

RESOLUTION NO. 10-1

**WHEREAS**, Sangamon County Information Systems utilizes an imaging and scanning system for Sangamon Offices to store documents.

**WHEREAS**, OpenText Inc. is the vendor utilized to provide the imaging and scanning software and maintenance for Sangamon County Information Systems;

**NOW, THEREFORE, BE IT RESOLVED**, by the Members of the Board of Sangamon County, Illinois in session this 10th day of December, 2019, hereby approves the Information Systems Department to utilize OpenText for the maintenance services described above in an amount not to exceed \$33,000 for fiscal year 2020.

**Building & Grounds Committee**

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**FILED**  
NOV 26 2019  
*[Handwritten signature]*  
Sangamon County Clerk

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**Sangamon County Purchase Order FY2019**

Purchase Orders are required for all Informal Quotes (>\$3,500) and Formal Solicitations (>\$30,000)

**Department Information**

PO Number: ISD 2020-006 (Manually Assigned by Department)  
Department: Information Systems Department Employee Contact: Stephanie Butcher  
Department Head Signature: Wayne Roney Date: 11/21/19

**Purchase Order Type** (Regular, Exception or Emergency)

Type: Regular  (3 Quotes or RFP Documentation Required)  
Legal Review Date: \_\_\_\_\_ (>\$30,000 or Exception – see below)

Exception  (Provide detailed explanation in Purchase Description/Narrative Section)  
Reason: Joint Purchasing Contract  Sole Source  Professional Services   
Not Suitable for Quotes/RFP Other

Emergency  County Administrator Signature: \_\_\_\_\_  
• Will be reported at the next Oversight and/or County Board Meeting Date: \_\_\_\_\_  
• Provide detailed explanation in Purchase Description/Narrative Section

**Purchase Request Information**

Vendor: OpenText Quantity: 1 Price Per Unit: \_\_\_\_\_  
Total Price: \$33,000 G/L: 001.010.513.000

Purchase Description/Narrative:  
This is the annual maintenance for the AS/400 Imaging System Software. Legal Counsel has deemed the annual license fee unsuitable for quotes.

**Auditor's Office** (PO request documents need to be to the Auditor's Office 5 business days prior to the oversight committee meeting)

Date Received: 11-21-19 Date Review Completed: 11-29-19  
Auditor's Office Signature: [Signature]

**County Board**

Approved by Oversight Committee: \_\_\_\_\_ Meeting Date: 11/25/2019 Signature: [Signature]  
Approved by County Board (if applicable): \_\_\_\_\_

(County Board Resolution Required for All POs >\$30,000)

GAUSS INTERPRISE, INC.  
END-USER AGREEMENT  
SOFTWARE LICENSE, HARDWARE PURCHASE, INSTALLATION, TRAINING, MAINTENANCE

This Agreement is made effective this 27<sup>th</sup> day of Dec., 2001 by and between Gauss Interprise, Inc., a Delaware corporation, with offices at 8717 Research Drive, Irvine, California, 92618 ("Gauss") and Sangamon County, with offices at 200 South 9<sup>th</sup> Street, Springfield, Illinois, 62701 ("Licensee").

WHEREAS, Gauss desires to grant to Licensee and Licensee desires to accept from Gauss, a license to Use (as defined herein) Gauss's proprietary software (as defined herein);

WHEREAS, Gauss desires to sell to Licensee and Licensee desires to purchase from Gauss computer hardware (as defined herein);

NOW, THEREFORE, Gauss and Licensee agree as follows:

**1. DEFINITIONS**

1.1 "Affiliate" means a corporation located in the Territory in which Licensee owns at least fifty percent (50%) of the voting securities.

1.2 "Documentation" means Gauss's standard documentation, in human or machine-readable format, in any medium, which is delivered to Licensee under this Agreement, including Gauss's standard manuals, program listings, data models, flow charts, logic diagrams, input and output forms, functional specifications, instructions, and complete or partial copies of the foregoing.

1.3 "Hardware" or "Computer Hardware" means all computer hardware specified in Addendum 2 hereto.

1.4 "Host" means the computer(s) on which the Software is loaded and run which acts as a server to which Scan Workstations are connected.

1.5 "Major Modification" means any addition, change, alteration or revision to the Software which does not constitute a Minor Modification.

1.6 "Minor Modification" means a change to the Software limited to the translation of screens or text. The term, "Modification" shall refer to both Minor and Major Modifications.

1.7 "Program Concepts" means the concepts, techniques, ideas, and know-how embodied and expressed in any computer programs or modules included in the Software, including the structure, sequence, and organization of such programs or modules.

1.8 "Proprietary Information" means (i) with respect to Gauss, the Software and Documentation and any complete or partial copies thereof, the Program Concepts, Gauss licensors' Third-Party IP licensed with or as part of the Software, benchmark results, and any other information identified or reasonably identifiable as confidential and proprietary information of Gauss, or its licensors ("Gauss Proprietary Information"); and (ii) with respect to Licensee, information identified or reasonably identifiable as the confidential and proprietary information of Licensee ("Licensee Proprietary Information"), provided that, any part of the Gauss or

Licensee Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party; or (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; or (c) becomes independently available to the other party as a matter of right, shall be excluded.

1.9 "Scan Workstation" means any computer workstation(s) connected to the Host.

1.10 "Single Utilization" means Use of the Software on the System.

1.11 "Software" means: (i) all software specified and agreed upon in Addendum 2 hereto, in machine- or human-readable form, developed by or licensed to Gauss and delivered to Licensee hereunder; (ii) any Modifications; and (iii) any complete or partial copies of replacements of any of the foregoing.

1.12 "System" means a grouping of computer hardware and software which delivers a complete business function. The Software and Hardware described in Addendum 2 shall constitute the specified System for this Agreement.

1.13 "Territory" means the United States of America and such additional countries as may be specified in Addendum 1.

1.14 "Third-Party IP" means third-party proprietary software and/or database as described in Section 2.4.

1.15 "Use" means to load, execute, employ, utilize, store, or display the Software. Use is deemed to occur where any such processes occur and at any computer or workstation that initiates or is activated by these processes.

1.16 "User" means a named individual who by password allocation is authorized to log on to the Software and execute Software transactions.

**2. LICENSE GRANT.**

**2.1 Grant of License.**

(a) Subject to the terms and conditions of this Agreement, Gauss grants and Licensee accepts a non-exclusive, non-transferable license to Use the Software, Documentation and other Gauss Proprietary Information within the Territory. Use shall be for Single Utilization only.

(b) Licensee agrees that this license does not permit Licensee to: (i) Use the Software for a service bureau application; or (ii) sublicense, or otherwise transfer, assign, or rent the Software to any third party, including but not limited to Affiliates.

(c) Licensee agrees to install the Software only on the Host and Scan Workstations in conjunction with the System described in Addendum 2 hereto. Licensee further agrees to Use the Software only in accordance with the Documentation.

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2.2 Audit Right.

(a) The maximum number of Users applicable to the Software licensed hereunder shall be specified in Addendum 2 to this Agreement. Licensee shall promptly provide written notice to Gauss if the number of Users exceeds such maximum number

(b) Licensee shall allow access to the Software, Documentation, and other Gauss Proprietary Information only to employees or authorized agents of Licensee.

(c) During normal business hours and at any time during which the Software, Documentation, or other Gauss Proprietary Information are being utilized, Gauss or its authorized representatives or licensors, shall have the right, upon reasonable advance notice, to audit and inspect Licensee's or any Affiliate's utilization of such items, in order to verify compliance with the terms of this Agreement.

2.3 Archival Copy; Restriction on Copies; Legends to be Reproduced.

(a) Licensee may make one archival copy of the Software consistent with Licensee's normal periodic backup procedures.

(b) Licensee may reproduce or copy any portion of the Documentation into machine-readable or printed form for its internal use and only as required to exercise its rights hereunder.

(c) Licensee shall include Gauss's and its licensors' copyright, trademark, service mark, and other proprietary notices on any complete or partial copies of the Software, Documentation, or Gauss Proprietary Information in the same form and location as the notice appears on the original work.

2.4. License for Third Party IP. The Host Software includes the Third-Party IP described in Addendum 1. Gauss makes no representations or warranties as to the Third-Party IP or its operation.

3. HARDWARE.

3.1 Purchase of Hardware. Gauss shall sell to Licensee and Licensee shall purchase from Gauss the Hardware on this initial contract on Addendum 2.

4. DELIVERY AND INSTALLATION.

4.1 Delivery. One copy of the Software in machine-readable format and one copy of the Documentation, and all of the Hardware shall be delivered to Licensee on or before the delivery date set forth in Addendum 1 hereto ("Delivery"). The Software and Hardware shall be deemed accepted on Delivery, subject only to the warranty set forth in Section 9.

4.2 Installation Services.

(a) Licensee shall be responsible for installation of the Software. Licensee may, upon request, retain Gauss to install the Software at Gauss' standard rates as set forth in Addendum 2 hereto. Gauss's installation services are limited to loading the Software on the Host and Scan Workstations and testing the Software using Gauss's standard set of test data. Such other work related to the installation of the Software, if any, shall be specified in Addendum 4 – Installation Scope of Work. Licensee shall be responsible for configuring and installing any required hardware, storage systems, network software, other software not licensed

from Gauss, computer terminals and workstations prior to installation of the Software. Installation will be deemed successful and completed when the Software is loaded on the Host(s) and Scan Workstation(s) and is ready for use.

(b) At Licensee's request, and subject to the agreement of the parties, Gauss may agree to provide pre-installation support, installation support, training, and consulting services for the Software, at Gauss' standard rates as set forth in Addendum 2 hereto.

5. PRICE AND PAYMENT.

5.1 License Fees. In consideration of the license granted hereunder, Licensee shall pay to Gauss license fees for the Software as set forth in Addendum 2 hereto ("License Fees"). The License Fees have been calculated based on the total number of Users and type of Software licensed.

5.2 Price of Hardware. Licensee agrees to pay to Gauss the purchase price of the Hardware as set forth in Addendum 2 hereto ("Hardware Price").

5.3 Payment. The License Fees, Hardware Price and any other fees, costs and expenses set forth in Addendum 2 (except Maintenance Fees, as defined in Section 8.2) shall be paid, in full, upon execution of this Agreement by Licensee. Maintenance Fees shall be paid as set forth in Section 8.2.

5.4 Taxes. License and Maintenance Fees and the other charges described in this Agreement and its Addenda, or in Gauss's most recent List of Prices and Conditions, do not include federal, state, use, property, excise, service, withholding, import or export, value added or other taxes or duties now or hereafter levied, all of which shall be paid by Licensee. Licensee agrees to pay directly to the applicable taxing authorities, and to indemnify and hold Gauss harmless from all such taxes and fees not based on Gauss's net income and from any penalties, interest and costs of collection related to the payment of such taxes and fees.

5.5 Expenses. Licensee shall pay to Gauss any and all actual costs and expenses, including but not limited to the cost of travel, meals and lodging, incurred by Gauss in providing services to Licensee at Licensee's business premises, within 45 days after the date of any invoice setting forth such costs and expenses.

6.0 TERM AND TERMINATION.

6.1 Term. This Agreement and the license granted hereunder shall become effective upon execution by both parties and shall continue in effect thereafter unless terminated under Section 6.2.

6.2 Termination. This Agreement and the license granted hereunder shall terminate upon the earliest to occur of the following: (i) thirty days after Licensee gives Gauss written notice of Licensee's desire to terminate this Agreement, for any reason, but only after payment of all License Fees, Hardware Price, Maintenance Fees and any and all other fees, costs and expenses arising out of this Agreement then due and owing; (ii) fifteen days after Gauss gives Licensee notice of Licensee's material breach of any provision of the Agreement (other than Licensee's breach of its obligations under Section 7 which breach shall result in immediate termination), including more than fifteen days delinquency in Licensee's payment of any money due hereunder, unless Licensee has cured such breach during such fifteen day period; (iii)

immediately if any of the following events, which exist as to Licensee, remain uncured for more than sixty days: (a) entry of any order for relief under Title 11 of the United States Code; (b) the making of a general assignment for the benefit of creditors; (c) the appointment of a general receiver or trustee in bankruptcy of Licensee's business or property; or (d) action under any state insolvency or similar law for the purpose of bankruptcy, reorganization, or liquidation, unless within the specified sixty-day period, Licensee, its receiver, or its trustee in bankruptcy provides to Gauss adequate written assurances, reasonably acceptable to Gauss, of Licensee's continuing ability and willingness to fulfill all its obligations under this Agreement.

6.3 Effect of Termination. Upon any termination of this Agreement: Sections 7, 9.6, 10, 11, 12, and 13.8 shall survive such termination; Licensee's rights under Section 2 shall immediately cease; and Gauss and Licensee each shall promptly perform its obligations under Section 7.3.

6.4 No Refund. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee.

7. PROPRIETARY RIGHTS.

7.1 Gauss Proprietary Information.

(a) Licensee acknowledges that ownership of and title in and to all intellectual property rights, including patent, trademark, service mark, copyright, and trade secret rights, in the Gauss Proprietary Information and the Third Party IP are and shall remain in Gauss and/or its respective licensors. Licensee acquires only the right to use the Gauss Proprietary Information under the terms and conditions of this Agreement and does not acquire any ownership rights or title in or to the Gauss Proprietary Information and the Third Party IP.

(b) Except in the limited circumstances set forth in Sections 2.3 and 7.4, Licensee shall not copy, translate, disassemble, or decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software licensed hereunder or use it to create a derivative work, unless authorized in writing by Gauss. Other than as specified herein, any tools licensed with or included in the Software may not be copied, in whole or in part, without the express written consent of Gauss.

(c) Licensee shall not remove any proprietary, copyright, trademark, or service mark legend from the Software, Documentation, or Gauss Proprietary Information.

(d) Licensee shall maintain a log of the number and location of all originals and copies of the Software. The inclusion of a copyright notice on any portion of the Software or Documentation shall not cause or be construed to cause it to be a published work.

(e) All Modifications to the Software and Documentation shall be considered part of the Software and Documentation for purposes of this Section 7.

7.2 Protection of Proprietary Information. In order to protect the rights of Gauss and its licensors, and Licensee in their respective Proprietary Information, Gauss and Licensee agree as follows:

(a) Neither party shall, without the other party's prior written consent, disclose, provide, or make available any of the Proprietary Information of the other party in any form to any person,

except to bona fide employees, officers, directors, or consultants of such party whose access is necessary to enable such party to exercise its rights hereunder. Each party agrees that prior to disclosing any Proprietary Information of the other party to any consultant, it will obtain from that consultant a written acknowledgment that such consultant will be bound by the same terms as specified in this Section 7 with respect to the Proprietary Information.

(b) Licensee and Gauss acknowledge that any disclosure to third parties of Proprietary Information may cause immediate and irreparable harm to the owner of the disclosed Proprietary Information; therefore, each party agrees to take all reasonable steps and the same protective precautions to protect the Proprietary Information from disclosure to third parties as with its own proprietary and confidential information.

7.3 Duties Upon Termination. Upon any termination hereunder, Licensee and its authorized Affiliates shall immediately cease Use of the Software, Documentation, and other Gauss Proprietary Information, and shall irretrievably delete and/or remove such items from all computers, computer terminals, workstations, data files, and systems. Within thirty days after any termination, Licensee shall deliver to Gauss at Licensee's expense (adequately packaged and insured for safe delivery) or, at Gauss's request, destroy all copies of the Gauss Proprietary Information in every form. Licensee further agrees to erase the Software, Documentation, and other provided Gauss Proprietary Information from any storage media. Licensee agrees an officer of Licensee's organization, with the express authority to make such a representation, shall certify in writing to Gauss that it has performed the foregoing. Within thirty days after any termination, Gauss shall return the Licensee Proprietary Information to Licensee.

7.4 Modifications.

(a) Licensee may make Minor Modifications, provided that Licensee shall furnish Gauss with a copy thereof promptly upon completion. Minor Modifications shall be subject to the terms and conditions set forth in this Section 7.4.

(b) Gauss alone may make Major Modifications upon Licensee's request, the scope of which shall be determined by the parties, subject to terms and conditions to be agreed upon and set forth in a separate agreement. Licensee understands and acknowledges that the functionality of the Software and System is not dependent upon the completion or installation of any Major Modifications.

(c) In the event Licensee without Gauss's participation develops any Minor Modification to the Software, Licensee shall have all rights, title, and interest in such Minor Modification subject to Gauss's rights in the Software. Licensee agrees, however, that such Minor Modification will be used solely in connection with Licensee's business operations, and that such Minor Modification will not be marketed, licensed or sublicensed, sold, assigned, or otherwise transferred or made available to any third party or other entity, without the express prior written consent of Gauss. Licensee agrees to offer Gauss the right of first refusal to any license to or assignment of such Minor Modification and Gauss agrees to negotiate in good faith a mutually agreeable license or other arrangement for such rights.

(c) In the event Gauss develops either independently, or jointly with Licensee, any Minor Modification to the licensed Software, such Minor Modification will be the exclusive property of Gauss, and Licensee will not grant, either expressly or impliedly, any rights, title, interest, or licenses to such Minor Modification to any third party. Licensee shall be entitled to Use

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such Minor Modification on the System under the terms set forth in this Agreement.

(d) The parties hereto agree that the granting of any rights, title, or interest to Licensee in any Minor Modification shall not be construed by the parties hereto, or any court of law or equity, to mean that Gauss has granted or given up any rights, title, or interest in or to the Gauss Proprietary Information or any part thereof.

(e) Licensee agrees that it will not modify any Third-Party IP provided hereunder, unless expressly authorized in writing by such third-party vendor.

(f) During the term of warranty and during such time as Gauss provides Maintenance to Licensee, Licensee shall not make Minor Modifications to the Software without providing prior written notice to Gauss.

8. MAINTENANCE

8.1 Maintenance.

(a) Following the expiration of the Warranty Period (as defined in Section 9), Licensee may elect to retain Gauss to provide maintenance ("Maintenance") with respect to the Software, as follows:

- (i) All corrections and enhancements to the Software issued during the maintenance period.
- (ii) Documentation as to the existence of known Software failures and errors in the manual(s) for the Software.
- (iii) Operational procedures to avoid and/or compensate for the known Software failures.
- (iv) Unlimited communications for the purpose of reporting software failures that have not been previously reported to Licensee.
- (v) Limited communications for the purpose of consulting on the operational aspects of the Software.

(a) Maintenance is generally only available by telephone, provided that Gauss may accept communication via email, telefax or other means of communication, at Gauss' option. In no event shall Gauss be required to travel to Licensee's business premises in performing the Maintenance. The Maintenance shall only be available during the hours of 8:00 a.m. and 5:00 p.m. Pacific Time to answer technical questions, and to receive and resolve technical problem reports from the technical coordinators of Licensee. Licensee can expect a response time of up to 4 hours after contact by Licensee.

8.2 Maintenance Fee, Period. Licensee may obtain Maintenance for a period of one year ("Maintenance Period"), commencing on the first day following the end of the Warranty Period (defined in Section 9.1), by paying the list price for such services as set forth in Addendum 2 ("Maintenance Fee"), to Gauss prior to the expiration of the Warranty Period. Licensee may obtain additional Maintenance Periods by paying the Maintenance Fee to Gauss for each additional Maintenance Period, prior to the expiration of the preceding Maintenance Period. Annual Increase in Maintenance is limited by Addendum 3. Gauss shall have the right

to terminate future Maintenance by giving written notice to Licensee, within any Maintenance Period, of its intention to discontinue Maintenance for future Maintenance Periods.

8.3 Other Services. All other services not referred to in this Section 8 shall be agreed upon separately and shall be subject to additional charges, including without limitation, the installation of new releases, versions or updates of the Software, the incorporation of Modifications into new releases, versions or updates and related Documentation, and the adaptation of any authorized Modifications developed by or for Licensee to new releases, versions or updates.

9. PERFORMANCE WARRANTY.

9.1 Software Warranty Period. Gauss warrants that the Software will substantially conform to the functional specifications contained in the Documentation for thirty days following Delivery (the "Warranty Period") and will perform, when in Use without material alterations on the Host and Scan Workstations, in accordance with the functional specifications set forth in the Documentation. Gauss's warranty is subject to Licensee providing Gauss necessary access, including remote access, to the Software.

9.2 Licensee's Defect Reports. Licensee must specifically identify to Gauss the nature of the perceived Software defect which causes the Software not to conform substantially to the functional specifications and specifically describe the conditions under which the perceived defect occurs. Licensee shall deliver such information in written form within the Warranty Period. Licensee shall provide Gauss with sufficient test time and support on Licensee's System, Host, and Scan Workstations to duplicate the problem, to verify that the problem is with the Software, and to confirm that the problem has been corrected.

9.3 Gauss's Obligation to Correct or Replace Defects. Should the Software fail to comply with the warranty in Section 9.1, Gauss' sole obligation shall, at its option, be to correct the defect by bringing the performance of the Software into compliance with the specifications or replace the component within thirty (30) days after receiving written notice from Licensee of the failure, provided that such notice is given within the Warranty Period. In the event Gauss is unable to correct the defect or replace the defective component within a reasonable period of time after the thirty (30) day correction period in accordance with the warranty in Section 9.1, Gauss shall return or credit the payments made or to be made by Licensee with respect to the non-complying the Software. When Licensee's Use of the Software is significantly restricted by a reported defect and Licensee expressly so states in its report of the defect, Gauss shall use its best efforts to start its work on correcting the defect no later than the first working day after receipt of the report of the defect, subject in any case to the provisions of this Section 9.

9.4 Correction of Defects. Gauss will deliver a correction of the defect in writing and, if appropriate, in machine-readable form. Any installation shall be the responsibility of Licensee unless otherwise agreed to in writing by the parties. If, at Licensee's request, Gauss corrects a defect of any unsupported version, release or update of the Software, Gauss may request, and Licensee shall pay, additional charges.

9.5 Scope of Warranty.

(a) The warranty set forth in this Section 9 shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) to any Modifications not provided by Gauss;

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or (iii) if the defect is caused by a Modification not provided by Gauss; or (iv) if the Software is not installed on an approved Host or Scan Workstation; or (v) to the extent that the defect is caused by or is contributed to by Licensee; or (vi) if Licensee does not provide access, including remote access, to the Software as required under Section 9.1; or (vii) if the defect is caused by any software or database not furnished by Gauss. Expenses incurred by Gauss in remedying any of the above conditions will be charged to the Licensee.

(b) Gauss does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors which do not materially affect such performance or that the applications contained in the Software are designed to meet all Licensee's or its authorized Affiliates' business requirements.

9.6 Hardware Warranty. Licensee understands and acknowledges that companies other than Gauss manufacture the Hardware purchased by Licensee pursuant to this Agreement and that Gauss makes no warranty or representation, express or implied, as to the quality, fitness for a particular use or merchantability of any such item of Hardware. Gauss makes no other warranty or representation applicable to the Hardware except that all Hardware will be new and, if installed by Gauss, shall be properly installed in accordance with the manufacturer's installation instructions. Other than the foregoing, the sole warranty applicable to the Hardware shall be such warranty, if any, given by the manufacturer of such Hardware. Gauss agrees to transfer or assign all such manufacturer warranties to Licensee, upon Licensee's request.

9.7 Express Disclaimer. GAUSS DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

10. LIMITATION OF LIABILITY.

10.1 Licensee's Remedies. Subject to the limited warranty set forth in Section 9, Licensee's sole and exclusive remedies for any damages or loss in any way connected with the Software or services furnished by Gauss and its licensors, whether due to Gauss's negligence or breach of any other duty, shall be, at Gauss's option: (i) replacement of the Software or performance of services; or (ii) return or credit of an appropriate portion of any payment made or to be made by Licensee with respect to the applicable portion of the Software or services. The foregoing limitation of liability does not apply to infringement of the property rights referred to in Section 11, or to personal injury or death caused solely by the gross negligence or willful misconduct of Gauss. With respect to damage to tangible property, Gauss and its licensors will not be responsible in excess of any amount by which such damage is paid by Gauss's liability insurance.

10.2 Gauss Not Responsible. Gauss will not be responsible under this Agreement for: (i) the modification or improvement of the Software to fit the particular requirements of Licensee; or (ii) the correction of any program errors resulting from Modifications; or (iii) the correction of any program errors as a result of the misuse of the Software by Licensee. Under no condition will Gauss be responsible under this Agreement for preparation or conversion of data into the form required for use with the Software.

10.3 Exclusion of Damages. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, UNDER NO CIRCUMSTANCES SHALL GAUSS AND ITS LICENSORS BE

LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES.

11. INDEMNIFICATION.

11.1 Gauss Representation. Gauss represents that Gauss, and its licensors own the Proprietary Information licensed by Gauss hereunder, including all intellectual property rights therein, and that Gauss has all rights from and its licensors necessary to license, in accordance with the terms of this Agreement, such Proprietary Information to Licensee.

11.2 No Representation Regarding Combination Use. Gauss makes no representation with respect to the possibility of Infringement by Combination Use of the Software. The parties agree that Gauss has no duty to investigate nor to warn Licensee of any such possibility. As used herein, "Combination Use" means Use of the Software in combination or conjunction with any of the following, unless such Use is prescribed in the Documentation: (i) any software other than the Software (including any Modification); (ii) any apparatus other than an approved Host or Scan Workstation; and/or (iii) any activities of Licensee not licensed under this Agreement.

11.3 Indemnification of Licensee.

(a) Subject to Section 11.2, Gauss shall indemnify Licensee against all claims, liabilities, and costs, including reasonable attorneys' fees, up to the maximum amount described in Section 11.3(b), reasonably incurred in the defense of any claim brought against Licensee in the Territory by third parties alleging that Licensee's Use of the Software and Documentation infringes or misappropriates: (i) any United States patent of which Gauss is aware; or (ii) a United States copyright; provided that, Licensee promptly notifies Gauss in writing of any such claim and Gauss is permitted to control fully the defense and any settlement of such claim. Licensee shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Gauss. Gauss may, in its sole discretion, settle any such claim on a basis requiring Gauss to substitute for the Software and Documentation alternative substantially equivalent non-infringing programs and supporting documentation.

(b) The maximum aggregate liability of Gauss under the indemnity provided in Section 11.3(a) above shall be a sum equal to the aggregate payments actually made by Licensee to Gauss under this Agreement at the time the claim of infringement arises, and if there should be more than one claim of infringement, the amount payable under such indemnity in respect of each claim shall be divided pro rata.

11.4 Indemnification of Gauss. Licensee shall indemnify Gauss and its licensors against all claims, liabilities, and costs, including reasonable attorneys' fees, reasonably incurred in the defense of any claim (other than for the infringement of intellectual property rights specified in Section 11.3 above), arising out of Licensee's unauthorized Use of the Software, Documentation, Third-Party IP, and other Gauss Proprietary Information licensed under this Agreement, provided that, Gauss promptly notifies Licensee in writing of such claim and that Licensee is permitted to control fully the defense and any settlement of the claim.

11.5 Gauss's Right to Commence Infringement Actions.

Gauss alone shall be responsible for taking such actions which it determines are reasonably necessary or desirable in its sole discretion in connection with any infringement or alleged infringement by a third party of any portion of the Software and Documentation. Licensee shall not undertake any action in response to any infringement or alleged infringement of the Software and Documentation without the prior written consent of Gauss. Licensee agrees to cooperate with and assist Gauss in taking whatever action (including consenting to being named as a party to any suit or other proceeding) which Gauss determines to be reasonably necessary or desirable. Gauss agrees to reimburse Licensee for reasonable legal fees and other expenses incurred in connection with investigating or defending any such claim, suit, damage, or loss.

11.6 Gauss's Duty to Indemnify Licensee. THE PROVISIONS OF THIS SECTION 11 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF GAUSS, AND ITS LICENSORS TO LICENSEE AND LICENSEE'S SOLE REMEDY WITH RESPECT TO THE INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

12. ARBITRATION.

(a) Except as provided in Section 12(b) below, any controversy or claim between the parties arising out of or relating to this Agreement shall be settled by arbitration in Sangamon County, Illinois, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Arbitration shall be conducted by an arbitrator, selected by agreement between Gauss and the Licensee. The arbitrator shall have a background or training in computer law, computer science, or marketing of computer products.

(b) The parties understand and acknowledge that one party's breach or default of this Agreement ("Breaching Party") may cause irreparable harm to other party ("Nonbreaching Party") and that the Nonbreaching Party may not have an adequate remedy at law. In such circumstances, the Nonbreaching Party shall have the right to any and all equitable relief, which may be available as a consequence of such a breach or default. The Nonbreaching Party shall therefore have the right to seek and obtain such equitable relief in a court, notwithstanding the obligation of the parties to resolve any other disputes they may have in arbitration as provided in Section 12(a) of this Agreement.

13. ASSIGNMENT.

Licensee may not, without Gauss's prior written consent, assign, delegate, sublicense, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the Gauss Proprietary Information, to any party, including any Affiliate. Any permitted assignment of this Agreement shall provide that the provisions of this Agreement shall continue in full force and effect and that Licensee shall guarantee the performance of its assignee and shall remain liable for all obligations hereunder. Gauss may assign this Agreement; (i) to the parent corporation which owns at least 50% of it, or (ii) in connection with merger, reorganization or sale of all or substantially all of its business assets.

14. GENERAL PROVISIONS.

14.1 Agreement Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14.2 Entire Agreement. This Agreement and each Addendum hereto constitute the complete and exclusive statement of the agreement between Gauss and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by, this Agreement. This Agreement may be modified only by a writing signed by both parties. This Agreement and each Addendum hereto shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to Gauss.

14.3 Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

14.4 No Waiver. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

14.5 Attorneys' Fees. Should an arbitration be brought to interpret or enforce the performance of any term or condition in this Agreement, or to recover damages for the breach of this Agreement, or should any action or petition be brought in a forum other than arbitration which seeks to avoid the provisions of Section 12 (a) (which requires arbitration) or seeks equitable relief, then the prevailing party(ies) shall be entitled to recover, as an element of its costs and not as damages, reasonable attorneys' fees and costs from the party not prevailing.

14.6 Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

14.7 Publicity. Neither party shall use the name of the other in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee hereby consents to Gauss's inclusion of Licensee's name in customer listings which may be published as part of Gauss's marketing efforts.

14.8 Governing Law, Forum and Jurisdiction. This Agreement shall be interpreted and governed by the procedural and substantive laws of the State of Illinois. Each party hereby expressly consents and submits to the personal jurisdiction of any arbitration forum or court, as applicable, in the County of Sangamon in the State of Illinois, and also consents to the service of process by any means authorized by the State of Illinois at the time of the service of process.

14.9 Notices. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of Gauss and Licensee at the addresses first set forth above.

14.10 Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

14.11 No Presumption Re: Drafter. The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the



parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

Licensee:

PRINT NAME OF ENTITY: Sangamon County

By: *A. Van Meter*

Print Name & Title Andy Van Meter, Chairman

Date: 12-28-01

Gauss:

Gauss Interprise, Inc., a Delaware corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

ADDENDUM 1  
TO  
GAUSS INTERPRISE, INC.  
END-USER AGREEMENT

This Addendum is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Addendum 1 contradict or are inconsistent with the provisions of the Agreement, the provisions of this Addendum shall prevail and govern, and the contradicted or inconsistent provisions of the Agreement shall be deemed amended accordingly.

- 1. Licensee Name: Sangamon County
- 2. Software Delivery Date: \_\_\_\_\_
- 3. Territory: United States only
- 4. Third Party IP: (List Licenses from Third Parties): Kofax

Licensee:

PRINT NAME OF ENTITY: Sangamon County  
 By: [Signature]  
 Print Name: Andy Van Meter  
 Print Title: Chairman  
 Date: 12/28/01

Gauss:

Gauss Interprise, Inc., a Delaware corporation  
 By: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Print Title: \_\_\_\_\_  
 Date: \_\_\_\_\_