

STATE OF TEXAS

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COUNTY OF FORT BEND

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**FIFTH AMENDMENT TO COMPRISE TECHNOLOGIES
END USER LICENSE AND SERVICE AGREEMENT**

THIS FIFTH AMENDMENT ("5th Amendment") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Comprise Technologies, Inc. ("Comprise"), a company authorized to conduct business in the State of Texas (hereinafter referred to collectively as "Parties").

WHEREAS, County and Comprise previously executed the End User License and Service Agreement dated November 14, 2014, and subsequently amended the terms of the Agreement as evidenced by the Amendment dated April 28, 2015; 2nd Amendment dated July 26, 2016; 3rd Amendment dated January 24, 2017; and 4th Amendment dated September 4, 2018 (attached hereto as "Exhibit 1" and collectively referred to as "Agreement").

WHEREAS, County desires to renew licenses and support in an amount not to exceed \$41,613.00 effective November 2, 2018 – November 1, 2019, as described by "Exhibit 2".

NOW, THEREFORE, in consideration of the foregoing, the Agreement between the County and Comprise is hereby amended as follows:

1. **Payment.** Payment shall be made by County within thirty (30) days of receipt of invoice.
2. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under the Agreement, Fort Bend County shall notify all necessary parties that the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
3. **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
4. **Confidential Information.** Comprise expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Comprise shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.
5. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Comprise for any reason are hereby deleted.
6. **Software Assurance.** Comprise represents and warrants that its software and any related systems and/or services related to its software (collectively, the "Software") furnished by

Comprise to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Comprise will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of the Comprise's Software infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and the Comprise's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the Parties.

7. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by Comprise in any way associated with the Agreement.
8. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
9. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. By signature below, Comprise represents pursuant to Section 2252.152 of the Texas Government Code, that Comprise is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. As required by Chapter 2270, Government Code, Comprise hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
10. **Conflict.** In the event of a conflict between the terms of this 5th Amendment and the Agreement, the terms of this 5th Amendment shall control.
11. **Understanding, Fair Construction.** By execution of this Agreement, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Agreement. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
12. **Electronic and Digital Signatures.** The parties to this Agreement agree that the electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

Signatures Follow On Next Page

IN WITNESS WHEREOF, this 4th Amendment is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this 4th Amendment and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

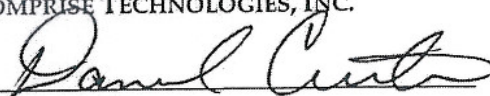
KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

COMPRISE TECHNOLOGIES, INC.



Daniel Curtin,
President

Date

1-16-19

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit 2



Invoice

Please remit in US Dollars to:

Comprise Technologies, Inc.
PO Box 425
Navesink, NJ 07752-0425

Phone: 732-291-3600
 Fax: 732-291-3699
 invoices@comprisetechologies.com

DATE	10/1/2018
INVOICE #	1810-659
TERMS	Due on Renewal
P.O. #	
ACCT #	085-00
REP	

Bill to:

Fort Bend County Library
1001 Golfview Drive
Richmond, TX 77469

Description	Quantity	Unit Price	Extended Amount
Smart Access Manager (SAM), Internet Filtering and SmartKiosk Software/Hardware Systems for the Fort Bend Public Library ANNUAL RENEWAL BILL EFFECTIVE - 11/02/18 to 11/01/19			
SAM Software License and Technical Support Renewal		13,808.00	13,808.00
WFR350 Filter Appliance Renewal	1	530.00	530.00
Internet Filter License Subscription Renewal	555	13.00	7,215.00
SmartKiosk Hardware Licensing, Maintenance and Support Renewal	7	1,396.00	9,772.00
Merchant Account License Renewal (one license for all Kiosks)	1	750.00	750.00
SmartAlec Mobile Print Licensing and Support Renewal		9,538.00	9,538.00
<p>SOLE SOURCE: Smart Access Manager (SAM), SmartKiosks and SmartAlec software products are licensed, sold and supported exclusively by Comprise Technologies, Inc. We do not offer, sell or license our products through local dealers or distributors. Comprise Technologies, Inc. software and licensing is not available in any other form or under any other brand name.</p>			

Total Due: \$41,613.00

Credit Card payments accepted for invoices less than \$2,000.00

Terms: After the initial contract term, the license agreement shall automatically renew for additional one (1) year terms thereafter, unless written notice of non-renewal is received at least (30) calendar days prior to expiration of the current term. FEIN: 22-3200334