

## TAX COLLECTIONS

### SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

This is an Agreement for professional services and the license of computer program software between SW Data Solutions, LLC d/b/a Southwest Data Solutions, State of Texas CMBL Vendor number 1201241135600, referred to in this Agreement as "Licensor," and Sabine County Tax Office, referred to in this Agreement as "Licensee." Licensor is a Texas limited liability company, located at 217 S. Rogers, Waxahachie, Texas. Licensee is located at 213 Market Street, Hemphill, TX 75948. Licensor and Licensee are collectively referred to in this Agreement as the "Parties."

#### RECITAL

In consideration of the mutual promises made in this Agreement, Licensor and Licensee agree that the terms and conditions set forth as follows will apply to the license of the computer program software described in the Agreement.

#### ARTICLE 1

##### LICENSE GRANT

###### Grant of License

1.01. Licensor grants and Licensee accepts a nontransferable license to use for Tax Collections of property in Assessments of the Southwest, Inc. and overlapping Office property if applicable. Programs involved in license are not to be modified or converted to a different language or configuration by anyone other than Licensor. The Software described in Paragraph 1.02 is subject to the conditions for the period specified in this Agreement.

###### Subject Matter Software

1.02. The term "Software" as used in this Agreement consists of the following:

- (a) A single computer program designated as Gemini Tax Collections. The program is:
  - (i) Electronically transferred to the Licensor's computer system and main server;
  - (ii) Designed to appraise property in accordance with Licensor's specifications for the program;
  - (iii) In Microsoft VB.Net object code language only.
- (b) All subsequent improvements to either the computer program or the related printed documentation made by either Licensor or Licensee.

## ARTICLE 2

### LIMITATIONS ON USE

#### General Use of Software

2.01. Licensee agrees to use the software solely for its exclusive benefits or specific purposes, e.g., for Licensee's own and internal purposes in the property tax and Tax Collections business.

#### Restriction to Designated Hardware

2.02. (a) The Software may be used only on the Designated Hardware located at 213 Market Street, Hemphill, TX 75948. The Designated Hardware may be moved to another location with specific permission of Licensor, should Licensee's place of business change during the term of this agreement. The term "Designated Hardware" is defined as the server, workstations and network installed at the Assessments of the Southwest Office.

(b) Licensee may temporarily install and use the Software on hardware other than that described in this Paragraph 2.02 if that hardware meets or exceeds the specifications for the Designated Hardware in the event of catastrophe enabling the Licensee to recover from disaster and to include such temporary operation in Licensee's Disaster Plan. Licensee shall not install or use the computer program portion of the Software on such replacement hardware without the prior written consent of Licensor. Licensor shall not unreasonably withhold this consent if the proposed replacement hardware meets or exceeds the specifications for the Designated Hardware.

(c) Licensee agrees that it shall obtain a license from Licensor for the permanent installation and use of the Software on any computers other than the Designated Hardware prior to any such installation or use. Licensor agrees that it shall not unreasonably refuse to grant such a license.

#### Copies

2.03. (a) Except as provided in this Paragraph 2.03, Licensee shall not copy any portion of the Software. Licensee may make one "backup copy" of the Software for archival purposes.

(b) Licensee shall keep the Software at 213 Market Street, Hemphill, TX 75948 or such other place to which the Designated Hardware may subsequently be moved. All copies of the software shall be kept at 213 Market Street, Hemphill, TX 75948.

(c) Licensee shall reproduce and include Licensor's applicable copyright notice, patent notice, trademark, or service mark on any copies of the Software, including any modifications, adaptations, or conversions. Furthermore, each copy shall state that it is the property of Licensor in the following language:

"This copy of Gemini Tax Collections is the property of SW Data Solutions LLC, DBA Southwest Data Solutions, and is protected under the copyright, trade secret, and proprietary laws of the United States and, when applicable, the state of Texas."

#### **Licensee's User Responsibilities**

2.04. Licensee shall be exclusively responsible for the supervision, management, and control of its use of the Software, including, but not limited to:

- (a) Assuring proper configuration of the Designated Hardware, related equipment, and devices, and compatibility with the Software;
- (b) Establishing adequate operating methods; and
- (c) Implementing procedures sufficient to satisfy its obligations for security under this Agreement, including appropriate control of its employees to prevent misuse, unauthorized copying, modification, or disclosure of the Software.

#### **License Term**

2.05. Absent termination covered in Section 7 of this Agreement, the license granted in this Agreement shall remain in force for three years from the last execution date of this agreement. This Agreement will automatically renew for another two-year term if a party does not submit a written notice of termination to the other party at least 60 days before the renewal anniversary date.

### **ARTICLE 3**

#### **PROPERTY RIGHTS**

##### **Title to Software**

3.01. Title to the Software is reserved for Licensor. Licensee acknowledges and agrees that Licensor is and shall remain the owner of the Software and shall be the owner of all copies of the Software made by Licensee.

##### **Confidentiality of Software**

3.02. Licensee acknowledges that the Software is confidential in nature and constitutes a trade secret belonging to Licensor. Licensee agrees to hold Software in confidence for Licensor and not to sell, rent, license, distribute, transfer, or disclose the Software or its contents, including methods or ideas used in the Software, to anyone except to employees of Licensee when disclosure to employees is necessary to use the license granted in this Agreement. Licensee shall

instruct all employees to whom any such disclosure is made that the disclosure is confidential and that the employee must keep the Software confidential by using the same care and discretion that they use with other data designated by Licensee as confidential. The confidentiality requirements of this Paragraph 3.02 shall be in effect both during the term of this Agreement and after it is terminated.

#### **Security**

3.03. Licensee agrees to keep the Software in a secure place, under access and use. Licensee agrees to at least implement the security precautions that it normally uses to protect its own confidential materials and trade secrets.

#### **Disclosure as Breach**

3.04. Licensee agrees that any disclosure of the Software to a third party constitutes a material breach of this Agreement and shall terminate the license granted by this Agreement. The terms of this Agreement, however are expressly made subject to the laws regarding access to public records in the State of Texas. As long as the Licensee complies with the laws regarding access to public records in the State of Texas, Licensee shall not be liable to Licensor or its successors in the title to the Software for any disclosure that is required by law.

3.05. Licensee agrees not to remove, mutilate, or destroy any copyright, patent notice, trademark, service mark, other proprietary markings, or confidential legends placed on or within the Software.

3.06. Demonstrating the capability of the Software to non-competing Tax Collections Offices, non-competing vendors, and/or non-competing agents shall not be a disclosure of the Software that constitutes a material breach of this agreement. Demonstrating the capability of the Software to competing Tax Collections Offices, competing vendors, and competing agents shall not be a disclosure of the Software that constitutes a material breach of this agreement unless the employee or officer of the Licensee knowingly and intentionally disclosed the Software to the competitor of Licensor.

### **ARTICLE 4**

#### **PAYMENT**

##### **Payment Upon Execution**

4.01. In payment for the license granted under this Agreement, Licensee shall pay Licensor an amount of \$30,000 for the full licensing of six (6) workstations. The agreement is considered a professional services agreement and includes software maintenance and support (see section 5.8).

Licensee will pay the software license fee (\$30,000), data conversion fee (\$6,000) and software training fee (\$5,000) in 36 monthly payments of \$1,285.00 or 12 quarterly payments of \$3,855.00 beginning January 1, 2017. Computer hardware lease down payment will be billed in the amount of \$5,109 as well as the 1<sup>st</sup> monthly lease payment \$640 on January 1, 2017. Section 4.01 represents all upfront costs of the system to be billed January 1, 2017.

#### **Payment of Taxes**

4.02. Licensee shall pay all taxes that may be assessed on the Software or its use, including personal property taxes, sales and use taxes, and excise taxes, excluding taxes based on the income of the Licensor.

### **ARTICLE 5**

#### **INSTALLATION AND SERVICE**

##### **Delivery of Software**

5.01. Licensor shall deliver one copy of the computer program portion of the Software no later than July 11, 2016.

##### **Installation Services**

5.03. Hardware. The computer hardware will be installed and configured to run the Gemini Tax Collections system at 213 Market Street, Hemphill, TX 75948.

##### **Testing**

5.04. Licensee and Licensor shall conduct tests of the Software after it has been installed. All testing shall be conducted in accordance with parallel procedures to the existing computer system. All testing shall be performed on the Designated Hardware.

##### **Acceptance**

5.05. The Software shall be accepted or rejected by Licensee after completion of the testing prescribed by Paragraph 5.04 and productive use of the Software by Licensee for a reasonable period of use by Licensee, not to exceed sixty days. Acceptance shall be established by the written acceptance of the Software by the Licensee. If the Software is deemed unacceptable, Licensee shall return the Software without charge with a report detailing the reasons for its unacceptability. If Licensee has made payments to Licensor for the Software, such payment shall be refunded if the Software is not accepted.

### **Training**

5.06. Licensor shall provide ten business days of technical orientation and training for all of Licensee's computer operations employees. Training and orientation shall be provided at 213 Market Street, Hemphill, TX 75948, Licensee's place of business. The cost for the training will be payable upon Licensee's acceptance of installation of the Tax Collections System as broken down in Section 4.01.

### **Data Conversion**

5.07. Licensor shall provide Data Conversion service of the existing Tax Collections Data to the format required for the Gemini Tax Collections System on a one-time fee basis as indicated in Section 4.01. The conversion will include conversion of all available years of historical data.

### **Maintenance Agreement**

5.08. Licensee shall enter into and during the term of this Agreement maintain in effect a Software Maintenance Agreement covering the Software with Licensor who will maintain software. Licensor agrees that all changes in the Gemini Tax Collections Software that are resultant from State of Texas Legislative are included in this agreement and shall be performed as part of this agreement. The term of this Maintenance agreement will be in effect for three years from the date of this contract. The Licensor is to keep the Software in good working order in accordance with the provisions of that agreement and make all necessary adjustments and repairs to the Software. The Maintenance agreement is part of the professional services agreement and payment for said is included in section 4.01. Licensee may terminate this maintenance agreement at any time if the Tax Assessor determines that maintenance by Licensor is insufficient. Monthly maintenance for the term of this agreement will be \$1,080 monthly due and payable upon Licensee's acceptance of installation of the Tax Collections System and will begin January 1, 2017.

## **ARTICLE 6**

### **WARRANTY PROVISIONS**

#### **Warranty of Title**

6.01. Licensor warrants that it has good title to the Software and the right to license its use to Licensee free of any proprietary rights, liens, or encumbrances of any other party.

#### **Warranty of Title Remedies**

6.02. (a) Licensee shall notify Licensor of the assertion of any claim that the Software or Licensee's use of the Software under this Agreement violates the trade secret, trademark, copyright, patent, or other proprietary right of any other party, and shall cooperate with Licensor

in the investigation and resolution of any such claim. Licensor shall defend Licensee against any such claims. Licensor shall indemnify and hold Licensee harmless from any liability for damage, costs, or other loss incurred by Licensee in connection with any such claim.

(b) If the Software becomes, or is likely to become, the subject of a claim of infringement of a copyright or patent, Licensor may procure for Licensee the right to continue using the Software, may replace or modify the Software to render it noninfringing, or may require that Licensee discontinue its use. If Licensor requires that Licensee discontinue its use of the Software, Licensor shall refund to Licensee the purchase price of the Software.

(c) Licensor shall have no liability for any claim of copyright or patent infringement based on the use of an original version of the Software if infringement would have been avoided by the use of an updated version made available to Licensee and for which Licensor gave Licensee written notice that the updated version of the Software made available to Licensee was for the purpose of curing a potential infringement.

(d) Licensor shall not indemnify Licensee against any claim or liability based on Licensee's modification or conversion of the Software and/or the subsequent use of that modification or conversion or use of the Software in combination with programs or data not supplied by Licensor if infringement would have been avoided by not using or combining the Software with other programs or data.

#### **Warranty of Conformity to Specifications**

6.03. Licensor warrants that the Software is in conformance with its intended purpose as Software for the operation and administration of ad valorem taxation functions under the Law of the State of Texas. ANY MODIFICATION OF THE SOFTWARE BY ANY PERSONS OTHER THAN LICENSOR SHALL VOID THIS WARRANTY.

#### **Remedy for Nonconforming Software**

6.04. During a period of 90 days after acceptance of the Software by Licensee, Licensor shall at its own expense provide programming services to correct Software defects, errors, or malfunctions that cause the Software to fail to operate in substantial conformance to Licensor's published functional specifications. The Licensor shall perform such services only in the event Licensee has notified Licensor of any such failure to perform. If Licensor fails to remedy the defects, errors, or malfunctions as referenced above, the Licensee may determine that the Software is non-conforming and demand a refund of the purchase price of Software. LICENSEE AGREES THAT LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR THE DEFECTS DESCRIBED IN THIS PARAGRAPH 6.04 SHALL BE LIMITED TO THE CORRECTIVE ACTION DESCRIBED IN THIS PARAGRAPH.

### **Warranty Disclaimer**

6.05. THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **Limitation of Remedies**

6.06. LICENSEE AGREES THAT ITS EXCLUSIVE REMEDIES, AND LICENSOR'S ENTIRE LIABILITY WITH RESPECT TO THE SOFTWARE IS AS SET FORTH IN THIS AGREEMENT. LICENSEE FURTHER AGREES THAT LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF ITS USE OR INABILITY TO USE THE SOFTWARE OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY.

## **ARTICLE 7**

### **TERMINATION**

#### **Cause for Termination**

7.01. The license granted in this Agreement shall be terminated automatically and without further notice upon the occurrence of any of the following events:

- (a) Disclosure by Licensee of the Software to a third party, whether directly or indirectly and in violation of paragraphs 3.04, 3.05 of 3.06 of this agreement.
- (b) Refusal by Licensee to pay any periodic maintenance fee or any increase in maintenance fee provided for in this Agreement.
- (c) Commission by Licensee of an event of default as defined in Paragraph 7.02 or commission by Licensor of an event of default as defined in Paragraph 7.03.

#### **Events of Default**

7.02. Licensee commits an event of default, and this Agreement and the license granted under this Agreement shall terminate, if any of the following occur:

- (a) Licensee attempts to use, copy, license, or convey the Software in any manner contrary to the terms of this Agreement.



(b) Licensee fails or neglects to perform or observe any of its existing or future obligations under this Agreement, including, without limitation, the timely payment of any sums due Licensor within 30 days of the due date.

(c) Licensee makes an assignment of Licensee's business for the benefit of creditors.

(d) A petition in bankruptcy is filed by or against Licensee.

(e) A receiver, trustee in bankruptcy, or similar officer is appointed to take control of all or part of Licensee's property.

(f) Licensee is adjudicated a bankrupt.

7.03 This contract shall be terminated immediately and without further notice upon the occurrence of any of the following events:

(a) Cessation of business on dissolution or insolvency of Licensor;

(b) Licensor fails or neglects to perform or observe any of its existing or future obligations under this Agreement;

(c) Licensor makes an assignment of Licensor's business for the benefit of creditors;

(d) A petition in bankruptcy is filed by Licensor;

(e) A receiver, trustee in bankruptcy, or similar officer is appointed to take control of all or part of Licensor's property;

(f) Licensor is adjudicated bankrupt.

#### Effect of Termination

7.03. Licensee agrees that immediately on termination under Paragraph 7.01, it shall immediately return all copies of the Software to Licensor or destroy all copies of the Software, certify to Licensee that it has retained no copies of the Software, and acknowledge that it may no longer use the Software. Licensee further agrees that in the event of termination through its default, all fees or charges due for the remaining term of this Agreement shall immediately become due and payable. Upon termination of the license, Licensor's obligations under this Agreement shall cease.

7.04. Licensor agrees that if the licensee chooses a different software product than that authorized in this contract, then upon written notification by licensee, licensor has thirty (30) days to provide the licensee with all its data in a universal format such as ascii, comma-delimited text files. Licensor will also provide a document detailing the file data layout and other aspects of the files that are necessary for the conversion of licensee's data to the any third party of its choosing for the sole purpose of converting licensee's data for use on another product. If licensor fails to provide the licensee with all its data in a universal, readable format or fails to provide the document detailing the file data layout and other aspects of the files that are necessary for the conversion of licensee's data to the designated third party within 30 days after written notification by licensee, then licensee may provide the necessary formatting, schema, file data

layout and other aspects of the Software that are necessary for the conversion of licensee's data to the any third party of its choosing for the sole purpose of converting licensee's data for use on another product.

## ARTICLE 8

### GENERAL PROVISIONS

#### Assignment

8.01. Licensee shall not assign or otherwise transfer its rights under this Agreement, including the license granted in this Agreement, or the Software obtained pursuant to this Agreement or assign this Agreement or rights under the Agreement without the prior written consent of Licensor. Any attempt to make such an assignment without Licensor's consent shall be void. Licensor shall not assign this contract without written permission of Licensee.

#### Governing Law

8.02. The Parties acknowledge that this Agreement has been made in Texas and agree that it shall be construed pursuant to the laws of the State of Texas. The appropriate state or federal courts located in Galveston County, Texas shall have exclusive jurisdiction over all matters arising under this Agreement and will be the proper forums in which to adjudicate such matters.

#### Integration

8.03. The Parties acknowledge and agree that this Agreement is the complete and exclusive statement of the mutual understanding of the Parties and that it supersedes and cancels all previous written and oral agreements and communications relating to the license that is the subject matter of this Agreement.

#### Notices

8.04. Wherever any notice, demand, or other communication is required or permitted under this Agreement, the notice, demand, or other communication shall be in writing. Any notice or document required or permitted to be delivered, whether actually received or not, shall be deemed given when (i) personally delivered, (ii) deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set forth below, or at such other addresses as they have specified by written notice delivered in accordance with this paragraph, or (iii) transmitted by facsimile to the telephone number shown on the signature page of this Agreement, and such transmission is confirmed as received by facsimile equipment. Either party hereto may change its address or facsimile number for notice by giving the other party ten (10) days' advance written notice of such change.

(a) When intended for Licensee, to Sabine County Tax Office, 213 Market Street, Hemphill, TX 75948.

(b) When intended for Licensor, to SW Data Solutions, LLC, 217 S. Rogers, Waxahachie, Texas, 75165.

#### **Attorney's Fees**

8.05. If any legal proceeding is necessary to enforce the terms of this Agreement, each party will be responsible for its own attorney's fees in addition to any other relief to which that party may be entitled.

#### **Severability**

8.06. If any part of this Agreement is declared to be invalid by any court of competent jurisdiction, that part of the Agreement shall be severed from this Agreement and the remainder of this Agreement shall remain in full force and effect.

#### **Non-waiver**

8.07. The Parties agree that a waiver of a breach or default under this Agreement shall not constitute a waiver of any subsequent breach or default. The Parties also agree that no failure to exercise or delay in exercising any right under this Agreement on the part of either party shall operate as a waiver of the right.

#### **Amendments**

8.08. This Agreement shall be modified only by a written agreement executed by persons authorized to execute agreements on behalf of the Parties.

#### **Funding Out**

8.09. The parties acknowledge that this contract is a commitment of the current revenues only of the Office. If the Office's governing body fails to appropriate funds for the payment of its obligations hereunder for any subsequent fiscal year, this contract is terminated as of the last date of the then current fiscal year of the Office.

#### **Independent Contractor**

8.10. Licensor shall remain at all times an independent contractor and shall not be considered for any purpose as an officer, agent, or employee of Licensee. Licensor shall not represent to any person that it is an agent or employee of Licensee.

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By: Janice McDaniel Deputy  
Janice McDaniel ~ County Clerk  
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The State Of Texas §  
County Of Sabine §  
I hereby certify that these documents were filed and duly  
recorded in the Commissioner Court Minutes of Sabine  
County, Texas.

PAGE 12

SOFTWARE LICENSE AGREEMENT

Sabine County Tax Assessor-Collector  
Martha Stone  
Authorized Signature

By Martha Stone

LICENSEE  
Sabine County Tax Office

Southwest Data Solutions  
Jerry Whitehead

By \_\_\_\_\_

SW DATA SOLUTIONS, LLC

LICENSOR

Executed at Hemphill, Texas on 6/27/2016