

**AGREEMENT FOR ONLINE AUCTION PORTAL**

**between**

**Madison County, Mississippi**

**And**

**GovEase Auction LLC**

## **I. Online Tax Certificate Auctions**

Subject to payment by the County of Madison, Mississippi, (“the Customer”) of pass-through charges to be collected from third party users, GovEase, LLC (“GovEase”) shall provide a custom tax certificate auction web site for the Customer and administer tax certificate sales on the web site.

The procedures and technical requirements of the Online Tax Certificate Auction module shall be substantially as described herein. The Customer will not be responsible for any costs or fees associated with the Online Tax Certificate Auctions as the costs/fees will be paid by third party users. The Customer will be responsible for paying to GovEase the agreed upon compensation, but in no event will such compensation exceed the costs/fees paid by third party users.

### **A. Auction Web Site Development**

1. GovEase will work with the Customer to determine the development timeline and gather information required to build the auction web site.

2. GovEase will build a tax certificate auction web site that will be used to make information available to bidders and conduct online auctions using a process that replicates a live, public outcry auction.

Customer: 3. GovEase will populate the web site with data provided by the

- a. A list of properties with delinquent taxes (typically referred to as an advertising list)
- b. Data on bidders who participated in previous auctions
- c. Sources of additional data (tax records, appraiser's web site and links to GIS maps, if available).

4. GovEase will provide training for bidders including an online auction demo, practice auctions and an on-site Bidder Orientation Session (at the discretion of the Customer).

### **B. Services to be Provided by GovEase**

1. GovEase shall furnish Internet Auction Services for Tax Certificates for Madison County, MS.

2. GovEase shall provide a host server for the Web Site. As used herein, the term "Web Site" shall mean an Internet web site that GovEase will make available to the Customer under this Agreement. The Web Site will utilize GovEase’s proprietary software, which is capable of accepting and processing competitive bids for Tax Certificates to be issued by Client. The Customer acknowledges that GovEase’s Server may not be dedicated exclusively to the Web Site. The Contractor shall use its best efforts to make the Web Site available during all business hours and shall not schedule planned maintenance downtime to occur during business

hours. During each auction, the Contractor shall provide Auction Administrator(s) and the technical support necessary to facilitate the Tax Collector's conduct of online auction sales of tax certificates.

3. GovEase will include on the Web Site terms and conditions, with appropriate disclaimers, which third party users (i.e., participants in auctions/bidders) will be required to give assent. Each party will have the right to reasonably approve the terms and conditions or disclaimers that are included within the Web Site.

4. On the date when properties with delinquent taxes are advertised in local newspapers (the advertising dates), GovEase will post the same list on the web site. Auctions conducted on the web site may include both annual sales typically beginning on the last Monday of August each year and supplemental certificate sales at the discretion of the Customer.

5. On the last Monday of August, beginning at 8:30 a.m., and concluding at 4:30 p.m., the delinquent tax properties shall be sold on the GovEase website. Bidders can submit bids by using the auction website to perform all tasks normally associated with the tax certificate sale including: researching certificates; submitting registration forms and other information as specified by the Tax Collector; submitting bids; viewing; and downloading auction results.

## **II. License and Services Schedule**

### **A. Fee for Online Sales of Tax Certificates**

1. It is agreed and understood between both GovEase and Madison County, MS, that all services contained herein will be provided to the County Tax Collector and their staff for the 2016 Tax Lien Auction at no fee.
2. The fee schedule for all subsequent Tax Lien Auctions held shall be set forth as provided in this section, to begin with the 2017 Madison County Tax Lien Auction.
3. The Contractor will be paid for the Contract amount upon invoices submitted to the Tax Collector by the Contractor on a monthly basis.
4. In consideration of the Services set forth in this Agreement, the Customer shall pay (or cause to be paid) the following fees to GovEase in the manner described:

- a. For each individual Tax Certificate sold during an auction on the Web Site, the Customer shall pay to GovEase ten dollars (\$10.00).
- b. For each individual Tax Certificate sold during a supplemental sale (if required, and at Tax Collector's option) on the Web Site, the Customer shall pay to GovEase ten dollars (\$10.00).
- c. For each individual Tax Certificate that is unsold, sold in error or cancelled, GovEase will receive no fee.

5. Unless otherwise provided on GovEase's invoice or other Instructions that GovEase provides subsequent to the execution of this Agreement, payments shall be made to:

GovEase Auction LLC

6. GovEase shall not be obligated to provide any Services hereunder in the event the Customer is more than 60 days delinquent in paying any invoices, provided, however, that GovEase has advised the Customer in writing that it will cease performing services unless delinquent invoices are paid in full.

### **III. License and Services Agreement**

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration and intending to be legally bound, the parties hereby agree as follows:

#### **A. Term**

1. This Agreement shall commence on the Effective Date and shall remain in force for five (5) years from the October 1st immediately following the Effective Date, or until terminated according to the provisions of this Agreement, whichever comes first. This Agreement shall be automatically renewable for additional one (1) year terms unless either party notifies the other ninety (90) days in advance that they do not intend to renew.

#### **B. Limited Warranties**

1. Contractor warrants that the Web Site, when provided with accurate and properly formatted data by Tax Collector and other third party users, and when accessed by properly functioning software and equipment of third party users, will perform substantially as required in order to facilitate Tax Collector's online auction sales of tax certificates. Contractor will, at no charge to Tax Collector, make corrections to the Web Site so that the Web Site performs substantially as required, and will use its best efforts to make such corrections available within 24 hours, provided that Tax Collector reports to Contractor any failures or defects in the Web Site and provides Contractor with information sufficient to correct such failure or defect. In the event Contractor is not able to make such corrections available within 24 hours, the Contractor's chief executive officer and/or chief operating officer will confer with Tax Collector to advise Tax Collector with respect to the status of problem resolution and anticipated time of correction.

#### **C. No Implied Warranties and Limitation of Liability**

1. Except for the expressed limited warranty set forth in section III(B) of this Agreement, GovEase makes no warranty, representation, promise or guarantee, either expressed or implied, statutory or otherwise, with respect to the Internet Application or the support services provided hereunder, including their quality, performance, merchantability or fitness for a particular purpose.

2. In no event will GovEase be liable for indirect, special, incidental, cover, consequential, or other damages including without limitation damages or costs relating to the loss of monies, business, goodwill, data or computer programs, even if advised of the possibility of such damages.

3. In no event will GovEase's liability to the Customer for damages under any theory of liability or form of action exceed the total amount of fees paid by the Customer to GovEase during the twelve (12) month period preceding the event that caused such damages.

#### D. Fees/Payment Terms

1. The Customer shall pay GovEase a Services Fee as set forth in Section II, License and Services Schedule.

#### E. Termination

1. Either party may terminate this Agreement upon written notice to the other if a material violation of this Agreement by the other party is not remedied within sixty (60) days after notice of violation or any representation or warranty made by the other party shall prove to have been false or fraudulent in any material respect as of the date the same was made.

2. The Customer may terminate this Agreement at any time for any reason by providing GovEase with at least a ninety (90) day written notice of its intent to terminate the Agreement.

3. GovEase may terminate this Agreement at any time for any reason by providing the Customer with at least a ninety (90) day written notice of its intent to terminate the Agreement.

4. Termination shall not exclude other remedies for failure of a party to perform its obligations under this Agreement.

5. Upon termination of this Agreement, each party shall promptly return to the other any and all personal property of the other held by such party and shall provide a certificate to the other party to the effect that it has delivered to the other party all property belonging to the other party, including Confidential Information, and has retained no duplicates or copies of, nor conveyed to any third party, any such property.

#### F. Title

1. GovEase shall own all rights, title and interest in and to the Internet Application and the related source code including copyright, trade secret, patent, trademark and other proprietary rights as well as all customizations, enhancements, modifications, improvements, derivations or other variations thereof. This Agreement does not transfer to the Customer under any circumstances any of GovEase's ownership rights in the Internet Application or the Application source code.

## G. License

1. GovEase grants the Customer and its full-time, part-time or contract employees (excluding professional consultants), subject to the terms and conditions of this Agreement, a limited, non-perpetual, non-transferable and non-exclusive license to access and use the Internet Application solely in conjunction with the Customer's billing, collection and administration of certain taxes. This license immediately terminates upon any termination of this Agreement. GovEase is acting as an Application Service Provider ("ASP") supplying to the Customer a hosted service via the Internet.

## H. Use Restriction

1. The Customer acknowledges and understands that the GovEase Internet Application licensed under this Agreement is owned by GovEase and constitutes a valuable trade secret belonging to GovEase. The Customer also acknowledges and understands that GovEase is willing to provide the Customer with certain proprietary business and technical information regarding its Internet Application pursuant to this Agreement.

2. It is expressly understood and agreed that the software used to develop and operate the Web Site; any related materials and documentation provided by Contractor, including without limitation information related to security or other technical aspects of the Web Site; and the non-public pages of the Web Site constitute a valuable proprietary product and trade secret of GovEase embodying substantial creative efforts and confidential information, ideas, and expressions. Tax Collector agrees to hold all such confidential information in strictest confidence and take such steps as are reasonably necessary to protect the confidentiality of the Contractor's Confidential Information and other materials designated by Contractor as confidential. Such steps shall include, without limitation, refraining from taking any action in derogation of Contractor's ownership rights and taking actions similar to those taken by Tax Collector with respect to protecting other third party confidential information in its possession.

3. The Customer shall not disclose or otherwise make available the Contractor's Confidential Information in any form to any person except to those employees of Tax Collector or GovEase who need access to the information to facilitate Tax Collector's authorized use of the Web Site. Nothing herein shall be construed, however, to prohibit Tax Collector from making any disclosures required of Tax Collector pursuant to any legal process or request from any governmental authority having jurisdiction over Tax Collector, or from making disclosure required by Mississippi law, provided however that prior to disclosure to any such governmental authority, Tax Collector shall provide notice to Contractor in order to enable Contractor to seek relief.

## I. Confidentiality of Data

1. Each party agrees to treat any information they receive that is submitted to the Web Site by third party users, including without limitation, deposit amounts, social security numbers, federal tax identification numbers, etc., in accordance with applicable law and the "privacy policy" set forth in the related link on the Web Site. GovEase will not change the "privacy policy" without the Customer's consent, which will not be unreasonably withheld.

## J. Place of Execution; Governing Law; Venue

1. This Agreement shall be deemed to be executed in Madison County, State of Mississippi, regardless of the GovEase's domicile, and shall be interpreted and

construed in accordance with the laws of the State of Mississippi. GovEase agrees that the venue for any and all claims between the parties arising from this Agreement shall be in the federal courts for the \_\_\_\_\_ District of Mississippi or in the state courts in and for Madison County, Mississippi.

K. Severability

1. If this Contract contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Contract without affecting the binding force of this Contract as it shall remain after omitting such provision.

L. Mutual Indemnification

1. Subject to any limitations stated in this Agreement, each Party shall indemnify and hold harmless the other Party, their respective officers, directors, employees, and subcontractors, from and against all claims, damages, losses, and actions, including reasonable legal fees, arising out of damages or liabilities for bodily injury, including death, or damage to property, caused by a negligent act, strict liability, breach of contract, error, or omission of the said Party or any of its agents, subcontractors, or employees in the performance of its obligations under this Agreement.

2. Limitation of Liability

1. GovEase and the Customer waive claims against each other for consequential damages arising out of or relating to this contract. This mutual waiver includes:
  - a. Damages incurred by the GovEase for rental, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons, and
  - b. Damages incurred by the GovEase for principal office expenses including the compensation of personal stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
2. This mutual waiver is applicable, without limitation, to all consequential due to either party's termination of the Contract in accordance with the provisions of the Contract documents.

3. Force Majeure

1. Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure nor is delay due to a "force majeure". For purposes of this Agreement, the term "force majeure" means any cause, action or agency delaying or preventing the performance of a party's obligation(s) under this

Agreement which is beyond the reasonable control or foreseeability of such party including but not limited to natural disasters, wars, power failures, internet outages and other acts of God.

2. Upon notice of a force majeure event, the party whose performance under this Agreement is affected thereby shall:

- a. Promptly notify the other party by the quickest means available, explaining the nature and expected duration thereof; and
- b. Use reasonable efforts to diligently remedy the interruption or delay, provided that the interruption or delay is reasonably capable of being remedied by that party.

#### 4. Complete Agreement

1. This Agreement constitutes the entire understanding and Agreement between the parties hereto with respect to its subject matter and supersedes all prior or contemporaneous Agreements, representations, warranties and understandings of such parties, whether oral or written. This Agreement may only be amended by a separate document, signed by both parties.

#### 5. Modifications

1. This Agreement may not be modified, altered or amended except by written instrument duly executed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Agreement duly authorized to execute this Agreement.