

**FIRST AMENDMENT
TO
AGREEMENT
BY AND BETWEEN
THE COUNTY OF CUYAHOGA
And
INTELLITECH CORPORATION, INC.**

This First Amendment to the Agreement for the License of Software (the "First Amendment") is entered into this 1st day of January, 2014 (the "Effective Date") by and between the County of Cuyahoga, Ohio, on behalf of the Cuyahoga County Sheriff's Department, (the "County") and Intellitech Corporation, an Ohio corporation ("Intellitech") with its principal office located at 1744 Payne Avenue, Cleveland, OH 44107-7164. The County and Intellitech may be referred to individually as "Party" or collectively as "Parties" herein.

WITNESSETH:

WHEREAS, the County and Intellitech executed an Agreement for the License of Software ("Agreement") on January 1, 2013 for the use of Intellitech's incarceration management software system, the Incarceration Management and Cost-recovery System ("IMACS") at the criminal justice facility operated by the County located at 1215 West Third Street, Cleveland, Ohio 44113;

WHEREAS, the County and Intellitech now desire to amend the Agreement to extend the term of the Agreement for another twelve months at a fee of **One Hundred Six Thousand and Fifty-five Dollars and Zero Cents (\$106,055.00)**; and

NOW THEREFORE, for valuable consideration the validity and sufficiency of which is hereby acknowledged, the County and Intellitech agree as follows:

1. The term of the Agreement is hereby extended for another twelve month term commencing January 1, 2014 and ending on December 31, 2014 for a maximum not to exceed amount of One Hundred Six Thousand and Fifty-five Dollars and Zero Cents (\$106,055.00).

2. The following clauses shall replace the second paragraph in the Section entitled "OWNERSHIP AND CONFIDENTIALITY OF DATA" in the Agreement:

"Trade Secret. Intellitech shall take all steps necessary to protect the County's trade secrets. All data dictionaries, entity relationships, database configurations, encryption passwords, forms, automated reports, or other artifacts used to access the data shall belong to County and shall be treated as a trade secret of the County.

Confidential Information. Intellitech shall treat as proprietary and confidential any and all information belonging to the County, which is disclosed to Intellitech in the course of providing support under this Agreement (the "Confidential Information"). Confidential Information shall include, but not limited to any device, data, database, files, data stores, process, method or technique originated by or peculiarly within the knowledge of the County and its representatives, employees, and those in privy with it, which is not available to the public and is subject to protection as property under recognized principles. All Confidential Information of the County supplied to Intellitech by the County are and shall remain the sole property of County. Intellitech

shall not, without the County's written consent, copy or use such records except to carry out the services, and will not transfer such records to any other party not involved in the performance of this Contract.

Intellitech shall only use Confidential Information for the purposes of this Agreement. Intellitech agrees not to disclose or reveal to any outside party or use for its own benefit, either directly or indirectly, any information which it may acquire or develop or, has acquired or developed concerning the technical or business affairs or other private or confidential matters, information, or data of County without prior written permission of the County. Confidential Information shall not include information that is in the public domain. The County will abide by law in granting or denying any permission for disclosure.

If Intellitech fails to meet its obligations to protect the Confidential Information, the County may seek equitable relief.

Survival of this Article. This entire Section shall survive the completion of the services hereunder and the termination of this Agreement unless the County releases Intellitech of its obligations through a written signed communication from the County's Director of Law at an earlier date."

3. The Section entitled "Notices" shall be amended to require that any notices sent to the County shall be sent to the following addresses:

County of Cuyahoga
Sheriff's Department
Attn: _____
1215 West Third Street
Cleveland, Ohio 44113

With a copy to:

County of Cuyahoga
Law Department
Attn: Law Director
310 West Lakeside Avenue
Cleveland, Ohio 44113

3. The Section entitled "No Default" is hereby deleted.

4. A new Section entitled "Termination" shall be inserted after the Section entitled "Severability":

"TERMINATION

(a) Termination by Cuyahoga County. This Agreement may be terminated by the County for convenience at its sole discretion upon thirty (30) days' advance written notice to Intellitech. In case of such termination, the compensation to be paid Intellitech by the County shall be mutually determined by the Parties on the basis of work completed and usable data available to the County at the time of termination notice. The County shall make all outstanding payments to Intellitech no later than thirty (30) days from the end of the termination date.

(b) Termination by Intellitech. Intellitech may terminate this Agreement, in whole or in part, if it determines that the County has failed satisfactorily to fulfill its monetary obligations hereunder or has failed to satisfactorily fulfill its non-monetary material obligations and responsibilities hereunder and is unable to cure such failure of non-monetary obligations within thirty (30) calendar days as specified in writing by Intellitech. Such termination shall be referred to as "Termination for Default". Upon determination by Intellitech that the County has failed to satisfactorily perform its material obligations and responsibilities hereunder, whether monetary or non-monetary, Intellitech shall notify the County in writing of the failure. In the event of monetary default, the notice of default shall specify the termination date, which shall be no less than thirty (30) days from the date of the notice of default. In the event of a non-monetary default, if the County is unable to cure the failure within said thirty-day period, Intellitech may, by giving written notice thereof to the County, terminate this Contract, in full or in part, as of the date specified in the notice of termination. In the event of termination, the compensation to be paid Intellitech by County shall be mutually determined by the Parties on the basis of work completed and usable data available to County.

(c) Termination for Financial Instability. In the event that Intellitech becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against Intellitech of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Agreement under this Section, by giving written notice thereof.

(d) Survival. The provisions of this Section shall survive the termination or expiration of this Agreement.

5. The Section entitled "Arbitration" is hereby deleted.

6. In the Section entitled, "Applicable Law", the following language shall be inserted after the first sentence: "Any suit arising from or relating to this Agreement shall be instituted in a state or federal court in Cuyahoga County, Ohio, and the Parties hereby agree to submit to the venue and personal jurisdiction of any such court."

7. The Section entitled "Certificate of Insurance" shall be replaced with the following:

"INSURANCE REQUIREMENTS

Insurance Requirements (Types and Limits). Intellitech shall procure, maintain and pay premiums for the insurance coverage and limits of liability outlined below with respect to products, services, work and/or operations performed in connection with this Contract:

- a. Mandatory Insurance. Intellitech shall procure, maintain, and pay premiums for the following forms of insurance:
 - i. Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer

status as granted by the Ohio Bureau of Workers Compensation (BWC).

ii. Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

iii. Professional Liability/Errors & Omissions Insurance providing coverage for claims arising out of the provision of design, engineering and/or other professional services with a limit of liability not less than:

\$2,000,000 per claim;
\$2,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, engineering or other professional activity related to this Contract.

b. Mandatory Requirements for All Insurance Coverage. The insurance policies of Intellitech required under this Section with the exception of the Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

- i. Thirty (30) days prior notice of cancellation or material change.
- ii. A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- iii. The insurance required above shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
- iv. These insurance provisions shall not affect or limit the liability of Intellitech stated elsewhere in this Contract or as provided by law.
- v. Intellitech shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.

c. Worker's Compensation. Intellitech shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming

certificate of insurance by the County shall not constitute a waiver of any rights of the Parties under this Contract.

LIMITATION ON LIABILITY

Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR INTELLITECH'S INDEMNIFICATION OBLIGATION HEREIN, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND, INCLUDING ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LIABILITY INSURANCE REQUIRED HEREUNDER.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, THEIR DIRECTORS, EMPLOYEES OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THIS SERVICE OR ANY OTHER ASPECT OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL PROVIDER BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR THE COUNTY'S ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

8. The following new Section entitled "Public Records" shall be inserted after the new Section entitled "Insurance Requirements":

"PUBLIC RECORDS

Intellitech acknowledges and agrees that as a political subdivision, the County is subject to the requirements of the Ohio Public Records Law. When Intellitech submits documents and/or information that properly and legally qualifies as a trade secret under Ohio law, Intellitech must segregate all protected information and/or documents submitted to County and conspicuously mark each page as "CONFIDENTIAL – TRADE SECRET." Intellitech may not take advantage of this process to mark information/documents that it wishes to keep confidential, but doesn't qualify legally as a trade secret under Ohio law. By taking advantage of this process, Intellitech certifies that it only marked information/documents that legally qualify as a trade secret under Ohio law as "CONFIDENTIAL – TRADE SECRET."

9. The following Section entitled "Miscellaneous" shall be inserted after the new Section entitled "Public Records":

"MISCELLANEOUS

- A). **County Agent and Liaison.** For the purpose of this Agreement, the agent for County and liaison officer on the matter contained herein shall be County Sheriff and/or such members of her/his staff as designated; and
- B). **Intellectual Property Rights.** Intellitech hereby agrees that there will be no charge to County for any patent, copyright, or any other intellectual property rights which it controls and which may be involved in the work under this Agreement unless such charges have been specified and included in the fees enumerated in this Agreement. Intellitech shall advise County, in writing, of any process or patent rights which are not held or controlled by Intellitech, but which in Intellitech's opinion may be involved in the work contemplated herein.
- C). **Agreement to Remain in Compliance with Certifications, Representations, and Warranties as Continuing Commitments/Verification.** Intellitech shall ensure that all of its certifications, representations, and warranties under this Agreement shall remain true throughout the duration of the Agreement as if they are continuing commitments, and it shall immediately notify County in writing in the event that any of the certifications, representations, and warranties ceases to be true. At its sole discretion, County has the unequivocal right to review and audit Intellitech's continuing certifications, representations, and warranties.
- D). **Independent Contractor.** Intellitech, its employees and subcontractors shall perform all Services pursuant to this Contract as independent contractors and not as employees of County.
- E). **Prohibition on Assignment.** Intellitech may not assign, directly or indirectly, all or part of its rights or obligations under this Contract without the prior written consent of County.
- F). **Applicable County Code.** All County contracts, including this Contract, are subject to the County Code, including, but not limited to, the chapters pertaining to Cuyahoga County Ethics, the Cuyahoga County Inspector General, and Cuyahoga County Contracting and Purchasing Procedures. The County Code is available on the County Council's web site at <http://council.cuyahogacounty.us/>."
8. **The following new Section entitled "Indemnification" shall be inserted in the Contract after the new Section entitled "Miscellaneous":**

"INDEMNIFICATION"

Indemnification. Intellitech agrees to save harmless and indemnify the County and its officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities from any and all claims and liability, caused by the negligence, errors or omissions due to the activities of Intellitech, and its owners, members, shareholders, officers, representatives, agents and/or employees and subcontractors in the performance of the services under this Agreement .

No Indemnity for County. Intellitech acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no Article of this Contract or any other contract or agreement between Intellitech and County may be interpreted to obligate County to indemnify or defend Intellitech or/any other part.

9. The following new Section entitled "Electronic Signature" shall be inserted after the new Section entitled "Indemnification":

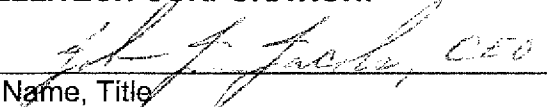
"ELECTRONIC SIGNATURE"

BY ENTERING INTO THIS CONTRACT INTELLITECH AGREES ON BEHALF OF THE CONTRACTING OR SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. INTELLITECH ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY."

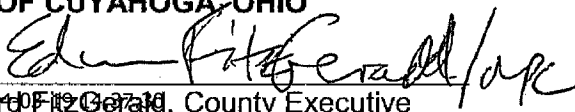
10. Except as set forth in this First Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this First Amendment and the Agreement, the terms of this First Amendment will prevail.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed on the day and year first above mentioned.


INTELLITECH CORPORATION:

By: 
Name, Title

COUNTY OF CUYAHOGA, OHIO Edward Fitzgerald, County Executive

By: 
Edward Fitzgerald, County Executive

The legal form and correctness
of this Agreement is hereby approved.
Cuyahoga County Law Department
LISA C. AVERYHART, ASSISTANT DIRECTOR OF LAW
Majeed G. Manklouri

By: 
2014-03-19 09:15:15

Date: _____