



#2577

SouthTech Systems, Inc.

## **DISCLOSUREDOCS/EDISCLOSURE SOFTWARE LICENSE PURCHASE AGREEMENT**

This AGREEMENT ("Agreement") is entered into as of January 26, 2018, by and between SouthTech Systems, Inc. ("SouthTech Systems"), and El Dorado County ("Customer").

### **SECTION 1: DEFINITIONS**

1.1 "Software" means the SouthTech Systems computer program product(s) identified as DisclosureDocs and eDisclosure and the modules that have been identified in the section called Scope of License. "Software" includes Major Releases or Upgrades and/or Maintenance Releases or Updates and/or Patches or Hot Fixes that SouthTech Systems makes commercially available to customers under this Agreement (or equivalent contract accepted by SouthTech Systems) for which the applicable fee has been paid. Software also includes all related documentation, user manuals, operator instructions and other materials used in conjunction with the Software and provided by SouthTech Systems.

1.2 "Software Releases" include the following.

- a) A "Patch or Hot Fix" or "Update or Rapid Improvement" may contain single or multiple bug fixes. Patches must be installed on top of a Major Release or a Maintenance Release and cannot be used independently.
- b) A "Maintenance Release" or "Update Release" contains bug fixes or limited new functionality. A Maintenance Release or Update Release is designed to provide an incrementally more stable Software environment.
- c) A "Major Release" or "Upgrade" is designed to provide new features or functions or to improve performance. A Major Release may also contain bug fixes and will have undergone quality assurance testing prior to release.
- d) Software release designations shall follow the format X.YY.ZZZZ, where X refers to the Major Release or Upgrade Release level, YY refers to the Maintenance Release or Update Release level, and ZZZZ refers to the Patch or Hot Fix level.

1.3 "Active Filer" is an individual who has current Form 700 filing obligations, including separate filings for multiple positions. The term does not include individual filers who have terminated positions and who have received the Fair Political Practices Commission's required notices.

1.4 "System User" is a user with administrative level access to the Software.

### **SECTION 2: GRANT OF LICENSE AND USE; SOFTWARE DELIVERY; PAYMENT**

**2.1 Scope of License.** Subject to Customer's compliance with this Agreement, SouthTech Systems hereby grants to Customer a perpetual, non-exclusive, non-transferable license (without rights to sublicense or to use in a service bureau environment), to use the Software as designed, including user documentation which are delivered to Customer by SouthTech Systems under this Agreement for Customer's internal business purposes only. License to Patches, Maintenance Releases and/or Update Releases and subsequent Major or Upgrade Releases to such computer program product(s) requires an active Annual Maintenance and Technical Support Agreement. Customer shall not copy (other than for archival purposes), modify, transfer to another entity, or use the Software in whole or in part, except as expressly provided for in this Agreement or authorized in the applicable purchase order or proof of license purchase. Software may not be exported, rented, leased, or used to process the data of others.



The Software Modules included in the Scope of this License are as follows:

System Modules	Module Needed
DisclosureDocs Management Suite for Filing Officer (Filer Manager, Agency Management, Configuration Module, Emails, Reports, Letters, Etc)	1
DisclosureDocs - Full Review Module	0
eDisclosure - Filer Module	1
eDisclosure - Contact Person Module	0
Conflict of Interest Code Module	0
Public Kiosk Module	0
Web Redaction / Web Publishing Module	0
Hosting by SouthTech	1

**2.2 Active Filers.** The total number of Active Filers allowed to be tracked by the Software is shown in the Section 2.4. SouthTech Systems requires that the Customer purchases the Software License for the maximum number of Active Filers that will be tracked by the Software.

**2.3 Delivery and Installation.** The Software and User Guides will be provided by SouthTech Systems electronically via FTP.



**2.4 Software License Fee.** Customer shall pay the annual maintenance fee in the amount listed below. This includes the Maintenance and Support. The customer needs to maintain an active Annual Maintenance and Technical Support Agreement, which is renewable on an annual basis. The Annual Maintenance and Technical Support Fee is fixed for the first 3 years. After this period the Customer can renew the agreement at a fee not to exceed COL increases up to 5% per year above the first-year price.

In addition, if quantity of Active Filers in the database exceeds the agreed upon number by 5% or if additional modules are needed, the Customer shall contact SouthTech Systems to upgrade the Software License. The upgrade fee will be prorated based on which modules and how many filers are being added. SouthTech Systems has the right to utilize an electronic monitoring tool to report the number of DisclosureDocs / eDisclosure filers in your organization's system at any given time.

***Maintenance Price Based on 1500 Filers***

<b>Annual Costs (60 Days after Installation)</b>			
Hosting Fee (If Hosted by SouthTech)	1	\$2,221.80	\$2,221.80
Software Support and Maintenance			\$7,952.11
No Tax - FTP Download	0.00%		\$0.00
<b>Annual Grand Totals</b>			<b>\$10,173.91</b>

**2.5 Payment Schedule.** Payments are due within 30 days of receipt of invoice.

Annual Maintenance and Hosting Fee	60 Day After Install ation (Week 8)	Maintenance Support and Hosting Fee	Maintenance Fee	\$7,952.11
			Hosting Fee	\$2,221.80
			No Tax - FTP Download	\$0.00
			<b>Invoice Total</b>	<b>\$10,173.91</b>

**SECTION 3: LIMITED WARRANTY, REMEDIES, LIMITATIONS ON LIABILITY**

**3.1 Limited Warranty.** For a period of sixty (60) days following the date of installation, SouthTech Systems warrants to the original licensee that (i) the Software will perform substantially in accordance with the accompanying documentation and (ii) the documentation and media will be free from defects in materials and workmanship. This limited warranty does not cover failures caused by accident, abuse or misapplication. In the event of a failure of the Software or documentation to meet this limited warranty, the entire liability of SouthTech Systems shall be, at SouthTech System's sole discretion, either (a) replacement of the Software or documentation not meeting the limited warranty, or (b) return of the fee paid, provided the Software and accompanying materials are returned to SouthTech Systems. Any replacement product or documentation provided by SouthTech Systems will be warranted for the remainder of the original warranty period or sixty (60) days, whichever is longer.





**3.2 No Other Warranties.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, SOUTHTECH SYSTEMS MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. SOUTHTECH SYSTEMS DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE WILL OPERATE WITHOUT INTERRUPTION OR WILL WORK IN ALL COMBINATIONS SELECTED BY CUSTOMER.

**3.3 Limitation of Liability.** IN NO EVENT SHALL SOUTHTECH SYSTEMS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO COSTS OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION OR LOST PROFITS, ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE SOFTWARE. IN NO EVENT SHALL SOUTHTECH SYSTEMS'S LIABILITY FOR MONEY DAMAGES EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SOFTWARE FROM WHICH THE CLAIM AROSE. THIS LIMITATION DOES NOT APPLY TO DAMAGES WHICH MAY ARISE IN CONNECTION WITH ANY CLAIM, SUIT OR PROCEEDING UNDER SECTION 7 OF THIS AGREEMENT.

#### **SECTION 4: PRODUCT MAINTENANCE, TECH SUPPORT AND HOSTING**

The Annual Software Maintenance and Tech Support Agreement covers all routine maintenance, software problem analysis and resolution, supplemental training, documentation updates, telephone technical support and WebEx sessions. In addition, it entitles the Customer to updates to the software product to maintain compatibility with operating system, database software and our standard enhanced functionality updates.

**4.1 Software Maintenance.** Under this Agreement the Customer will receive regular and emergency software updates and related professional services for the Software covered by this Agreement. These software updates and services shall include program bug fixes, minor software enhancements and FPPC related software changes. In addition, SouthTech Systems will provide Release Notes that describe the changes to the software.

**4.2 Remote Technical Support.** Telephone, e-mail and remote access support is available during normal business hours of Monday thru Friday, 8:00 a.m. to 5:00 p.m. The most common situations resolved with telephone support are:

- Minor end-user instructions and training requests
- Issues related to process for end-user to log into the system
- Software bug or error
- Software troubleshooting and trouble resolution
- System malfunction problem identification and resolution
- Software installation problems
  
- Database preventive maintenance/troubleshooting and problem resolution
- Software performance tuning

**4.3 Service Requests and Response Time.** SouthTech Systems will respond to non-emergency service requests within 8 hours after receipt of a support call by the Customer. SouthTech Systems will determine the necessary action to resolve a request for service. In order to make this determination the Customer's personnel will provide adequate information that will allow SouthTech Systems staff to determine the severity of the support request and the appropriate response that compiles with the terms and conditions of this agreement.

If the service request is an emergency, such as the system is not available to users, SouthTech Systems will respond in 1 hour or less by telephone or remote access.



Customer may request and on-site analysis, training or programming services. These visits shall be scheduled with the Customer's personnel. The Customer is responsible for any time, travel and out-of-pocket expenses. A minimum billable time will be 16 hours.

These services can be purchased at our discounted rates as shown.

#### Professional Service Rates

Position Title	Standard	Discounted*
Senior Developer Design	\$225.00	\$202.50
Project Manager	\$200.00	\$180.00
Senior Programmer/Analyst	\$175.00	\$157.50
Programmer/Analyst	\$150.00	\$135.00
Trainer/Technical Support	\$125.00	\$112.50

**4.4 Additional Optional Block of Hours for Work Requests and Enhancements.** If system analysis and software development is needed beyond the scope of this Agreement, SouthTech Systems is available for hire by the Customer to provide with system analysis, system design and programming, testing, implementation and training services. If additional services are needed the Customer can purchase additional professional services at a rate discounted 10% below SouthTech Systems standard professional service rates as shown above.

All work under this section must be approved by the Customer's Office Project Manager or designee prior to SouthTech Systems beginning any work. The scope of work will be included in a written work request approved by the Customer's office. For each work request SouthTech Systems will confirm the priority and provide an estimate of hours required and completion date. SouthTech Systems will track and report the actual time utilized to accomplish the work request in monthly billing statements.

**4.5 System Hosting.** SouthTech shall host the Customer's DisclosureDocs / eDisclosure system and provide related services to Customer in accordance with the terms of this Agreement.

**1) Service Level**

- a) During the Term of the Agreement, the DisclosureDocs / eDisclosure will be operational and available to Customer at least 99.9% of the time in any calendar month (the "Availability Agreement"). If SouthTech does not meet Availability Agreement, and if Customer meets its obligations under this Agreement, Customer will be eligible to receive the Service Credits described below.
- b) Definitions. The following definitions shall apply to Availability Agreement.
  - i) "Downtime" means, total number of minutes in a calendar month that the system was not available for use.
  - ii) "Monthly Uptime Percentage" means total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.
  - iii) "Service" means Availability Agreement for SouthTech Business Products purchased by Customer
  - iv) "Service Credit" means the following:





Monthly Uptime Percentage	Days of Service added to the end of the Service term, at no charge to Customer
< 99.9% - >= 99.0%	2
< 99.0% - >= 95.0%	4
< 95.0%	8

- c) Customer Must Request Service Credit. In order to receive any of the Service Credits described above, Customer must notify SouthTech within thirty days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer's right to receive a Service Credit.
  - d) Maximum Service Credit. The aggregate maximum number of Service Credits to be issued by SouthTech to Customer for all Downtime that occurs in a single calendar month shall not exceed eight days of Service added to the end of Customer's term for the Service.
- 2) **Security**
- a) SouthTech shall utilize a firewall to help prevent unauthorized access to Customer's Website and Data, which will consist of hardware and software designed and configured to control or limit access to our computer and network resources.
  - b) SouthTech shall immediately notify Customer of any breach of the firewall detected by SouthTech.
- 3) **Back-Up Data and Disaster Recovery**
- a) SouthTech shall back up the Customer's data nightly and retain those back-ups in an offsite location.
  - b) In the event of a hardware failure, SouthTech shall restore the back-up data to Customers database.

## SECTION 5: INTELLECTUAL PROPERTY RIGHTS

The Software and accompanying documentation are protected by both copyright law and international treaties. SouthTech Systems and its suppliers own all intellectual property rights in the Software and accompanying documentation, and the structure, organization and code contain valuable trade secrets of SouthTech Systems and its suppliers. SouthTech Systems retains all rights not expressly granted hereunder. Customer owns and shall continue to own all proprietary rights to their Customer data stored in the Software.

## SECTION 6: TERM AND TERMINATION

**6.1 Term.** The term of this Agreement shall commence at the approval of this agreement. The Annual Software Maintenance and Technical Support Agreement will renew on an annual basis, unless sooner terminated in accordance with the section entitled "TERMINATION BY EITHER PARTY", as set forth elsewhere in this Agreement. Given the services provided by SouthTech Systems have been to the satisfaction of the Customer, the Customer reserves the right to extend the period of this Agreement on a year-to-year basis.

**6.2 Termination by Either Party.** Either party may terminate this Agreement or any license granted in Section 2 upon 30 days written notice to the other party, if the party breaches any term of this Agreement, and fails to cure the breach within the 30-day period.

**6.3 Effect of Termination.** Upon termination of this Agreement for any reason, Customer can continue using the system but will not receive Support, Updates and Patches from SouthTech Systems. In addition, at the termination,



SouthTech System will export the Data and Images from the database and provide them to the Customer in an XML and PDF format. The obligations of the parties under Sections 3 and 5 shall survive any termination of this Agreement.

## **SECTION 7: PROPRIETARY RIGHT INFRINGEMENT**

**7.1 SouthTech Software.** SouthTech Systems shall defend any claim, suit or proceeding and pay any settlement amounts or damages awarded by a court of final jurisdiction arising out of claims by third parties that the Software infringes any U.S. patent, copyright or trademark, provided that Customer promptly notifies SouthTech Systems of the claim in writing and permits SouthTech Systems to control the defense or settlement of such claim and cooperates in the defense or settlement thereof. Customer shall have the option of being represented by counsel at Customer's expense. If as a result of any such claim, Customer's right to use the Software is revoked by a court of competent jurisdiction, SouthTech Systems, at its expense and sole discretion, shall do one of the following: (i) obtain for Customer the right to continue using the Software; (ii) provide Customer with a replacement or modified product with substantially the same functionality as the Software; or (iii) provide Customer with a refund of the last Annual Subscription payment in exchange for termination of Customer's right to use the Software. SouthTech Systems obligations under this section shall not apply to claims of infringement based upon: (a) use of other than the latest unmodified release of the Software made available by SouthTech Systems or its authorized reseller to Customer, if such infringement would have been avoided by the use of such release of the Software, (b) combination, operation or use of the Software with any non-SouthTech Systems programs or data, if such infringement would not have occurred without such combination, operation or use, or (c) use of the Software after receiving written notice from SouthTech Systems that the Software infringes a U.S. patent, copyright or trademark of a third party. SouthTech Systems's obligations under this section constitute Customer's sole and exclusive remedy for a claim of intellectual property infringement.

**7.2 Customer Content.** The Customer acknowledges that responsibility for all content provided by the Customer for the performance of the Services or otherwise included in the Software (the "Customer Content") is the sole and exclusive responsibility of the Customer and that SouthTech will not be held responsible in any way for any copyright infringement or violation, or the violation of any other person's rights or the violation of any laws, including but not limited to infringement or misappropriation of copyright, trademark or other property right of any person or entity arising or relating to the Customer Content. The Customer agrees to indemnify and hold harmless SouthTech from and against all losses, damages, actions or causes of action, suits, claims, demands, penalties and interest arising in connection with or out of any such Customer Material provided by the Customer.

## **SECTION 8: AUDIT**

Upon reasonable notice to customer, SouthTech Systems may audit Customer's Software use, either on-site or remotely, in order to determine the quantity of Active Filers tracked in the Software. Should an audit reveal excess use beyond licensed Concurrent Use, Customer shall purchase the requisite number of additional licenses.

## **SECTION 9: GENERAL PROVISIONS**

**9.1 Entire Agreement.** This Agreement and any applicable purchase orders accepted by SouthTech Systems represent the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, relating to the subject matter hereof. This Agreement can be amended or modified only by a written agreement signed by both parties. The terms of this Agreement shall prevail over the terms of any Customer order or acknowledgment document.



**9.2 No Assignment.** Neither party shall not sell, transfer, assign, or subcontract any right or obligation hereunder without the prior written consent of both parties.

**9.3 Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA AS APPLIED TO CONTRACTS BETWEEN CALIFORNIA RESIDENTS.

**9.4 Severability.** If any provision of this Agreement is found invalid by a court, the remaining provisions shall remain in full force and effect.

**9.5 Limits on Actions.** No action arising under this Agreement, in contract, tort or otherwise, may be brought by either party more than four years after the cause of action arises.

**9.6 No Waiver.** No failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver or preclude further exercise thereof.

**9.7 Force Majeure.** Neither party shall be deemed to be in default for any delay or failure to perform its obligations under this Agreement resulting from acts of God, the elements, strikes, shortages of parts, labor or transportation or any other causes beyond the reasonable control of such party.





IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**SOUTHTECH SYSTEMS, INC.**

**EL DORADO COUNTY**

Signature: \_\_\_\_\_

A handwritten signature in blue ink, appearing to read 'Jose Dominguez', written over a horizontal line.

Print Name: \_\_\_\_\_

Jose Dominguez

Title: \_\_\_\_\_

President

Date: \_\_\_\_\_

3-12-18

Signature: \_\_\_\_\_

A handwritten signature in blue ink, appearing to read 'Laura Schwartz', written over a horizontal line.

(AS)

Print Name: \_\_\_\_\_

Laura Schwartz

Title: \_\_\_\_\_

Purchasing Agent

Date: \_\_\_\_\_

4-18-18