Resolution No: 2018-02-13-28

Resolution of the County Board
of
Kankakee County, Illinois

RE: AUTHORIZING THE COUNTY BOARD CHAIRMAN TO SIGN AN AGREEMENT WITH PLATINUM TECHNOLOGY RESOURCE, LLC

WHEREAS, the County Clerk has concluded that the County needs to revisit its voter registration technology, and;

WHEREAS, the County Clerk explored several vendors and recommends Platinum Technology Resource, LLC as the provider of the necessary voter registration software;

WHEREAS, the County Clerk, with the assistance of the State’s Attorney’s Office has reviewed the attached proposed contract from Platinum, see Exhibit A, and recommends its adoption; and;

WHEREAS, the Community Services Committee at their meeting of January 16, 2018, after discussion, review and consideration, agrees with the County Clerk and recommends to the full Board that the County Chairman be authorized to sign the attached agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Kankakee County Board hereby authorizes and directs the County Board Chairman, or his designee, to execute all the necessary paperwork to execute the attached agreement.

PASSED and adopted this 13th day of February, 2018.

Andrew H. Wheeler, County Board Chairman

ATTEST:

Dan Hendrickson, County Clerk

/ /
SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT ("Agreement") is made this _____ day of December, 2017, by and between PLATINUM TECHNOLOGY RESOURCE, LLC, an Illinois limited liability company (hereinafter referred to as "Platinum") and KANKAKEE COUNTY, ILLINOIS (hereinafter referred to as the "Customer").

RECITALS

A. Platinum’s EASzVR, voter registration software, were designed and developed by Geneva Software, LLC, an Illinois limited liability company ("Geneva Software"); and

B. Platinum is the exclusive distributor of "EASZVR" for Geneva Software, pursuant to the terms of a license granted by Geneva Software to Platinum; and

C. Customer desires to purchase a nonexclusive sublicense, from Platinum, for Customer’s use of EASzVR in managing voter registration in Kankakee County, Illinois (hereinafter referred to as the “Purpose”); and

D. Geneva Software, as the developer of, and owner of all copyrights in, EASzVR has a protectable interest with respect to the sublicense granted by Platinum to Customer pursuant to this Agreement.
TERMS OF AGREEMENT

In consideration of the foregoing recitals and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I - GENERAL TERMS

1.1 PURCHASE OF SUBLICENSE: Customer agrees to buy from Platinum, and Platinum agrees to sell to Customer, a license, on the terms set forth below, with respect to EASzVR (hereinafter referred to as the "Software").

1.2 ACCEPTANCE BY CUSTOMER: Customer acknowledges that implementation of its use of the Software will require Platinum’s installation of the Software at Customer’s facility specified in paragraph 1.3, below; Platinum’s conversion of Customer’s data for use with the Software; Platinum’s testing of the Software, using test data provided by Customer; and Platinum’s training of Customer’s designated personnel, following which the Customer will use the Software for the Purpose. Platinum shall begin the process of installing, converting data, testing, and training, on or before the “Installation Date” set forth on Schedule B, and shall complete that process on or before the “Completion Date” set forth on Schedule B. Customer shall have until thirty (30) days after the later of the Completion Date or the date on which Platinum actually completes the process of installing, converting data, testing, and training (hereinafter referred to as the “Evaluation Period”) to give written notice of any “Critical Error” to Platinum. A “Critical Error” shall mean a failure of the Software, which cannot be avoided by changes to procedures followed by Customer when using the Software. Customer shall be deemed to have accepted the Software, if the Customer has not given written notice of any “Critical Error” to Platinum within the Evaluation Period. If a Customer gives timely notice of any Critical Error, and Platinum determines that a Critical Error exists, the Evaluation Period shall continue until thirty days after Platinum advises Customer that such Critical Error has been corrected.

1.3 DELIVERY: Platinum will deliver the Software and Software Products (defined below) to Customer at Customer’s facility located at:

Kankakee County, Illinois; 189 E. Court St., Kankakee, IL 60901
ARTICLE II - SOFTWARE LICENSE

2.1 PROPERTY RIGHTS: The Software, and all physical components other than software, which are delivered to Customer by Platinum, including but not limited to, documentation, magnetic media, job aids, templates, and other similar devices (such physical components being hereinafter referred to as “Software Products”) used in, for, or in connection with the Software, parts, subsystems, or derivatives thereof, in whatever form, including, without limitation, Source Code, Object Code, microcode and mask works, including any computer programs and any documentation relating to or describing such Software or Software Products, such as, but not limited to, logic manuals and flow charts provided by Platinum, including instructions for use of the Software or Software Products and formulation of theory upon which the Software or Software Products are based, are furnished to Customer only under the License (as defined in Section 2.2, below), which is nonexclusive, nontransferable, and non-assignable and is intended solely for the Purpose. All of the Software and all computer program specifications, documentation, procedure manuals, disks, and tapes utilized, processed, or developed by Platinum in connection with this Agreement or the services rendered to Customer hereunder shall be and remain the exclusive and confidential property of Platinum or third parties from whom Platinum has secured the right to use the same. The voter registration data input by or for Customer using the Software, and Customer's document images and signature, constitute the “Customer Data”. Customer shall retain title to Customer Data, and Platinum shall release all Customer Data to Customer upon Customer's request.

2.2 HARDWARE: In order to be able to use the Software for the Purpose, Customer shall purchase from Platinum the items, if any, listed on Schedule A, attached hereto, at the price and on the terms and conditions therein specified.

2.3 LICENSE: For the “Term” set forth in Schedule B attached hereto, unless earlier terminated as provided elsewhere in this Agreement, Platinum grants Customer a limited, nonexclusive, nontransferable, non-assignable license to use the “Object Code” of the Software, and to use the Software and Software Products solely for the Purpose, subject to the provisions of this Agreement (hereinafter referred to as the “License”). For purposes of this Agreement, the term “Object Code” shall mean the binary, machine-readable version of the Software. Platinum agrees to provide Customer with the Software identified on Schedule B, attached hereto and made a part hereof, such Software Products as Platinum determines are necessary and appropriate for Customer to use.
the Software for the Purpose, and such Software maintenance and support services as are described on Schedule B, attached hereto and made a part hereof.

A. Customer agrees not to copy, duplicate or otherwise reproduce the Software or Software Products in any manner, except in normal backup procedures, without the prior, express, written consent of Platinum.

B. Platinum agrees to mark all tangible Software Products, such as operation manuals and related materials, with the following: "The information contained herein includes trade secrets and is the proprietary property of PLATINUM TECHNOLOGY RESOURCE, LLC".

C. The Software and Software Products shall be used for the Purpose, only, and shall remain subject to all terms and conditions of this Agreement. In the event the License granted by this Agreement is terminated, Customer shall give Platinum such access to Customer's systems as may be reasonably required by Platinum to completely remove the Software from all of Customer's systems.

D. 1. Customer is exclusively responsible for the supervision, management, and control of its use of the Software and Software Products. Except as provided otherwise in this Agreement, Customer agrees that the Software and Software Products are the "Confidential Information" of Platinum. Customer further agrees: (a) not to disclose any Confidential Information, or any part thereof or any copies or reproductions thereof, in any form, to any third party, except with the prior express, written consent of Platinum or as required by law; (b) not use, either directly, indirectly, or in concert with any other person, any Confidential Information for any purpose other than the Purpose; (c) to use reasonable diligence, and in no event less than that degree of care that Customer uses in respect to its own confidential information, to prevent the unauthorized disclosure or reproduction of Confidential Information; and (d) to require each of its employee or agents to agree to be bound by the terms of this paragraph 2.3.

2. Customer acknowledges and agrees that the Software and Software Products constitute "Confidential Information" without regard to whether they qualify, in whole
or in part, as trade secrets under applicable state law or whether they are entitled to patent or copyright protection under applicable federal laws. **Confidential Information** shall, also, include, but not be limited to, formulas, techniques, processes, "know-how", methods, pricing techniques, pricing information, research and development, inventions, methods, prototypes, and computer software applications (including all updates and enhancements made thereto).

3. Notwithstanding anything to the contrary contained in this subparagraph D, **Confidential Information** shall not include information that: (a) is **Customer Data**; (b) is or becomes generally available to the public other than as a result of the disclosure by the **Customer** or any of its representatives (including its employees and agents); (c) is or becomes available to the **Customer** on a non-confidential basis from a source (other than **Platinum** or its representatives) that is not prohibited from disclosing such information to the **Customer** by a legal, contractual, or fiduciary obligation to **Platinum** or **Geneva Software**; (d) at the time of disclosure was already known by the **Customer** or its representatives as evidenced by the written records of the **Customer**; or (e) was developed by the **Customer** without reference to the **Confidential Information**.

E. **Customer** shall have the right, at no additional charge, to reproduce, solely for the Purpose, all manuals and documentation, including user documentation and all training manuals, furnished by **Platinum** pursuant to this Agreement, regardless of whether such manuals or documentation are copyrighted or otherwise restricted as proprietary information. **Customer** shall cause all copies of manuals or documentation made by **Customer** to include a proprietary notice or stamp that states "The information herein includes trade secrets and is the proprietary property of PLATINUM TECHNOLOGY RESOURCE, LLC". **Platinum** shall furnish, for each License obtained by **Customer**, and at no additional charge to **Customer**, one (1) copy of the relevant **Software Products** and any succeeding changes thereto, as Platinum determines are necessary and appropriate to enable **Customer** to enable **Customer** to maintain and operate the **Software** for the Purpose.

**Object Code** software may be reproduced by **Customer**, at no additional charge, only for backup or archival purposes or as otherwise stipulated in this Agreement. **Platinum** agrees that **Customer** may also transfer the **Object Code** internally to another of **Customer**'s computers, at no additional License fee, only for the purpose of testing and/or for training...
purposes. However, Platinum shall not be obligated to provide Software maintenance to Customer under this Agreement for Software transferred for testing and/or for training purposes.

F. LICENSE FEE: Customer shall pay Platinum the License Fee as and when set forth on Schedule B, attached hereto.

2.4 PROTECTION OF LICENSE: Customer and Platinum agree to assist one another in the protection of all of Platinum’s rights and Geneva Software’s rights in and to the Software and Software Products. Customer is in no way obligated to provide financial or legal assistance in the pursuit of this protection. Assistance is limited to using best efforts in securing access to and control of the Software and Software Products only to authorized employees or agents of Customer and Platinum.

2.5 TRANSFER: Customer agrees that it will not sell, assign, give, encumber in any manner, or otherwise transfer to any other person or entity any of its rights or obligations under this Agreement, including any rights in or to the Software or Software Products, whether or not later modified or developed for Customer pursuant to this Agreement, without the prior express written consent of Platinum.

2.6 WARRANTY AS TO SOFTWARE PRODUCTS: Platinum hereby DISCLAIMS the IMPLIED WARRANTIES OF MERCHANTABILITY and FITNESS FOR A PARTICULAR PURPOSE.

The following warranties are provided by Platinum in lieu of any other warranties, whether express, implied, or statutory. There are no warranties that extend beyond those described below.

A. Platinum warrants that it is the owner of, or otherwise has the right to license and distribute the Software and Software Products in accordance with this Agreement.

B. Platinum warrants that the media in which the Software is delivered to Customer is undamaged and free from mechanical defects.
C. Platinum warrants that the Illinois State Board of Elections has approved the use of the Software.
Customer acknowledges and agrees that, except for the express warranties set forth above, in this paragraph 2.6, Platinum makes no warranties either express or implied with respects to the Software, the Software Products, or the Hardware.

Customer acknowledges and agrees that, with respect to the Hardware, it is relying solely on such warranties as the manufacturer of the Hardware provides; that Platinum is not responsible for maintaining, repairing, or replacing any Hardware; and that Customer's sole remedy for any defect in any Hardware shall be against the manufacturer thereof.

2.7 SUPPORT AND CUSTOMER SERVICE: Platinum shall provide Customer with Software maintenance and support, and customer service, as described in Schedule B, attached hereto, provided that Customer is in material compliance with Customer's obligations under this Agreement.

2.8 TERM AND TERMINATION: Platinum may terminate the Licenses granted to Customer under this Agreement if Customer fails to perform any of its material obligations under this Agreement and such failure is not cured within fifteen days after Platinum has given written notice of such failure to Customer. Customer may terminate this agreement if Platinum, Platinum's rights to distribute the Software or Geneva Software cease to exist or are otherwise transferred to any outside third party. Customer may also terminate this agreement if at any point the Software is no longer approved by the Illinois State Board of Elections for the Purpose. Within thirty (30) days after Platinum has discontinued the use of the Software, or within ten (10) days after Platinum or Customer has terminated Customer's Licenses:

A. Customer shall immediately deliver, or cause to be delivered to Platinum, all of the Confidential Information in Customer's possession or control, including, without limitation, all originals, copies, and reproductions made of the Software, Software Products, and other documents reflecting any Confidential Information. An authorized representative of Customer shall certify, in writing, to Platinum that through its best efforts and to the best of its knowledge, all of the above-described items have been returned to Platinum, except that, upon prior written authorization from Platinum, Customer may retain a copy for archive purpose only; and
B. Customer shall destroy all documents, memoranda, notes, and other writings whatsoever prepared by Customer or any of its representatives, based on the Software, Software Products, or Confidential Information, and such destruction shall be certified in writing to Platinum by an authorized representative of Customer, who shall supervise such destruction.

C. Customer and Platinum agree that the final day of this agreement in the event of termination shall be the date in which Customer has fulfilled its obligations under subsection A and B above. Following that date, Customer shall not be responsible for any further payments obligated by Schedule B of this agreement and Platinum shall not be responsible for providing any further services or products. Platinum agrees that the amount of compensation outlined in Schedule B is for a license for the entire calendar year. Therefore, in the event of termination, Platinum will return to Customer any pro-rated amount Customer has over paid for a given year based on the termination date.

ARTICLE III - REMEDIES

3.1 CUSTOMER'S EXCLUSIVE REMEDY.

3.2 PLATINUM'S REMEDIES: In addition to Platinum's right to terminate the Customer's License, as set forth elsewhere in this Agreement, Platinum shall have the following remedies for any material breach of this Agreement by Customer:

A. Customer hereby acknowledges and agrees that any material violation of the provisions of paragraph 2.3D or paragraph 2.8 will cause irreparable damage to Platinum and/or Geneva Software, that is not susceptible to measurement with any certainty.
Customer acknowledges and agrees that Geneva Software is a third-party beneficiary of this Agreement.

**ARTICLE IV — MISCELLANEOUS**

4.1 CAPTIONS AND HEADINGS: The captions and headings of the various paragraphs in this Agreement are for convenience only, and shall not be used to construe or interpret this Agreement.

4.2 SEVERABILITY: If any provision of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be unenforceable, then the remainder of this Agreement, or the application of such provision to parties or circumstances other than those as to which it is held unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law. If a court of competent jurisdiction determines that any provision of this Agreement is unenforceable for failure to conform to a constraint imposed by law, and such court determines that the provision could be modified to conform to such constraint without frustrating the intents and purposes of this Agreement, then the court shall modify the provision, but only to the extent it determines necessary to conform the provision to such constraint, and the provision, as so modified, shall be binding upon the parties hereto.

4.3 GOVERNING LAW: This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the State of Illinois, without regard to the conflicts of law provisions thereof.

4.4 CONSTRUCTION: Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

4.5 WAIVER: Any failure of any party hereto to comply with any of its obligations under this Agreement, or to fulfill conditions herein contained, may be waived only by a written waiver from the other party. Failure by either party to demand strict compliance with any of the provisions of this Agreement shall not operate as, nor be construed as, a waiver of the right to strictly enforce the provisions of this Agreement subsequently.
4.6 Carrying Out: The parties hereto covenant and agree that they and their legal representatives, successors, and permitted assigns will execute any and all instruments, releases, and assignments, and do all other things reasonably required of them, or necessary, to effectuate the intents and purposes of this Agreement.

4.7 ENTIRE AGREEMENT: This Agreement embodies the entire understanding of the parties hereto with respect to the subject matter hereof, and there are no other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This Agreement may be amended or modified only by an instrument signed by the parties hereto or their duly authorized agents.

4.8 BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

4.9 COUNTERPARTS: This Agreement may be executed simultaneously, in two or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same agreement.

4.10 JURISDICTION: The parties hereto hereby acknowledge and agree that this Agreement is made and entered into, and will be substantially performed in, Kankakee County, Illinois. The parties hereto hereby further agree that the exclusive jurisdiction for resolution of any disputes arising out of, or with respect to, this Agreement shall be in a court in the Sixteenth Judicial Circuit, Kane County, Illinois, and each hereby submit itself to the jurisdiction of such court.

4.12 AUTHORITY: Platinum and Customer each hereby warrant and represent that the representative who has signed this Agreement on behalf of each of them, has been and is, on the date of this Agreement, duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement on its behalf.

This Agreement has been executed by the parties as of the date first above written.
CUSTOMER: KANKAKEE COUNTY, IL

By: [Signature]

PLATINUM TECHNOLOGY RESOURCE, LLC

By: [Signature]

Duly Authorized Manager
SCHEDULE A

No hardware components purchased
SCHEDULE B

LICENSE

Term: Five (5) years, commencing on the “Installation Date”.

Installation Date: TBD.

Completion Date: TBD.

Conversion and Initial Annual License Fee: $29,984, payable as follows:

$29,984 is payable on or before Installation Date. Each year of the Term, after the first year, shall commence on the next anniversary of the Installation Date.

Annual License Fees:

Payable: Annually, on anniversary of Installation Date

Year 2: $29,984 Year 3: $29,984 Year 4: $29,984 Year 5: $29,984