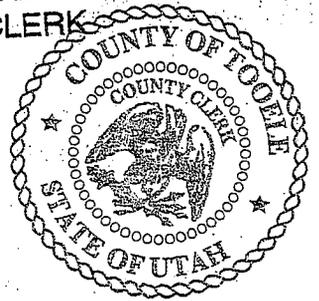
Colleen Johnson Date: 9-6-11

Zuercher Technologies LLC  
Michael Zuercher  
President

\_\_\_\_\_ Date: \_\_\_\_\_

ATTEST:

Marilyn K. Gillette  
MARILYN K. GILLETTE  
TOOELE COUNTY CLERK



## Addendum A – Statement of Work

Licensor will provide a system and services substantially similar to those outlined in the attached document entitled "ledsJail Proposal" dated August 11, 2011.

## Addendum B – Payment Schedule

The total amount of this contract is \$137,007 with the following breakdown:

The amounts due under this contract are as follows:

Upon contract execution	\$21,507
When system goes live	\$17,200
Upon system acceptance	\$4,300
1 year after system acceptance (year 2)	\$23,500
2 years after system acceptance (year 3)	\$23,500
3 years after system acceptance (year 4)	\$23,500
4 years after system acceptance (year 5)	\$23,500

These amounts do not include any taxes.

## Addendum C - Maintenance Agreement

### 1. Updates and Enhancements

While this Agreement has not expired, Licensor will maintain the Software by providing software updates and enhancements to Licensee. All software updates and enhancements provided to Client by Licensor pursuant to the terms of this Agreement shall be subject to the terms and conditions of the License Agreement between the parties. Updates will be provided on an as-available basis and include the items listed below:

1. Bug fixes;
2. Updates do not include:
  - (a) Platform extensions including product extensions to different hardware platforms, different windowing system platforms, or different operating system platforms;
  - (b) New functions such as new modules, components, or applications.

At a time mutually acceptable to both parties, Licensor will install software updates remotely.

### 2. Support

Licensor will provide phone and email support for the Software licensed under this agreement. This does not include custom programming services or training.

Licensor will perform regular backups of the system to an offsite location.

### 3. Hardware

Licensor will provide and maintain the server hardware necessary to host Software. This does not include networking or client hardware, which is the responsibility of Licensee. Additionally, it does not include hardware necessary to run third party programs or systems.

### 4. Warranties

Licensor warrants that: (i) it owns or otherwise has the rights in the Software and has the right to license the Software as described in this Agreement and (ii) while the Maintenance Agreement is in effect and has not been terminated or expired the operation of the Software shall not have material non-conformities, provided that no party has altered any portion of the Software, that the Software are operated on the Equipment and in the Operation Environment necessary to operate the Software, and that any non-conformities are not caused by products or services from Licensor's suppliers or any other third party. Licensor's sole obligation or liability under the Warranty shall be to use reasonable efforts to correct the Software, in a reasonable time, to

perform in accordance with Addendum A, upon written notice of its failure to so perform from the Licensee. In the event Licensor fails to remedy material defects in the Software under this Warranty, Licensee's sole remedy and Licensor's sole liability shall be to receive a refund of any fee paid hereunder for the portion of the Software, if any, which contains a Material Defect.