



SOFTWARE LICENSE SUBSCRIPTION AGREEMENT

LICENSOR: **BIGWEBAPPS, INC.**
 PO Box 7010
 Atlanta GA 30357-0010

LICENSEE: **Hidalgo County**
 2802 S. Bus. Hwy. 281
 Edinburg, TX 78539

1. Grant of License.

BigWebApps, Inc. (also referred to herein as "bigWebApps") hereby grants to Licensee, and Licensee accepts from bigWebApps, Inc., a license to use the bigWebDesk Software Program and related documentation (hereinafter the "Licensed Software" or "Software"), in machine-readable source and object code formats, at a single designated CPU, or at a designated number of Workstations, or designated Site(s), as the case may be, subject to and in accordance with the terms, conditions and limitations of this Agreement.

2. Scope of License.

Licensee agrees that it will use the Licensed Software hereunder only in connection with its own normal legal business operations, and it will not, without the express written permission of bigWebApps, Inc., sell, lease, or otherwise provide or make available the Licensed Software to any third party. The Licensed Software and all purchased licenses of the Licensed Software are granted full use to the Licensee and all legal business entities the Licensee owns and operates.

3. Payment Terms.

- (a) License Pricing. License pricing will be based on a yearly subscription fees (the "Annual Subscription Fees"). In addition to the foregoing charges, Licensee is not obligated to pay any federal, state, local, and other taxes, fees and assessments imposed in connection with this Agreement.
- (b) Term Commitment. The Licensee commits to the quantity of Annual Subscription Fees described in Exhibit A ("Term Commitment").
- (c) Invoicing and Payment Terms. Before bigWebApps, Inc. furnishes full rights to the Software, bigWebApps, Inc. will require the Licensee to make an initial payment of the Annual Subscription Fee for the first year of Software License. Thereafter, bigWebApps, Inc. may bill the Licensee annually in two months in advance of contract term for each year of Software Licensing. All payments are due net 30 days from the date of receipt of a bigWebApps invoice. If bigWebApps, Inc. does not receive the full amount of payment within thirty (30) days after the receipt of the invoice, an additional two-point-five percent (2.5%) (or to the extent allowable by law) per month will be added to the unpaid balance of the Licensee and shall be immediately due and payable to bigWebApps, Inc. Licensee shall also be liable for any and all attorney and collection fees arising from bigWebApps, Inc.'s efforts to collect any unpaid balance of Licensee's account. Notwithstanding the previous, bigWebApps, Inc.'s remedies for late payments as set out in this Section 3(c) and in Section 5(c) hereof shall be mutually exclusive.

4. License Activation Date.

The License Activation Date shall be the first date of the contract term set out in Exhibit A hereto.

5. Duration and Termination

(a) Duration. Unless terminated earlier as provided elsewhere in this Agreement, bigWebApps, Inc. will continue to provide the Licensed Software and the related services set out in Exhibit A attached hereto for as long as the Licensee continues to pay the Annual Subscription Fee during the contract term defined in Exhibit A ("Term"). In the event that the Licensee continues to license the Software past the Term, Agreement shall automatically renew for another (12) month period, unless written notice of termination of the Agreement is given (30) days prior to Term Commitment or Licensee initiates a renegotiation of the terms of the Agreement with bigWebApps, Inc. During any such automatic extended Agreement period, bigWebApps, Inc., at its option, may bill Licensee at the rates contained in this Agreement or at rates in effect at that time. However, rates are limited to and may not exceed 10% of previous years contract with existing purchased services. Any new additional services will be billed at the current scheduled price.

(b) Voluntary Termination. Effective at any time after the Term Commitment, this Agreement may be terminated by Licensee for any reason upon thirty (30) days' prior written notice. Should Licensee terminate this Agreement before the completion of the Term Commitment for any reason other than material breach of this Agreement by bigWebApps, Inc., Licensee shall be responsible for the payments specified in Section 5(e). bigWebApps may only voluntarily terminate this Agreement if a material breach is found as specified in Section 5 (c).

(c) For Breach. Either party may terminate this Agreement if the other party is in material breach of any term of this Agreement and fails to remedy such breach upon thirty (30) days after written notice of such breach by the non-breaching party. Without limiting the generality of the foregoing, failure to make any payment to bigWebApps, Inc. when due is a material breach of this Agreement on the part of Licensee. Should bigWebApps, Inc., as a result of Licensee's material breach of this Agreement, terminate this Agreement before the completion of the Term Commitment, Licensee shall be responsible for the payments specified in Section 5(e). Should Licensee, as a result of bigWebApps, Inc.'s material breach of this Agreement, terminate this Agreement before the completion of the Term Commitment, bigWebApps, Inc. shall refund to Licensee the pro-rata portion of the Annual Subscription Fee paid which relates to the remaining period of the Term following termination of the Agreement.

In addition to the foregoing, in the event of a breach, each party shall be subject to the provisions of Section 11(b) hereof.

(d) Effect of Termination. Within five (5) days after termination of this Agreement, Licensee shall be blocked from the Licensed Software.

(e) Early Termination Charges. The rates and discounts set forth in this Agreement are based on Licensee's commitment to purchase the Software License for the entire Term Commitment. To compensate bigWebApps, Inc. for any loss related to early termination of the Agreement, and not as a penalty, Licensee -- in the case of its voluntary termination pursuant to Section 5(b) or bigWebApps, Inc.'s termination pursuant to Section 5(c) -- shall pay bigWebApps, Inc. an early termination charge. The early termination charge shall come in effect during the first 90 days of Term Commitment. During this time all fees paid by Licensee for the Term Commitment will be reimbursed to Licensee minus an early termination fee of 25% of such paid fees, with a minimum of \$300 of Licensee contract amount. Past 90 days of Term Commitment, all fees paid by Licensee attributable to the remaining portion of the Term Commitment will be reimbursed to Licensee minus an early termination fee of 50% of such paid fees. The reimbursed amount minus early termination charge shall be paid to Licensee within thirty (30) days after written notice of termination.

(f) Other Charges. Nothing in this Agreement shall relieve Licensee from its liability for payment for services rendered by bigWebApps, Inc. prior to the termination of this Agreement, as the case may be.

6. License Not a Sale

This license does not constitute a sale, nor does it pass to Licensee any title to or any proprietary rights in the Licensed Software, all of the same being expressly reserved to and vested in bigWebApps, Inc. Nor

shall Licensee acquire any right or interest in the Licensed Software as a result of any changes to, modifications of or additions to the Licensed Software made by Licensee.

(a) **Copyright.** bigWebApps Inc. is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Licensed Software is licensed, not sold. All title and copyrights in and to the Software are owned by bigWebApps. All title and intellectual property rights in and to the content which may be accessed through use of the Licensed Software is the property of the Licensee and also may be protected by applicable copyright or other intellectual property laws and treaties.

(b) **Intellectual Property Rights.** bigWebApps Inc. acknowledges and agrees that any data distributed to bigWebApps Inc. network for processing constitute confidential and proprietary information belonging to Licensee and/or its customers ("Customer Data"), and contain trade secrets and intellectual property protected under United States copyright and other laws and international treaty provisions. bigWebApps agrees not to remove, obscure, or alter any notice of patent, copyright, trademark, trade secret or other proprietary right in the Licensed Software or Customer Data. bigWebApps agrees not to mine, farm, or sell any notice of patent, copyright, trademark, trade secret or other proprietary right in the Licensed Software or Customer Data to any third party. This Agreement does not grant Licensee any rights in connection with any trademarks or service marks of bigWebApps or its customers.

7. Security

Data is stored using Microsoft SQL Server on state-of-the-art Dell file servers. All software and systems are fully compliant with up-to-date patches and are regularly serviced based on Security Updates issued by Microsoft Corporation. The transfer of sensitive data, such as password information, as appropriate, is accomplished over a secure network using MD5 security. Components of the system, where technically feasible, are redundant and fault tolerant for bigWebApps Inc. operations. All hosted data and its hosting facilities of bigWebApps Inc. are protected by an undisclosed security protocol with restricted access requiring authorization authentication.

8. Software Maintenance.

bigWebApps, Inc. shall be obligated to correct errors, or remedy defects in, or to provide modifications or enhancements to the Licensed Software in a timely manner based on the priority ratings set out in Exhibit B hereto. This further includes that the Licensee is entitled to all upgrades, patch fixes, and new available features. (SEE EXHIBIT "B" FOR DEFINITION)

9. User Registration.

Each qualified "user" of the Licensed Software will be assigned a separate registration number by bigWebApps, Inc. Licensee agrees that each registered user account will be used by one person at a time unless given authorization from bigWebApps, Inc. do so otherwise. Licensee agrees that its registered users may not use another registered user's account without the specific consent of that registered user unless given authorization from bigWebApps, Inc. to do so otherwise.

10. Warranties.

For so long as Licensee licenses the Software from bigWebApps, Inc. bigWebApps, Inc warrants that the Licensed Software will substantially conform to its documentation; provided, however, that Licensee keeps its payments to bigWebApps, Inc current.

11. DISCLAIMERS.

(a) **DISCLAIMER OF WARRANTIES; LIMITATIONS OF LIABILITY.** THE SOFTWARE IS MADE AVAILABLE ON AN "AS IS" BASIS. NEITHER BIGWEBAPPS, INC. NOR ANY SUPPLIER, LICENSOR, EMPLOYEE, AGENT, OR CONTRACTOR MAKES ANY WARRANTY WHATSOEVER REGARDING THE SOFTWARE, ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED THROUGH OR IN CONNECTION WITH THE SOFTWARE, OR ANY RESULTS TO BE OBTAINED THROUGH THE USE THEREOF, AND BIGWEBAPPS, INC. HEREBY EXPRESSLY DISCLAIMS ON BEHALF OF ITSELF AND ALL SUPPLIERS ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION: ANY EXPRESS OR IMPLIED WARRANTIES OF: 1)

MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE; EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; AND 7) TITLE, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT. LICENSEE FURTHER AGREES THAT BIGWEBAPPS, INC. SHALL NOT BE LIABLE TO LICENSEE, OR ANY THIRD PARTY, FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, ERROR, OMISSION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATIONS LINE FAILURE, PUBLIC INTERNET FAILURE BEYOND BIGWEBAPPS, INC. CONTROL, CURRENT LICENSEE HARDWARE AND SOFTWARE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORDS, EXCEPT AS PROVIDED IN SECTION 11(b) HEREOF.

(b) Indemnification. Licensee agrees to indemnify to the extent allowable by law, defend and hold harmless bigWebApps Inc and its affiliated entities, directors, officers and employees (each a "bigWebApps, Inc. Party") from and against any damages, losses, and liabilities incurred by bigWebApps, Inc. to the extent arising out of or relating to (i) Licensee's negligence or willful misconduct, or that of its employees, or (ii) material breach of its obligations set forth in this Agreement, except to the extent such damages, losses or liabilities are caused by the negligence or willful misconduct of any Licensee Party. bigWebApps, Inc. agrees to indemnify to the extent allowable by law, defend and hold harmless Licensee and its affiliated entities, directors, officers and employees (each a "Licensee Party") from and against any damages, losses, and liabilities incurred by Licensee to the extent arising out of or relating to (i) bigWebApps, Inc.'s negligence or willful misconduct, or that of its employees or agents, or (ii) material breach of its obligations set forth in this Agreement, except to the extent such damages, losses or liabilities are caused by the negligence or willful misconduct of any Licensee Party. Subject to Section 11(c), in no event shall either party be liable to the other for any incidental, special or consequential damages incurred by the other party as a result of the performance or any default in the performance of their respective obligations under this Agreement.

(c) Alternative. Some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages, and, as such, some portion of the above limitation may not apply. In such jurisdictions, each party's liability is limited to the greatest extent permitted by law.

12. Proprietary property of the parties.

(a) Licensee acknowledges that the Licensed Software, including all documentation, all screens and formats used in connection therewith, are the exclusive proprietary property of bigWebApps, Inc., and Licensee shall not publish, disclose, display, provide access to or otherwise make available any Licensed Software or documentation thereof, or any screens, formats, reports or printouts used, provided, produced or supplied from or in connection therewith, to any person or entity other than an employee or agent of Licensee without the prior written consent of, and on terms acceptable to, bigWebApps, Inc., which consent shall not be unreasonably withheld; provided, however, that Licensee may disclose to a governmental or regulatory agency or to customers of Licensee any information expressly prepared for disclosure to such governmental or regulatory agency or to such customer. Except as required by law, Licensee shall not disclose Licensee's use of Licensed Software in any advertising or promotional materials without the prior written consent to such use, and approval of such materials, by bigWebApps, Inc.

(b) Each party acknowledges that, pursuant to this Agreement, it shall have access to information owned by the other party which constitutes highly confidential and/or proprietary information of such other party ("Confidential Information"). Confidential Information includes, but is not limited to, any information of either party related to either party's services, operations, systems (including the Licensed Software), programs, inventions, techniques, customers, prospective customers, trade secrets, and other information of, or relating to, either party's business. Each party further acknowledges that the unauthorized disclosure of any part of the Confidential Information by the party accessing the Confidential Information ("Access Party") may result in serious injury to the party that owns the Confidential Information ("Owner Party"). The Access Party shall thus take reasonable precautions to maintain the security and confidentiality of the Confidential Information, which precautions shall not be less stringent than those employed, or that reasonably should be employed, by the Access Party to protect its own most proprietary information.

The parties agree that the term "Confidential Information" does not include information if and to the extent: (i) the information is or becomes generally available or known to the public through no fault of the Access Party; (ii) the information was already known by, or available to, the Access Party on a non-confidential basis prior to the disclosure by the Owner Party; (iii) the information is subsequently disclosed to the Access Party by a third party who is not under any obligation of confidentiality to the Owner Party; (iv) the information is required to be disclosed pursuant to an applicable law or regulation, or a judicial process, government investigation, legal proceeding or other similar process; or (v) the information has already been or is hereafter independently acquired or developed by the Access Party without violating any confidentiality agreement or other similar obligation. If the Access Party is required to disclose the Confidential Information of the Owner Party as part of a judicial process, government investigation, legal proceeding, or other similar process, the Access Party, if it is reasonably possible to do so, shall give such prior written notice to the Owner Party to allow the Owner Party to seek an appropriate protective order or modification of any disclosure.

(c) This License Agreement and the terms hereof are confidential, and no information concerning the same shall be disclosed without written consent of the parties, except as may be necessary to conform to generally accepted accounting principles and/or to comply with applicable laws and regulations.

(d) The obligations of this Paragraph 12 shall survive termination of this Agreement. Each party understands that the unauthorized publication, disclosure or use by the Access Party of any Confidential Information of the Owner Party may cause irreparable harm to the Owner Party for which there is no adequate remedy at law. Each party therefore agrees that in the event of such unauthorized disclosure or use, the Owner Party may, at its discretion and at the Access Party's expense, terminate this Agreement, obtain immediate injunctive relief in a court of competent jurisdiction, or take such other steps provided for in this Agreement as it deems necessary to protect its rights. If the Owner Party, in its reasonable, good faith judgment, determines that there is a material risk of such unauthorized disclosure or use, it may demand immediate assurances, satisfactory to the Owner Party, that there will be no such unauthorized disclosure or use. In the absence of such assurance, the Owner Party may take such steps provided for in this Agreement as it deems necessary and may, in addition, terminate this Agreement, but only after submitting the controversy to mediation pursuant to paragraph 12(a).

13. Dispute Resolution.

(a) Any dispute between the parties arising under or relating to this Agreement that cannot be resolved by the parties themselves shall be submitted to mediation, administered by and conducted in accordance with the Rules of Commercial Mediation of the American Arbitration Association ("AAA"). Any mediation proceeding under this Agreement shall be conducted in Hidalgo County. The Mediation shall be conducted by a mutually acceptable mediator to be chosen by the parties. Neither party may unreasonably withhold consent to the selection of a mediator. However, if the parties are unable to reach an agreement on the selection of the mediator, the AAA will select the mediator. Each party will bear its own costs in the mediation, including attorneys' fees, and one-half the cost of the mediator.

14. General

(a) **Waiver of Breach.** The fact that one party excuses or overlooks a breach of any provision of this Agreement by the other party does not mean that such party excuses any other breach or waives its right to remedy any other breach by the other party.

(b) **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party or its successor.

(c) **Governing Law.** This Agreement shall be applied and construed according to the laws of the State of Texas without regard to conflicts of laws provisions thereof. If any provision of this Agreement is found to be illegal or unenforceable, then, notwithstanding such finding, this Agreement shall remain in full force and effect and such provision shall be deemed stricken. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees, unless otherwise specified herein.

(e) **Jurisdiction.** By entering this Agreement, each party agrees to and does hereby submit to the personal jurisdiction of the courts in or for the State of Texas in the event any legal action is commenced by either party or its successor to enforce any rights arising hereunder.

(f) **Headings.** The headings in this Agreement are for convenience only and shall not be used to alter or limit the interpretation of any provision hereof.

(g) **Entire Agreement.** This Agreement, together with all schedules, exhibits and amendments hereto, constitute the entire agreement of the parties and supersede all prior discussion, correspondence and agreements between them with respect to the subject matter hereof. No modifications of this Agreement shall be effective unless the same is in writing and signed by both parties.

(h) **Joint and Several Obligations.** All Licensee payment obligations shall be made on the basis of joint and several liability for such obligations. Licensee agrees that it has received adequate consideration in connection with the respective obligations hereunder.

(i) **Counterparts.** This Agreement may be executed in multiple counterparts, which together shall constitute one and the same Agreement.

(j) **Notices.** Any notice given under this Agreement shall be given in writing, and sent by hand delivery, facsimile transmission (receipt confirmed), overnight courier that provides confirmation of delivery, or certified mail, return receipt requested, to the applicable party at its stated location of business.

15. Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of Buyer under this Agreement, Buyer may terminate this Agreement upon ninety (90) days written notice to Seller. Buyer agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Buyer pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1996).