

NAVARRO COUNTY COMMISSIONER'S COURT

A SPECIAL MEETING OF THE NAVARRO COUNTY COMMISSIONER'S COURT WAS HELD ON TUESDAY 9TH DAY OF OCTOBER, 2007 AT 10:00 A.M., IN THE NAVARRO COUNTY COURTHOUSE, CORSICANA, TEXAS. PRESIDING JUDGE H.M. DAVENPORT, COMMISSIONER'S PRESENT KIT HERRINGTON, FAITH HOLT, WILLIAM BALDWIN, AND JAMES OLSEN.

- 1. MOTION TO CONVENE BY BALDWIN SEC BY OLSEN  
ALL VOTED AYE
- 2. MOTION TO APPROVE CONTRACT WITH SOUTHWEST DATA FOR VOTER REGISTRATION SYSTEM BY HERRINGTON SEC BY OLSEN  
ALL VOTED AYE TO WIT PG 293-303
- 4. MOTION TO ADJOURN BY BALDWIN SEC BY OLSEN  
ALL VOTED AYE

THESE MINUTES ARE HEREBY APPROVED THIS 27 DAY OF OCTOBER 2007.

JUDGE HM DAVENPORT [Signature]

COMR.PCT.1 KIT HERRINGTON [Signature]

COMR.PCT.2 FAITH HOLT [Signature]

COMR.PCT.3 WILLIAM BALDWIN [Signature]

COMR.PCT.4 JAMES OLSEN [Signature]

I, SHERRY DOWD, NAVARRO COUNTY CLERK, ATTEST THAT THE FOREGOING IS A TRUE AND ACCURATE ACCOUNTING OF THE COMMISSIONERS COURT'S AUTHORIZED PROCEEDING FOR OCTOBER 9TH, 2007

SIGNED 22 DAY OF OCTOBER 2007

[Signature]  
SHERRY DOWD, COUNTY CLERK



## SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

This is an Agreement for the license of computer program software between SW Data Solutions, LLC d/b/a Southwest Data Solutions, referred to in this Agreement as "Licensor," and County of Navarro, Texas, referred to in this Agreement as "Licensee." Licensor is a Texas limited liability company located at 301 S. Rogers St. Ste B., Waxahachie, Texas. Licensee is located at 300 W 3<sup>rd</sup> Ave Suite 18, Corsicana, Texas. 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 and professional services described in the Agreement.

## ARTICLE 1

## LICENSE GRANT

**Grant of License**

1.01. Licensor grants and Licensee accepts a nontransferable license to use for Voter Registration in Navarro County. 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 Voter Registration. The program is:

(i) Electronically transferred to the Licensor's computer system and main server.

(ii) Designed to maintain voter records and produce related printed information 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 benefit or specified purposes, e.g., for Licensee's own and internal purposes in the voter registration business.

**Restriction to Designated Hardware**

2.02. (a) The Software may be used only on the Designated Hardware at 300 W 3<sup>rd</sup> Ave Suite 18, Corsicana, Texas. 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.

(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 Paragraph 2.03, Licensee shall not copy any portion of the Software. Licensee may make one "backup copy" of the Software for archival purposes. Licensee shall provide Licensor a written description of the procedures under which it makes backup copies, including any that may involve backup of the Software, and Licensor shall promptly approve or disapprove those procedures. Licensor's approval shall not be unreasonably withheld.

(b) Licensee shall keep the Software at 300 W 3<sup>rd</sup> Ave Suite 18, Corsicana, Texas or such other place to which the Designated Hardware may subsequently be moved, and all copies of the software shall be kept at 300 W 3<sup>rd</sup> Ave Suite 18, Corsicana, Texas.

(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 Voter registration 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.
- (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. The license granted in this Agreement shall remain in force until Perpetuation unless terminated prior to that time by Licensee.

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, Data, and Data Ownership**

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. The licensor agrees that any contact it may have with the data specific to the licensee's installation of said software will be kept confidential and not used in any other manner, except those as set forth in the licensor's software application. Licensor also agrees that the data contained in the database of said software will remain the sole property of the licensee and the licensor will not prohibit in any manner licensee's access to said data. Any portion of the database that is considered intellectual property, such as database structures, scripts, or any other programming code that would be found in any other installations of the licensor's software will remain the property of the licensor.

**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.

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.

**ARTICLE 4**

**PAYMENT**

**Payment in accordance with Prompt Payment Act**

4.01. In payment for the license granted under this Agreement, Licensee shall pay Licensor the total sum of \$ 12,000.00 as a license fee, which is payable in accordance with the Fair Payment Act which is within thirty (30) days from approved dated invoice delivered to the County Auditor of Navarro County. The licensee fee is for 4 (four) licenses @ \$3,000 per license.

**Payment of Taxes**

4.02. Licensor 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 October 15, 2007.

**Installation Services**

5.03. Licensor shall install the Software computer program, which shall be installed on the Designated Hardware no later than October 22, 2007. Software installation charges of \$500.00 will be due and payable in accordance with the Fair Payment Act as stated in section 4.01.

**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 deemed to have been accepted by Licensee after completion of the testing prescribed by Paragraph 5.04 and productive use of the Software by Licensee or a reasonable period of use by Licensee, not to exceed thirty days). If the Software is deemed unacceptable, Licensee shall return the Software without charge with a report detailing the reasons for its unacceptability.

**Training**

5.06. Licensor shall provide five days of technical orientation and training for all of Licensee's computer operations employees at \$400 per day. Training and orientation shall be provided at 300 W 3<sup>rd</sup> Ave Suite 18, Corsicana, Texas, Licensee's place of business. The total of \$2,000 will be due and payable upon system acceptance.

**Data Conversion**

5.07. Licensor shall provide Data Conversion service of the existing Voter Registration Data to the format required for the Gemini Voter System on a one time fee basis of \$2,500. The total of \$2,500 will be due and payable upon system acceptance.

**Software Maintenance and Professional Services 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 Voter Registration Software that are resultant from State of Texas Legislative are inclusive in this agreement and shall be performed as part of this agreement. The term of this Maintenance agreement will be in effect for One (1) year 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 will begin November 1, 2007 and conclude October 31, 2008. The Monthly Maintenance amount will be \$500 beginning November 1, 2007 and remain in effect for the length of the agreement.

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 non infringing, or may require that Licensee discontinue its use.

(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.

(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 shall substantially conform to Licensor's published functional specifications when shipped to Licensee. 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. However, LICENSOR DOES NOT GUARANTEE SERVICE RESULTS OR REPRESENT OR WARRANT THAT ALL ERRORS WILL BE CORRECTED. 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) Expiration of the term specified in Paragraph 2.05 or of any optional renewal term in the absence of a subsequent renewal in accordance with the terms of this Agreement.
- (b) Disclosure by Licensee of the Software to a third party, whether directly or purposefully.
- (c) Refusal by Licensee to pay any periodic maintenance fee or any increase in maintenance fee provided for in this Agreement.
- (d) Non-Appropriation of Funds by Licensee.
- (e) Commission by Licensee of an event of default as defined in Paragraph 7.02.

**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 or in derogation of Licensor's proprietary rights in the Software.
- (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 15 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 as bankrupt.

**Effect of Termination**

7.03. Licensee agrees that upon 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. Licensor shall provide to Licensee a copy of all data in a format that can be used to import said data into another application or database prior to Licensee returning said software. Upon termination of the license, Licensor's obligations under this Agreement shall cease. The section (7.03 entitled Effect of Termination) shall become null and void in the event that licensor's business activities terminate due to bankruptcy, or other action that would cause business activates to cease

**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.

**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 Navarro 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 Licensor, to SW Data Solutions, LLC, 301 S. Rogers St. Ste B., Waxahachie, Texas, 75165 or

(b) When intended for Licensee, to County of Navarro, Texas, 300 W 3<sup>rd</sup> Ave Suite 18, Corsicana, Texas 75783.

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

8.05. If any legal proceeding is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable 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.

#### **Licensor's Termination of Business Activities**

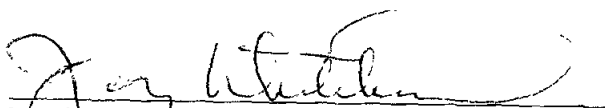
8.08. In the event of licensor's business activities terminating due to bankruptcy, or any other action that would cause business activities to cease, the Licensor agrees that the Licensee shall be allowed to continue to use said software during the interim time that it may take to replace said software.

#### **Amendments**

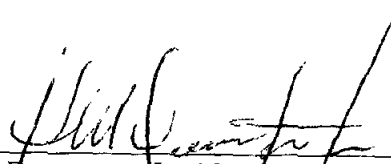
8.08. This Agreement shall be modified only by a written agreement executed by persons authorized to execute agreements on behalf of the Parties.

Executed at Corsicana, Texas on October 9, 2007

LICENSOR  
SW DATA SOLUTIONS, LLC

By   
Southwest Data Solutions  
Jerry Whitehead, President

LICENSEE

By   
H.M. Davenport Jr., Navarro County Judge