

**Central Election Reporting System for the State of Nebraska
Application Services and Licensing Agreement**

This application services and licensing agreement (the "Agreement") for the Central Election Reporting System for the State of Nebraska is made by and between the Nebraska Secretary of State, a Nebraska state agency (the "State") and BPro Inc., a private business, (the "Contractor").

The parties agree as follows:

1. **BACKGROUND.** The Contractor has developed a customized Central Election Reporting System for the State of Nebraska (the "Application") pursuant to a prior contract, number 42656-04 effective March 2, 2010; and modified by first addendum, dated September 4, 2012, and second addendum dated April 18, 2014, and prior contract, number 66821 dated June 25, 2015. The State wishes to continue to utilize the Application and to have the Contractor provide ongoing Application services, maintenance and support, and hosting services associated with maintaining and enhancing the Application.

2. **DEFINITIONS.** The following terms, when capitalized, will have the meanings designated in this Definitions section:

Addendum: Something to be added or deleted to an existing document; a supplement.

Agent/Representative: A person authorized to act on behalf of another.

Amend(ed): To alter or change by adding, subtracting, or substituting.

Amendment: A written correction or alteration to a document.

Appropriation: Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Business: Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

Calendar Day: Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

Collusion: An agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose.

Commodities: Any equipment, material, supply or goods; anything movable or tangible that is provided or sold.

Confidential Information: Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to Business

competitors and serve no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

Copyright: A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

Data: Any information created and stored by State and State Users through the Application and information created and collected by Contractor during the course of providing Application services.

Default: The omission or failure to perform a contractual duty.

Election Cycle: A 60 Calendar Day period beginning thirty (30) Calendar Days prior to an Election Day and ending thirty (30) Calendar Days following an Election Day.

Election Day: Date of statewide general election, primary election, and special election. The general election is held on the first Tuesday following the first Monday in November in even-numbered years. The primary election is held on the first Tuesday after the second Monday in May in even-number years.

Enhancements: Improvements to or additional components to the Application that add functionality.

Module (see System): A collection of routines and data structures that perform a specific function of software.

Non-Election Cycle: A period beginning 31 Calendar Days following an Election Day and ending 31 Calendar Days before an Election Day.

Operating System: The control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources.

Performance Bond: An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Contractor fulfills any and all obligations under the contract.

Platform: A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the software Product is required to execute properly in the environment established by such hardware and Operating System combination.

Product: Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

Project: The total scheme, program, or method worked out for the accomplishment of an objective, including all documentation, commodities, and services to be provided under the Agreement.

State Users: Election commissioners, county clerks, election officials and their employees who are engaged in conducting elections and reporting election results through the Application.

System (see Module): Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Contractor as functioning or being capable of functioning, as an entity.

Termination: Occurs when either party, pursuant to a power created by the Agreement or law, puts an end to the Agreement prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

Trade Secret: Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. § 87-502(4)).

Trademark: A word, phrase, logo, or other graphic symbol used by a manufacturer or vendor to distinguish its Product from those of others, registered with the U.S. Patent and Trademark Office.

Upgrade: Any change that improves or alters the basic function of a Product or service.

3. **TERM.** This Agreement commences on January 1, 2017 and terminates on June 30, 2019 unless sooner terminated in accordance with this Agreement. The Agreement may be extended or renewed for an additional (2) year period if mutually agreed upon by all parties. This Agreement may be Amended at any time upon the mutual written agreement of both parties.

4. **OWNERSHIP AND LICENSE.**

4.1. DESCRIPTION OF LICENSE. Subject to the terms and conditions of the Agreement between the parties, Contractor grants State and State Users a limited, non-transferrable, non-exclusive, royalty-free worldwide license to use the Application for the term of the Agreement. Contractor retains all rights, title and interest in and to the Application.

4.2. CONTRACTOR INTELLECTUAL PROPERTY. Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to State pursuant to the services performed under this Agreement.

4.3. OWNERSHIP OF DATA. State owns all State Intellectual Property and Data provided to or collected by Contractor pursuant to this Agreement. The State has the unlimited right to publish, duplicate, use, and disclose all Data developed or derived by the Contractor pursuant to this Agreement.

- a. **LEGAL REQUESTS FOR DATA.** Except as otherwise expressly prohibited by law, the Contractor will:
 - i. Immediately notify the State of any subpoenas, warrants, or other legal orders, demands or requests received by the Contractor seeking State Intellectual Property or Data maintained by the Contractor;
 - ii. Consult with the State regarding its response
 - iii. Cooperate with the State's requests in connection with efforts by the State to intervene and quash or modify the legal order, demand or request; and
 - iv. Upon the State's request, provide the State with a copy of both the demand or request and its proposed or actual response.
- b. **EDISCOVERY.** The Contractor Shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the Data of the State. The Contractor Shall not respond to service of process, and other legal requests related to the State without first notifying the State unless prohibited by law from providing such notice.
- c. **DATA PRIVACY**
 - i. The Contractor will use State Intellectual Property and Data only for the purpose of fulfilling its duties under this Agreement and will not share such Data with, or disclose it to, any third party, without the prior written consent of the State or as otherwise required by law. The Contractor will not use such Data for the Contractor's own benefit and, in particular, will not engage in "data mining" of State Data, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by the State through a State employee or officer specifically authorized to grant such use of State Data.
 - ii. The Contractor will provide access to State Data only to those Contractor employees and subcontractors who need to access the Data to fulfill the Contractor's obligations under this Agreement.

5. SCOPE OF SERVICES.

5.1. ONGOING APPLICATION SERVICES, MAINTENANCE AND SUPPORT. Contractor shall provide Application services, maintenance, and support in order to meet the service requirements set forth in Exhibit A. Contractor warrants that all services will be performed in a professional and workmanlike manner consistent with industry standards reasonably applicable to such services.

5.2. UPGRADES. Contractor shall furnish Upgrades to the Application to State without additional charge when such Upgrades are made generally available by Contractor to Contractor's

customers without additional charge. Contractor will provide release notes describing each Upgrade, when furnished, and documentation for the training manual.

5.3. ENHANCEMENTS. Contractor shall furnish Enhancements to the Application to State without additional charge when such Enhancements are made generally available by Contractor without additional charge. Contractor shall inform State of the availability of Enhancements of the Application for which a separate license fee or service fee is required. Should State desire to engage Contractor to provide fee based Enhancements, the services to be provided along with the costs of the services will be set forth in an addendum to this Agreement.

6. SECURITY AND HOSTING REQUIREMENTS.

6.1. SECURITY REQUIREMENTS. The Contractor will use industry standards and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this Agreement.

The Contractor will, at its expense, either conduct or have conducted at least on an annual basis and provide to the state upon its request:

- a. A vulnerability scan, performed by a scanner approved by the State, of the Contractor's Systems and facilities that are used in any way to deliver services under this Agreement; and
- b. A formal penetration test, performed by a process and qualified personnel approved by the State, of the Contractor's Systems and facilities that are used in any way to deliver services under this Agreement.

6.2. SECURITY ASSURANCES. The Contractor shall take all actions necessary to protect State information from exploits, inappropriate alterations, access or release, and malicious attacks.

By signing this agreement, Contractor warrants that:

- a. All known security issues are resolved.
- b. Assistance will be provided to the State by the Contractor in performing an investigation to determine the nature of any security issues that are discovered or are reasonably suspected. This investigation can include security scans made at the State's discretion.
- c. State will have access to the source and object code for all outward facing components to ensure State security needs are met.
- d. Contractor will fully support and maintain the Application on Platforms and code bases (including but not limited to: Operating Systems, hypervisors, web presentation layers, communication protocols, security Products, report writers, and any other technologies on which the application depends) that are still being supported, maintained, and patched by the applicable third parties owning them. The Contractor shall not withhold support from the State for the Application nor charge the State additional fees as a result of the State moving the Application to a new release of third party technology if:

- i. The previous version of the third party code base or Platform is no longer being maintained, patched, and supported; and
- ii. The new version to which the State moved the Application is actively maintained, patched, and supported.

If a code base or Platform on which the Application depends is no longer supported, maintained, or patched by a qualified third party the Contractor commits to migrate the Application from that code base and/or Platform to one that is supported, maintained, and patched after the State has performed a risk assessment using industry standard tools and methods. Based on that assessment, the Contractor will fix or mitigate the risk based on the following schedule: high risk, within 7 days, medium risk within 14 days, low risk, within 30 days. Failure on the part of the Contractor to work in good faith with the State toward a timely move to supported, maintained, and patched technology will allow the State to terminate this Agreement without penalty.

7. HOSTING REQUIREMENTS. The Application will run on the Microsoft Azure cloud environment utilizing Cloud Services, SQL Databases, Azure Storage, and Content Delivery Network (CDN) as those terms are defined by Microsoft. Contractor shall configure the Application architecture to meet the service requirements set forth in Exhibit A.

- a. All facilities used to store and process State Data will employ commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure Data from unauthorized access, disclosure, alteration, and use.
- b. All State Data will be stored on servers located solely within the continental United States. Contractor must provide the state with written assurances from Microsoft that State Data will reside in the continental United States.
- c. Contractor warrants that all State Data will be encrypted in transmission (including via web interface) and storage at no less than AES 256-bit level encryption and SHA 256 or SHA 2 Hashing.
- d. Should Contractor desire to migrate from the Microsoft Azure cloud environment to a different hosting environment, Contractor shall provide the State with one hundred and eighty (180) days advance notice of this desired change. Any such change in hosting environment must be mutually agreed upon by the parties in writing.

8. SUCCESSION PLANNING & COOPERATION. Contractor shall provide transition services to support a responsible and secure transition of State Data to another service provider or to the State.

8.1. TRANSITION PLAN. Contractor and State will outline a Transition Plan, pursuant to a notice of Termination or in anticipation of the Agreement terminating in accordance with its terms. Contractor shall deliver a detailed Transition Plan within 14 Calendar Days of State's written request, or otherwise within a timeframe agreed upon by the parties, for State's review. The Transition Plan will not be effective until it is approved by the State. If Contractor does not deliver an acceptable Transition Plan on or before the Agreement Termination date, the parties

will abide by a draft of the plan promulgated by the State until the Transition Plan is approved. The Transition Plan must address the following:

- a. The respective tasks and deliverables to be completed by each party during the transition period,
- b. A schedule pursuant to which such tasks and deliverables will be completed,
- c. A schedule identifying which party is responsible for paying the cost (if any) related to each task and deliverable.

The parties will cooperate in good faith with each other in connection with their obligations under Section 8 SUCCESSION PLANNING & COOPERATION and will perform their obligations under the Transition Plan. If the transition period extends beyond the Agreement term, the provisions of the Agreement will remain in effect for the duration of the transition period.

Contractor will provide State and any State designated provider with all information regarding the Application services and State Data, including Data conversion, Data access or transfers, and interface specifications necessary for the transition.

Contractor shall complete the transition of State Data from Contractor and its subcontractors to State and to any providers that State designates, without causing any unnecessary interruption of or adverse impact on the Application services.

9. COMPENSATION. State will pay Contractor for services rendered pursuant to this Agreement as set forth in Exhibit B.

10. TERMS AND CONDITIONS.

10.1. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT/ NONDISCRIMINATION. The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of the Agreement. The Contractor shall insert a similar provision in all Subcontracts for services to be covered by any contract resulting from this Agreement.

10.2. PERMITS, REGULATIONS, LAWS. The Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of the Agreement. The Contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

10.3. INSURANCE REQUIREMENTS. The Contractor shall not commence work under this Agreement until all the insurance required hereunder has been obtained and such insurance has been approved by the State. The Contractor shall maintain all required insurance for the life of this Agreement and shall ensure that the State has the most current certificate of insurance throughout the life of this Agreement. If Contractor will be utilizing any subcontractors, the Contractor is responsible for obtaining the certificate(s) of insurance required herein under from any and all subcontractor (s). Contractor is also responsible for ensuring subcontractor(s) maintain the insurance required until completion of the Agreement requirements. The Contractor shall not allow any subcontractor to commence work on any Subcontract until all similar insurance required of the subcontractor has been obtained and approved by the Contractor. Approval of the insurance by the State shall not limit, relieve, or decrease the liability of the Contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Insurance coverages shall function independent of all other clauses in the Agreement, and in no instance shall the limits of recovery from the insurance be reduced below the limits required by this paragraph.

- a. **WORKERS' COMPENSATION INSURANCE.** The Contractor shall take out and maintain during the life of this Agreement the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the Project under this Agreement and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.
- b. **COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** The Contractor shall take out and maintain during the life of this Agreement such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any subcontractor performing work covered by this Agreement from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this Agreement, whether such operation be by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. The policy shall include the State as Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

c. INSURANCE COVERAGE AMOUNTS REQUIRED

COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$5,000 any one person
Damage to Rented Premises	\$100,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Contractors	Included
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included

Motor Carrier Act Endorsement	Where Applicable
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$3,000,000
PROFESSIONAL LIABILITY	
Professional Liability Errors and Omissions, including, where applicable, Technology Errors and Omissions	\$2,000,000
SUBROGATION WAIVER	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
LIABILITY WAIVER	
"Commercial General Liability & Commercial Automobile Liability policies shall be primary and any insurance or self-insurance carried by the State shall be considered excess and non-contributory."	

- d. **EVIDENCE OF COVERAGE.** The Contractor should furnish the State a certificate of insurance coverage complying with the above requirements, which shall be submitted to the attention of the State.

Secretary of State
1445 K Street, Suite 2300
Lincoln, NE 68509
Fax: (402) 471-3237.

These certificates or the cover sheet shall reference the Agreement number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Notice of cancellation of any required insurance policy must be submitted to the State when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

10.4. INDEPENDENT CONTRACTOR. It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The Contractor represents that it has, or will secure at its own

expense, all personnel required to perform the services under the Agreement. The Contractor's employees and other persons engaged in work or services required by the Contractor under the Agreement shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the Contractor, its officers, or its agents) shall in no way be the responsibility of the State. The Contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights, or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

10.5. CONTRACTOR RESPONSIBILITY. The Contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and Products to be delivered as stated in the Agreement. The Contractor shall be the sole point of contact regarding all contractual matters.

The Contractor shall agree that it will not utilize any subcontractors in the performance of the Agreement without the prior written authorization of the State. The Contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

10.6. CONTRACTOR PERSONNEL. The Contractor warrants that all persons assigned to the Project shall be employees of the Contractor or specified subcontractors, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor to fulfill the terms of the Agreement shall remain under the sole direction and control of the Contractor. The Contractor shall include a similar provision in any contract with any subcontractor selected to perform work on the Project.

Contractor shall provide to the State the names and addresses of Contractor's key personnel assigned to perform services pursuant to the Agreement. Personnel commitments made to the State shall not be changed without the prior written approval of the State. Replacement of key personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The State reserves the right to require the Contractor to reassign or remove from the Project any Contractor or subcontractor employee.

With respect to its employees, the Contractor agrees to be responsible for the following:

- a. any and all employment taxes and/or other payroll withholding;
- b. any and all vehicles used by the Contractor's employees, including all insurance required by state law;
- c. damages incurred by Contractor's employees within the scope of their duties under the contract;

- d. maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and
- e. determining the hours to be worked and the duties to be performed by the Contractor's employees.

10.7. AGREEMENT CONFLICTS. Contractor shall insure that contracts or agreements with sub-contractors and agents, and the performance of services in relation to this Agreement by sub-contractors and agents, does not conflict with this Agreement.

10.8. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION. The Contractor shall not, at any time, recruit or employ any State employee or agent who has worked on the Agreement or Project, or who had any influence on decisions affecting the Agreement or Project.

10.9. RIGHTS OR TITLES TO EXECUTE AGREEMENT. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this Agreement. The Agreement price shall, without exception, include compensation for all royalties and costs arising from patents, Trademarks, and Copyrights that are in any way involved in the Agreement. It shall be the responsibility of the Contractor to pay for all royalties and costs, and the State must be held harmless from any such claims.

10.10. CONFLICT OF INTEREST. Contractor certifies that there does not now exist any relationship between the Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this Project.

Contractor certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

Contractor certifies that it will not employ any individual known by Contractor to have a conflict of interest.

10.11. ASSIGNMENT BY THE CONTRACTOR. The Contractor shall not assign, voluntarily or involuntarily, the Agreement or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

10.12. GOVERNING LAW. The Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The Contractor must be in compliance with all Nebraska statutory and regulatory law.

10.13. ATTORNEY'S FEES. In the event of any litigation, appeal, or other legal action to enforce any provision of the Agreement, the Contractor agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the State is the prevailing party.

10.14. ADVERTISING. The Contractor agrees not to refer to the Agreement in advertising in such a manner as to state or imply that the Contractor or its services are endorsed or preferred by the State. News releases pertaining to the Project shall not be issued without prior written approval from the State.

10.15. STATE PROPERTY. The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the Agreement. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

10.16. SITE RULES AND REGULATIONS. The Contractor shall use its best efforts to ensure that its employees, agents, and subcontractors comply with site rules and regulations while on State or Political Subdivision premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State or Political Subdivision, it must make arrangements with the State or Political Subdivision to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State or Political Subdivision on the basis of lack of access, unless the State or Political Subdivision fails to provide access as agreed to between the State or Political Subdivision and the Contractor.

10.17. NOTIFICATION. All notices under the Agreement shall be given to the person designated as the point of contact for this Agreement.

Designated points of contact:

State: John A. Gale
 Nebraska Secretary of State
 1445 K Street, Suite 2300
 Lincoln, NE 68509

Bpro Inc.: Brandon Campea
 BPro Inc.
 124 West Dakota
 Pierre, SD 57501

Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth above, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.

Whenever the Contractor encounters any difficulty which is delaying or threatens to delay its timely performance under the Agreement, the Contractor shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the Agreement. Failure to give such notice, however, may be grounds for denial of any request for an extension of Contractor's timely performance because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

For the duration of the Agreement, all communication between Contractor and the State regarding the Agreement shall take place between the Contractor and individuals specified by the State in writing. Communication about the Agreement between Contractor and individuals not designated as points of contact by the State is strictly forbidden.

10.18. EARLY TERMINATION. The State and the Contractor, by mutual written agreement, may terminate the Agreement at any time. The State may terminate the Agreement immediately for the following reasons:

- a. If directed to do so by statute;
- b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
- c. A trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
- d. Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the Agreement by the Contractor, its employees, officers, directors, or shareholders;
- e. An involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) Calendar Days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
- f. A voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
- g. Contractor intentionally discloses Confidential Information;
- h. Contractor has or announces it will discontinue support of the deliverable;
- i. Contractor engaged in Collusion or actions which could have provided Contractor an unfair advantage in obtaining this Agreement.

10.19. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS. The State may terminate the Agreement, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative Appropriation of funds for the Agreement. Should said funds not be appropriated, the State may terminate the Agreement with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) Calendar Days prior to the effective date of any Termination, and advise the Contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the Termination date will cease and all interest of the State in any related equipment will terminate. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the Termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

10.20. BREACH BY CONTRACTOR. The State may terminate the Agreement, in whole or in part, if the Contractor fails to perform its obligations under the Agreement in a timely and proper manner. The State shall, by providing a written notice of default to the Contractor, allow the Contractor to cure a failure or breach of Agreement within a period of thirty (30) Calendar Days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing the Contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the Agreement for the same or different Agreement breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

10.21. ASSURANCES BEFORE BREACH. If any document or deliverable required pursuant to the Agreement does not fulfill the requirements of the Agreement, upon written notice from the State, the Contractor shall deliver assurances in the form of additional Contractor resources at no additional cost to the Project in order to complete the deliverable, and to ensure that other Project schedules will not be adversely affected.

10.22. ADMINISTRATION – CONTRACT TERMINATION. Contractor must provide confirmation that in the event of Agreement Termination, all records that are the property of the State will be returned to the State within thirty (30) Calendar Days. Notwithstanding the above, Contractor may retain one copy of any information as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures.

10.23. PENALTY. In the event that the Contractor fails to perform any substantial obligation under the Agreement, the State may withhold all monies due and payable to the Contractor, without penalty, until such failure is cured or otherwise adjudicated.

10.24. PAYMENT. State will render payment to Contractor when the terms and conditions of the Agreement have been satisfactorily completed on the part of the Contractor as solely determined by the State. Payment will be made in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§81-2401 through 81-2408). The State may require the Contractor to accept payment by electronic means such as ACH deposit.

10.25. INVOICES. Invoices for payments must be submitted by the Contractor to the State with sufficient detail to support payment as determined by the state. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an Amendment to the Agreement.

10.26. RIGHT TO AUDIT. Contractor shall establish and maintain a reasonable accounting System that enables the State to readily audit the Agreement. The State and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they are kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; Agreement Amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Contractor shall, at all times during the term of this Agreement and for a period of five (5) years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the State, whether during or after completion of this Agreement and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the State. Such records shall be made available to the State during normal business hours at the Contractor's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the State. Contractor shall ensure the State has these rights with Contractor's assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those Subcontracts or agreements relate to fulfillment of the Contractor's obligations to the State.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the State unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the State in excess of one-half of one percent (.5%) of the total Agreement billings, the Contractor shall reimburse the State for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Contractor shall reimburse the State for total costs of audit. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the State's findings to Contractor.

10.27. TAXES. The State is not required to pay taxes of any kind and assumes no such liability as a result of this Agreement. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

10.28. INSPECTION AND APPROVAL. Final inspection and approval of all work required under the Agreement shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or subcontractor duties under the Agreement are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

10.29. CHANGES IN SCOPE/CHANGE ORDERS. The State may, at any time work is in progress, by written agreement, make alterations in the services or work required pursuant to the Agreement. The Contractor shall not claim forfeiture of Agreement by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable service prices if any, or a pro-rated value. Corrections of any service or performance of work required pursuant to the Agreement shall not be deemed a change in scope.

10.30. SEVERABILITY. If any term or condition of the Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

10.31. CONFIDENTIALITY. All materials and information provided by the State or acquired by the Contractor on behalf of the State shall be regarded as Confidential Information. All materials and information provided by the State or acquired by the Contractor on behalf of the State shall be handled in accordance with federal and state law, and ethical standards. The Contractor must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a Contractor; Contractor shall notify the State immediately of said breach and take immediate corrective action.

It is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to Contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

10.32. INDEMNIFICATION.

- a. **GENERAL.** The Contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, subcontractors, consultants, representatives, and agents, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.
- b. **INTELLECTUAL PROPERTY.** The Contractor agrees it will at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, Copyright, trade secret, Trademark, or Confidential Information of any third party by the Contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor shall not settle any infringement claim that will affect the State's use of the Application without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall at the Contractor's sole cost and expense promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated

as a breach of warranty by the Contractor, and the State may receive the remedies provided under this Agreement.

- c. **PERSONNEL.** The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the Contractor.
- d. **SELF-INSURANCE.** The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

10.33. NEBRASKA TECHNOLOGY ACCESS STANDARDS. Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that Products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an Amendment to the Agreement to request that Agreement comply with the changed standard at a cost mutually acceptable to the parties.

10.34. ANTITRUST. The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

10.35. DISASTER RECOVERY/BACK UP PLAN. The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided to the State upon request, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified in this Agreement in the event of a disaster.

10.36. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations on the part of the Contractor remaining to be performed.

10.37. DRUG POLICY. Contractor certifies that it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

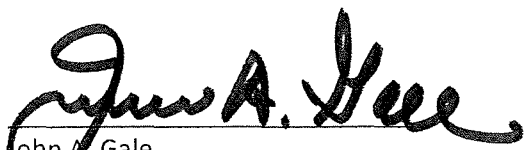
10.38. EMPLOYEE WORK ELIGIBILITY STATUS. The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal Agency authorized to verify the work eligibility status of a newly hired employee.

10.39. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY. The Contractor, by signing this Agreement, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The Contractor also agrees to include the above requirements in any and all Subcontracts into which it enters. The Contractor shall immediately notify the State if, during the term of this Agreement, Contractor becomes debarred. The State may immediately terminate this Agreement by providing Contractor written notice if Contractor becomes debarred during the term of this contract.

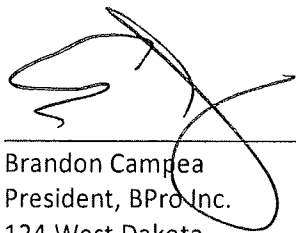
Contractor, by signature to this Agreement, certifies that Contractor has not had a contract or agreement with the State of Nebraska terminated early by the State of Nebraska.

10.40. ENTIRE AGREEMENT. This Agreement, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understanding between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or in addition to the provisions of this Agreement shall be of no force or effect. The provisions of Sections 10.12. GOVERNING LAW, 10.14 ADVERTISING, 10.32 INDEMNIFICATION and this section shall survive the Termination of the Agreement, to the extent applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates shown below:


John A. Gale
Secretary of State
1445 K Street, Suite 2300
Lincoln, NE 68509

April 7, 2017
Date



Brandon Campea
President, BPro Inc.
124 West Dakota
Pierre, SD 57501

4-4-2017

Date

**Central Election Reporting System for the State of Nebraska
Application Services and Licensing Agreement**

EXHIBIT A

Services Requirements.

- 1) **Performance Requirements.** Contractor shall make the Application perform as specified in Table 1 below:

TABLE 1-Performance Requirements			
Service Level	Non-Election Cycle	Election Cycle	Election Day
Availability	99.95%	99.99%	99.995%
Scheduled Maintenance/Application Changes	24 hours notice	72 hours notice	None allowed
Internal Application Response Time	Max 10 seconds at 95 th percentile	Max 5 seconds at 95 th percentile	Max 5 seconds at 95 th percentile
External Application Response Time	Max 20 seconds at 95 th percentile	Max 9 seconds at 95 th percentile	Max 8 seconds at 95 th percentile
Concurrent User Load	Up to 500	Up to 2500	Up to 5,000

1.1 Annual Load Testing. Contractor shall conduct an annual load test prior to the commencement of an Election Cycle for a major election, with prior approval from the State, to demonstrate that all performance requirements of the Contract are being met satisfactorily. Contractor shall provide a report upon completion of such test that clearly demonstrates success in meeting these performance requirements. If the Application does not meet the performance requirements, Contractor shall resolve performance issues at least 30 calendar days prior to the Election Cycle and provide a report demonstrating that the Application meets the performance requirements.

1.2 Scheduled Downtime. Scheduled downtime must be between 1:00am and 4:00am (Central Time) Monday-Sunday unless approved in advance by the State.

- 2) **Support Requirements.** Contractor shall provide support as specified in Table 2 below:

TABLE 2-Support Requirements			
Support Level	Non Election Cycle	Election Cycle	Election Day
BPro Help Desk Availability	8am-5pm (CT) Monday-Friday	6am-6pm (CT) Monday-Friday	Continuous
Help Desk Response Time	Less than 24 hours	Less than 4 hours	Less than 5 minutes
Authorized Access to Internal and External Monitoring Tools	No	Yes	Yes

- 3) **Service Disruption.** In the case of a service disruption, Contractor shall:
- Promptly, and at the Contractor's expense, use commercial best efforts to restore the services as soon as possible,
 - coordinate incident management for its staff and all other third party vendors that may be involved in supporting the Application including the hosting environment,
 - provide updates to the State designated staff on the status of the disruption and estimated time to resolution,
 - provide a preliminary incident report and a root cause analysis within 5 business days of disruption, and
 - provide a final incident report and root cause analysis within 15 business days of disruption.

Service disruptions include catastrophic and major defects. A catastrophic defect affects critical functionality or Data and needs to be fixed urgently for business operations to resume. A major defect affects major functionality or Data. There may be a workaround but it is not obvious and operations are significantly impacted. A major defect needs to be fixed urgently for business to run effectively.

Any service disruption will be deemed critical and will follow the communication response times specified in Table 3 below:

TABLE 3-Response Times		
	Election Cycle	Election Day
Response	15 minutes	5 minutes
Updates	30 minutes	15 minutes
Resolution	1 hour	30 minutes

3.1 Service Disruption Penalty. In the case of one or more Service Disruptions during an Election Cycle, the following penalty amounts set forth in Table 4 will be assessed against the Contractor:

TABLE 4-Service Disruption Penalty			
	1 st Disruption	2 nd Disruption	3 rd Disruption
0-15 minutes	0	0	\$500
15-60 minutes	0	\$500	\$1000
60-120 minutes	\$500	\$1000	\$1500
2 hours or more	\$1500	\$2000	\$2500

This section does not limit the State's rights with respect to the events upon which the State may rely as a basis for termination of the Agreement.

3.2 Defect Resolution

Contractor shall correct minor defects within ten (10) calendar days of the notification of the defect. Minor defects are defects that prevent minor functionality from operating or cause minor functions to operate with incorrect results. There is a clear business need to have the Application repaired but workarounds exist for business operations. Contractor shall correct cosmetic or trivial defects occurring during an Election Cycle within thirty (30) calendar days of the notification of the defect. Cosmetic or trivial defects do not affect functionality or Data but are an inconvenience.

- 4) **Training.** Contractor shall provide annual online refresher training for all users. Contractor shall provide in person training at the request of the State. Should State request in person training, State will pay Contractor's travel expenses including mileage and lodging at the current State government rate. Other necessary travel expenses shall not exceed \$35.00 per person per day.

4.1 Training Manual. Within 180 days of the effective date of the Agreement, Contractor shall provide an electronic training manual which includes the following items:

- a. Election Set-up
 - General system navigation
 - Description of the tables and how the tables relate to one another in the system
 - Adding races to the Contest Candidate Table
 - District Table
 - Adding/Deleting Counties in sub districts
 - Entering Judicial Retentions
 - Entering Ballot Questions
 - Candidate Entry
 - Searching/Updating Candidates
- b. Reports
 - Candidate list
 - Acknowledgment letters
 - Certificates of Election
 - Canvass
 - Certifications
 - Sample Ballots
 - Current Contests
- c. Election Night
 - County steps for uploading results
 - Manual entry steps
 - Electronic Entry (ERF file upload) steps

**Central Election Reporting System for the State of Nebraska
Application Services and Licensing Agreement**

EXHIBIT B

Payment Schedule.

1. Payment will be made in accordance with Section 10.24 of the Agreement at the rates and fees shown in this Exhibit B.

Description of Service	Payment Amount	Payment Date
License fee, maintenance and support	\$34,650	July 1, 2017
Hosting Services (July 1, 2017-June 30, 2018)	\$11,425	July 1, 2107
Hosting Services (July 1, 2018-June 30, 2019)	\$15,000	July 1, 2018

2. Payment for the optional renewal term, if exercised, in accordance with Section 3 of the Agreement will be at the following rates and fees.

Description of Service	Payment Amount	Payment Date
License fee, maintenance and support	\$34,650	July 1, 2019
Hosting Services (July 1, 2017-June 30, 2018)	\$15,000	July 1, 2109
Hosting Services (July 1, 2018-June 30, 2019)	\$15,000	July 1, 2020