



Ms. Jessica Pollema  
President of the Board, South Dakota Canvassing Group  
State Educator for Cause of America  
Citizen and registered voter of Minnehaha County, South Dakota

April 30, 2025

To: Speaker of the House, Jon Hansen  
Speaker Pro Tempore, Representative Karla Lems  
Senator Taffy Howard  
Members of the Government Operations and Audit Committee: Senators Foster, Howard, Karr, Otten, Wheeler and Representatives Auch, Emery, Lems, Moore and Overweg.

Re: Legal and Ethical Conflicts with the Secretary of State's KNOWiNK Contract Dated June 10, 2024

Dear Legislators,

I am writing to bring to your urgent attention grave legal and ethical conflicts arising from the contract dated June 10, 2024, between the South Dakota Secretary of State and KNOWiNK, LLC, titled "Information Processing System, Services and License Contract for Voter Registration System" (hereinafter "the KNOWiNK contract"). This agreement, detailed in Exhibit 1, includes a system integration interface with the Electronic Registration Information Center (ERIC)—an organization funded by George Soros—that jeopardizes the integrity of South Dakota's voter rolls and the confidentiality of voters' personally identifiable information (PII).

SOURCE DOCUMENT : INFORMATION PROCESSING SYSTEM, SERVICES AND LICENSE CONTRACT FOR VOTER REGISTRATION SYSTEM Between THE STATE OF SOUTH DAKOTA Acting by its SECRETARY OF STATE And KNOWiNK, LLC. [EXHIBIT 1]

On February 23, 2024, Deputy Secretary of State Tom Deadrick presented [SB18](#) to the House State Affairs Committee for legislative approval for sharing the statewide master voter file with other election jurisdictions. During this committee hearing, Deputy Deadrick testified before the House State Affairs Committee that the Secretary of State's Office would not contract with ERIC.

*"So, we'd like to be able to do the crosscheck. And what it would do, it would help improve voter accuracy, help reduce election costs, because we don't have people on the rolls that shouldn't be there. All the information would be sent securely, and for those of you who are*

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curious, we have no intention of joining ERIC for numerous reasons, which we don't need to go into.” – Tom Deadrick

“At this time there is a program out there called ERIC, it's Electronic Registration Information Center. It seems to be losing member states rapidly, and we've never been a member of ERIC and we don't plan to be a member of ERIC. With that I'll conclude my testimony and stand by for questions.” - Tom Deadrick

Deputy Deadrick led the committee to believe the Secretary of State's Office intended only to cross check voter registration lists with other states, including Ohio, that may be implementing voter cross check programs. He also notified the committee that the current TotalVote platform was going to be replaced after the 2024 general election.

South Dakota Deputy Election Director Rachel Soulek stated in response to a public records request on March 11, 2025 that the Secretary of State's Office has currently not entered into any data sharing agreements between states. [EXHIBIT 2] After lobbying for SB18 and it's passage into law, why hasn't the Secretary of State entered into any voter cross check programs? Is it because they intend to use ERIC?

The Secretary of State has entered into a new contract with KNOWiNK, of St. Louis, Missouri for a TotalVote upgrade with a price tag of \$4.5 million. You can see the payment installment agreement below:

**South Dakota TotalVote Payment Schedule - Exhibit B**

Payment	Payment \$	Total
Initial Licensing	\$ 1,500,000.00	\$ 1,500,000.00
Month 1	\$ 193,750.00	\$ 1,693,750.00
Month 2	\$ 193,750.00	\$ 1,887,500.00
Month 3	\$ 193,750.00	\$ 2,081,250.00
Month 4	\$ 193,750.00	\$ 2,275,000.00
Month 5	\$ 193,750.00	\$ 2,468,750.00
Month 6	\$ 193,750.00	\$ 2,662,500.00
Month 7	\$ 193,750.00	\$ 2,856,250.00
Month 8	\$ 193,750.00	\$ 3,050,000.00
Month 9	\$ 193,750.00	\$ 3,243,750.00
Month 10	\$ 193,750.00	\$ 3,437,500.00
Month 11	\$ 193,750.00	\$ 3,631,250.00
Month 12	\$ 193,750.00	\$ 3,825,000.00
Retainage (Invoiced upon Go Live)	\$ 675,000.00	\$ 4,500,000.00
<b>Total</b>	<b>\$ 4,500,000.00</b>	

Annual Software License and Support (Invoiced upon Go Live)  
\$ 300,000.00

Annual Hosting (Invoiced upon Development Environment Creation)  
\$ 120,000.00

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Of particular concern are the following sections in the contract:

A. Data Management and Interface Exchanges - Page 38-39

1. **System integration shall include** but not be limited to the following:

**On the federal/national level:**

- USPS and National Change of Address (NCOA) information through **Melissa Data**
- **American Association of Motor Vehicle Administrators (AAMVA)** and Social Security Administration (SSA) – (AAMVA is a private third-party NGO with no governmental oversight doing the business of the government which collects the data of all licensed drivers in North America, various countries in Europe and more.)
- **Electronic Registration Information Center (ERIC)**

2. On the State and local level:

- Point-based addressing and district data
- Department of Public Health/Vital Records (Deaths)
- Department of Corrections (Felons)
- Department of Motor Vehicles
- **Ballot Printers and Tabulators**

B. System Software / Voter Registration – Page 39

1. The Voter Registration Module includes but is not limited to:

- **Online Voter Registration**
- Voter Identity Validation
- Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)
- **Voter Signature Validation**
- Notice Management

C. Statement of Work / State of South Dakota / Secretary of State / 5.16.24 / Version 1.0 – Page 58

1. **Contractors' system will include end-to-end election capabilities including:**

- **Interfacing with national and local agencies such as ERIC, Dept of corrections, Driver's License Division, Division of Vital Statistics, and SSA.**

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- **Online voter registration application** and voter portal site.
2. Objectives, Public Interface – page 59
    - Provide a secure **online voter registration portal**, or be able to interface with one.
  3. Voter Management – page 60
    - **Ability to capture and store individual or batch scanned documents or signatures and associate them with the correct voter.**
    - **Ability to process new online and manual registrations and updates**, match the registration to an existing voter, if it exists.
  4. External Interfaces – page 60-61
    - **The ability to process and manage data from external sources (ERIC, NCOA, etc.)** to update voter roll
- D. Software Warranty : **Contractor warrants for a period of six months from the date of acceptance (go-live)** that the software portions of the Goods and Custom Deliverable, including Software as a Service, that Contractor directly or indirectly provides will:
- Perform in accordance with the specific requirements of this SOW and all specifications and documentation for the software;
  - Be suitable for the ordinary purposes for which such goods and custom deliverables are used;
  - Be suitable for any special purposes that SDSOS has relied on Contractor’s skill or judgment to consider when it advised the State about the Goods or Custom Deliverables;
  - Have been properly designed and manufactured; and
  - Be free of significant defects. Contractor shall provide SDSOS with bug fixes and inform SDSOS of any known software bugs or software defects that may affect the state’s use of the software.
- E. Architecture Components: pages 34, 40-41
- The System shall comply with all existing State and Federal laws.
  - The Election Management System (EMS) shall simplify multijurisdictional election results reporting by **receiving the results in the System and automatically combining and reporting results to the public.**

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- The System shall replace the SECRETARY OF STATE'S OFFICE existing election management system and **enable users to setup elections and build ballots before every election.**
- Federal law (HAVA) requires that official election results must be processed on certified software, which was certified by EAC accredited testing labs, as stated in the Voluntary Voting System Guidelines, Section 1.1: *“all system hardware, software, telecommunications, and documentation intended for use to: prepare the voting system for use in an election, **produce appropriate ballot formats**, test that the voting system and ballot materials have been properly prepared and are ready for use, record and count votes, **consolidate and report election results, display results on-site or remotely, produce and maintain comprehensive audit trail.**”*
- TotalVote will handle Election Night Reporting (ENR) and “voting results closeout.” If “voting results closeout” refers to the official election results, the Voluntary Voting System Guidelines Section 2.4.5 prohibits there being any digital access path between ENR and the final election results. If both are being done on the same software, that connection would obviously exist.

F. Infrastructure Capabilities and Features:

- The system shall ensure that there are enough resources at critical times to avoid System outage.
- Contractor shall ensure that the System is closely monitored against past, current and future cyber threats. Contractor shall maintain close relationships with its **Cloud Providers and other government and private allies to leverage a Teamwork approach to Cybersecurity.** Contractor shall perform granular and extensive data reporting, auditing, monitoring, and alerting in the cloud environment along with function and feature automation to defend against threats from all vectors.

G. Auditability/Monitoring

- Latest Security Controls - REDACTED
- Threat Identification / Hunting – REDACTED
- Network Security – REDACTED

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Legal and Ethical conflicts with the above listed provisions in the contract:

1. The South Dakota Secretary of State and the contracted vendors do not have any legal authority to interface the personally identifiable information (PII) of the South Dakota statewide voter file with the Electronic Registration Information Center (ERIC) or the American Association of Motor Vehicle Administrators (AAMVA).
2. The South Dakota Secretary of State has no legal authority to enact or provide online voter registration or online voter registration updates.
3. The South Dakota Secretary of State appears to be preparing to electronically verify signatures and eliminate human signature verification.
4. The South Dakota Secretary of State has no legal authority by which to interface the TotalVote system with electronic vote counting tabulators.
  - GIS mapping data, the DPH, DOC, and DMV are all electronically interfaced entities, by listing ballot printers and tabulators in the same section this infers electronic interfacing capability.
  - This provision infers the fact that ES&S electronic tabulators and ballot printers are wireless devices connectable by either an intranet or internet capability.
  - **12-17B-2. Requirements for automatic tabulating, electronic ballot marking, and election voting equipment systems--Approval of changes or modifications.**  
Any automatic tabulating or electronic ballot marking system used in an election shall enable the voter to cast a vote for all offices and on all measures on which the voter is entitled to vote. **No automatic tabulating, electronic ballot marking, or election voting equipment system may be connected to the internet....**
  - The TotalVote election management system and the ES&S electronic tabulating machines should be stand-alone equipment in order to help preserve the integrity of the vote cumulating process. Any interfacing functionality would violate the certification of the systems, and therefore would become unlawful to use in the State of South Dakota.
5. KNOWiNK has only provided a six-month guarantee of functionality for a \$4.5 million system upgrade.

Other concerns:

6. The system shall ensure adequate resources to avoid a systemwide outage, however, during the 2024 general election cycle, on November 1, 2025, the statewide system did experience a statewide outage, for which there has been no public explanation.
  - Deputy SOS Tom Deadrick was quoted in a KELOLAND article saying **“It’s a global issue, we’ve been told with Microsoft.** Another state — we haven’t been told who it is — has the same problem,” said Deadrick, who also declined an on-camera interview.

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When asked what happens if the issue isn't fixed by Election Day, Deadrick said the best people in Microsoft and best people in KNOWiNK are working on the problem.

**“I don't know what Plan B would be right now. Right now, all we're thinking about is getting up and going again,”** Deadrick told KELOLAND News.

<https://www.keloland.com/keloland-com-original/state-voting-system-facing-issues-friday/>

- To the best of our knowledge, per Microsoft.com, there were no reported global outages by Microsoft, including on the Azure platform, on November 1, 2024.
  - To date, there has been no public explanation for the system outage, and no oversight into the event that caused chaos and long lines for auditors across the state.
  - What guarantee does South Dakota have that the Azure platform is secure, and that the upgrade will provide increased stability?
  - **Contractor plans to work with government and private allies in a teamwork approach to cybersecurity.** Who are these private allies and government entities? Are they associated with the EI-ISAC, CIS or CISA that the Trump administration is now defunding and investigating? Does the Secretary of State have documentation for all said subcontractors who will be assisting the vendor for security requirements of the contract?
7. All Cybersecurity portions of the contract have been redacted and are not available to the public. The Secretary of State's Office has no legislative or independent oversight to ensure the most stringent cybersecurity standards are in place for the system, as required by the Federal government for critical national infrastructure. Per all publicly available reporting on KNOWiNK's ability to deliver a quality product in a timely manner with the required cybersecurity standards, KNOWiNK has been failing to do so, resulting in cancelled statewide contracts upwards of \$10 million.
  8. KNOWiNK is leveraging outside government and private allies to assist with cybersecurity, however those entities are unknown to the State of South Dakota and may or may not have access to the data in our centralized cloud hosted system.
  9. KNOWiNK has failed to deliver a secure, working product in compliance with the original timeline of the contract. What assurance do we have that South Dakota won't experience the same problems?
  10. KNOWiNK TotalVote appears to be performing the work of election equipment that must be certified under federal law, but is not currently certified to any VVSG standards. KNOWiNK and other vendors of similar software avoid certification by labeling the software and equipment "non-voting equipment".
  11. Evidence of a Ukrainian foreign national providing GIS mapping services for the New Mexico Secretary of State has been found. New Mexico also uses a the TotalVote system which was gifted to them by a former South Dakota Secretary of State. What assurances does South Dakota have that KNOWiNK does not contract with or employ foreign nationals?
  12. All user names and passwords of TotalVote users are known and stored by the Secretary of State's office.

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## Information on the Electronic Registration Information Center (ERIC)

1. The South Dakota Deputy Secretary of State has publicly stated the office has no intention of using ERIC.
2. ERIC is a failed voter registration accuracy program which was started by a democrat operative named David Becker, funded by George Soros.
3. ERIC's poor performance nationally has caused many states to cancel their contracts in the past two years. Wisconsin, for instance used the ERIC system, and in 2020, had 3.3 MILLION more voters on the rolls than citizens in the state.
4. Election expert and citizen investigator Peter Bernegger testified in a Wisconsin Election Commission hearing that Wisconsin voter's information was exposed to China through ERIC.
5. Motor Voter and Automatic Voter Registration paired with private voter registration firm ERIC literally disallows states to send citizenship information. ERIC fills their databases with "eligible" but not registered voters, which is a proven method for inflating voter rolls with ineligible voters.

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## EXHIBIT A

17 of 30

- b. Within sixty (60) days of the Certification Date, and at least every sixty (60) days thereafter, the Member shall transmit the following data to ERIC: (1) all inactive and active voter files (excluding those records that are confidential or protected from disclosure by law), including those fields identified in Exhibit B ("Voter Registration Data"), and (2) all licensing or identification records from motor vehicles departments (excluding those fields unrelated to voter eligibility, such as fields related to an individual's driving record), including those fields identified in Exhibit B ("MVD Data"). Voter Registration Data and MVD Data shall be collectively referred to as "Member Data." Under no circumstances shall the Member transmit an individual's record where the record contains documentation or other information indicating that the individual is a non-citizen of the United States.
  - c. Should Member fail to transmit Member Data in any sixty (60) day period as provided in sub-section b, Member shall, upon written notice from ERIC, have a thirty (30) day grace period in which to provide such Member Data. Member may submit written requests to the Executive Director of ERIC for reasonable extensions of the grace period deadline if Member is unable to upload Member Data because of a technical issue or a problem accessing or receiving the Member Data. Whether or not to grant the extension or to proceed to automatic removal shall be in the sole discretion of ERIC's Executive Director. If a grace period expires without a transmission to ERIC of Member Data from the Member, the Member shall be automatically removed from membership in accordance with the Bylaws.
3. Protection of ERIC Reports, Member Data, Third-Party Data, and ERIC Information.
- a. Definitions. The following definitions pertain to this Section and the Agreement as a whole.
    - i. ERIC Reports: Using Member Data (defined in Section 2 of this Agreement) and, in some cases, data from third-party sources, ERIC makes the reports described below available to its Members. These reports, in whole or in part, shall be collectively referred to in this Agreement as "ERIC Reports."
      - A. Eligible but Unregistered Report: This report identifies individuals who appear to be eligible to register to vote in a member state but who do not appear to be registered. This report contains MVD Data and Voter Registration Data.
      - B. Cross-State Movers Report: This report identifies voters who appear to have moved from one ERIC member state to another ERIC member state. This report contains MVD Data and Voter Registration Data.

6. Virginia became the eighth state to recently leave the George Soros connected Electronic Registration Information Center (ERIC) agreement and almost retroactively, over 230,000+ Voter Registration Cancellations occurred.
7. The Arizona GOP filed a Bombshell Lawsuit Against the Secretary of State Adrian Fontes after discovering from 500,000 to 1.3 million ILLEGAL VOTERS on the state's voter rolls.  
*"The lawsuit highlights outrageous voter registration rates, with some counties exceeding 100% of eligible voters. The lawsuit uncovered that Arizona has between 500,000 to 1,270,000 unaccounted-for voters on the rolls, including deceased individuals and those who have moved away."*

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*“Our findings reveal a staggering number of counties with more registered voters than eligible citizens, this is a clear indication of a system in disarray. We are holding Adrian Fontes accountable to ensure fair and credible elections in Arizona.”*

Arizona is a member of ERIC. Arizona also uses a modified version of South Dakota’s TotalVote, and is currently under investigation by the Trump Administration’s DOJ for potential non-citizen voting.

8. ERIC was formed in 2012 with assistance from The Pew Charitable Trusts, which is funded by [Open Society Foundations](#). Open Society Foundations is a George Soros organization, therefore George Soros funded and started ERIC.
9. Wisconsin whistleblowers have found that officials send private information (social security number, birthdate, driver's license number & more) to ERIC. ERIC then shares it with the Center for Election Innovation and Research (CEIR), another organization tied to David Becker and George Soros. This data sharing practice is a violation of state and federal privacy laws. It also breaches the language in the agreement between Wisconsin and ERIC. How do we know ERIC will not send South Dakota voter information to CEIR?
10. **ERIC creates lists of eligible but unregistered residents** using state DMV and social services data [with](#) CEIR, one of two groups that funneled [\\$419 million in grant funds from Facebook founder Mark Zuckerberg to government election offices](#) during the 2020 election.
11. Jurisdictions using ERIC have been found to have master voter registration lists with more than 100% of eligible voters. Judicial Watch has sued several states.
12. ERIC has been found to have only three employees, and no offices, leaving us to wonder who is actually performing the work ERIC claims to do.
13. Louisiana and Alabama had legitimate concerns about ERIC’s forced voter registration requirement, the misuse of residents’ personal information, Becker’s partisan past, and ERIC’s failure to compel members to tackle double-voting and voter fraud.
14. Jurisdictions using ERIC have reported virtually no voters being removed from the rolls over extended time periods.
15. States that have more recently cancelled their contracts with ERIC include:
  - Iowa, Missouri, Texas, Louisiana, Alabama, Florida, Virginia, West Virginia, Ohio. Georgia and Wisconsin are considering legislation to withdraw from ERIC.

*Virginia pulled out of ERIC listing a variety of reasons, including increased uncertainty and the declining participation of other Republican-led states, concerns about the “confidentiality of voter information” and “controversy surrounding the historical sharing of data with outside organizations leveraged for political purposes.”*

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*“In short, ERIC’s mandate has expanded beyond that of its initial intent – to improve the accuracy of voter rolls,”* Beals wrote.

<https://virginiamercury.com/briefs/virginia-joins-republican-states-pulling-out-of-multi-state-voter-list-program/>

Ohio left ERIC, with Secretary of State, Frank LaRose saying this: “. . . *I cannot justify the use of Ohio’s tax dollars for an organization that seems intent on **rejecting meaningful accountability**, publicly **maligning my motives**, and **waging a relentless campaign of misinformation** about this effort. The conduct of ERIC and some of its hyper-partisan allies in recent weeks only heightens my suspicion and reinforces my decision [emphasis added].”*

<https://www.mifairelections.org/post/jumping-the-sinking-ship-ohio-bails-from-eric>

Texas withdrew from ERIC after the Texas GOP resolution stated this:

*“WHEREAS, ERIC receives Personally Identifiable Information of citizens and minors regardless of voting status from those states’ departments of motor vehicles; and WHEREAS, the ERIC membership agreement requires that every sixty (60) days, each member state shall transmit all inactive and active voter files, and all licensing or identification records contained in the motor vehicles database, including:*

- *all name fields*
- *all address fields*
- *driver’s license or state ID number*
- *last four digits of Social Security number*
- *date of birth*
- *activity dates as defined by the Board of Directors*
- *current record status*
- *affirmative documentation of citizenship*
- *the title/type of affirmative documentation of citizenship presented*
- *phone number*
- *e-mail address or other electronic contact method; and*

*WHEREAS, ERIC states in its membership agreement that “**under no circumstances shall the member transmit an individual’s record where the record contains documentation or other information indicating that the individual is a non-citizen of the United States**” yet, without that information ERIC is unable to perform a portion of the services for which it is contracted; and*

*WHEREAS, ERIC has violated the security of Texas registrants’ data by transmitting state data to third parties, such as the Center for Election Innovation and Research, whose data practices and usage are unknown to Texas and its citizens, and ERIC prohibits states from auditing its own work or that of any third-party vendor; and*

*WHEREAS, ERIC provides data regarding eligible or possibly eligible citizens who are not registered to vote, stating that, “the Member shall, at a minimum, initiate contact with each and every eligible or possibly eligible citizen and inform them how to register to vote.*

*WHEREAS, ERIC gives little focus to removing or identifying ineligible voters.”*

<https://www.mifairelections.org/post/iowa-makes-7-seven-states-bail-from-sinking-ship-eric>

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## Information on the American Association of Motor Vehicle Administrators (AAMVA)

1. [AAMVA](#) is a private corporation doing the work for governmental organizations.
2. AAMVA gathers all PII from all driver's license recipients from the DMV in all 50 states.
3. AAMVA is a registered corporation in the state of South Dakota, based out of Washington D.C., with an Arlington Virginia mailing address.
4. Eric Holder, former US Attorney General under the Obama Administration, advised California relating to a technology system being constructed to bridge the DMV and SoS offices. You might know this as a "Motor/Voter" process. However, former AG Eric Holder had a very specific function in the construction of this technology bridge. The process of adding voters to the registration rolls when they receive or update their driver's license was seen as an opportunity to **expand the voter rolls**.
5. \$14,183,211.32 in federal grants went to AAMVA - the data aggregate NGO that collects PII from every DMV in North America. As we know, in most cases they are connected to the voter registration systems, as is the case in South Dakota.  
[https://datarepublican.com/award\\_search/?keywords=AAMVA...](https://datarepublican.com/award_search/?keywords=AAMVA...)

## Information on KNOWiNK's failure to perform in cybersecurity when reviewed by an independent third party:

1. The State of Oregon contracted with KNOWiNK for an overhaul of their statewide voter registration and election night reporting system. Oregon's modified version of the TotalVote system is called ORVIS – Oregon Registered Voter Information System.
  - Oregon signed a \$10 million contract with KNOWiNK
  - Oregon requires third party oversight for contracts over \$5 million.
  - Gartner, Inc. was contracted to oversee the implementation of the ORVIS project.
  - ORVIS was to be completed by October of 2023.
  - The project implementation has been riddled with problems and is currently still not completed with many risk assessment scorecard items continuing to remain in the "high risk" category. From Gartner's risk assessment report, December 2024:
    - i. The project lacks comprehensive go live and support plans.
    - ii. Lack of understanding of needs for go live, creating resource and budget risks.
    - iii. Vendor development documentation continues to have gaps.
    - iv. Documentation is not on pace with development completion.
    - v. Missed delivery dates erode trust and negatively impact timelines

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- Of most concern, is the continued inability to meet deadlines and implement deliverables such as: functionality, platform stability, disaster recovery and cybersecurity.  
<https://sos.oregon.gov/admin/Documents/transparency/2024-October-ORVIS-Quality-Assurance.pdf>
2. The State of Pennsylvania contracted with South Dakota's Bpro, Inc. for a new statewide voter registration system in December of 2020.
- 42 days later Bpro announced it was purchased by KNOWiNK.
  - Gartner, Inc. was contracted by the PA Department of State to oversee the project implementation.
  - KNOWiNK failed to meet the terms of the contract and the PA Department of State terminated the contract after making \$3.6 million in payments to KNOWiNK.
  - The project was originally set to conclude early 2023, but KNOWiNK's inability to meet deadlines pushed the project into 2025.
  - *"It became clear, despite several efforts to get things back on track, despite our putting a series of sort of mini-deadlines in place to make sure progress was being made at least incrementally, that the vendor was not going to be able to fulfill those requirements,"* (Secretary of the Commonwealth Al) Schmidt said.
  - Despite the cancellation of the contract, it does not appear KNOWiNK has returned all the funds to Pennsylvania.

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### Request for Intervention:

Whereas, I am a 30-year resident of South Dakota and have become the state's leading election expert on voter registrations and other election related issues.

Whereas, the South Dakota Secretary of State has no legal authority to set up online voter registration capabilities or interfaces according to South Dakota Codified Law.

Whereas, voter signature verification for absentee ballots is a recognized election security concern. Allowing an unmonitored, private third-party corporation to electronically verify signatures and link them to batch-scanned documents poses a significant risk. Absentee balloting is already vulnerable to fraud, and automating signature verification removes human oversight, which should rightfully belong to the people of South Dakota.

Whereas, TotalVote Election Night Reporting Software performs the functions as listed by HAVA requiring EAC certification. TotalVote is not EAC certified software, has no independent oversight, testing, or required standards.

Whereas, KNOWiNK was awarded a \$4.5 million contract to provide a new voter registration and election night reporting system without a public bidding process, and the contract includes only a limited guarantee.

Whereas, KNOWiNK has failed third party reviews in Oregon and Pennsylvania.

Whereas, Given KNOWiNK's failure to deliver a timely, high-quality product that meets South Dakota's security requirements, it would be unwise for the state to forgo third-party oversight of the new SDVOTES system.

Whereas, Deputy Secretary of State Tom Deadrick testified before the Legislative Rules Review Committee that neither the Secretary of State's Office nor the Board of Elections has personnel with adequate information technology or cybersecurity expertise to address these concerns.

Whereas, it is critical to promptly establish independent oversight for the implementation of the KNOWiNK SDVOTES system to ensure IT quality assurance, quality control, risk assessment, management, stability, testing, deployment, and go-live processes meet state and federal cybersecurity standards, as well as federal requirements for national critical infrastructure.

Whereas, Given the well-documented nationwide failures and data privacy issues with ERIC, along with supporting research, there are serious concerns about allowing KNOWiNK to connect South Dakota's statewide voter database to ERIC.

Whereas, states across the country have withdrawn from ERIC because of the failure to perform and the proven connections to George Soros.

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Whereas, ERIC and AAMVA are private corporations with which the South Dakota Secretary of State has no legal authority to share our PII.

Whereas, the South Dakota Secretary of State's Office publicly stated they had no intent of contracting with ERIC.

Whereas, the specifications in this contract state: "The System shall include" an external interface with AAMVA and ERIC.

Whereas, To protect the security and integrity of the statewide master voter file and the personal information it contains, action is needed to ensure the KNOWiNK system cannot connect to ERIC or AAMVA without explicit written approval from the South Dakota legislature, via codified state law.

Whereas, the apparent intent to interface with ERIC infers willful decisions and actions taken in bad faith by the South Dakota Secretary of State.

Whereas, to safeguard the security and integrity of the statewide master voter file and the election night reporting system, action is needed to ensure the KNOWiNK system cannot connect to electronic ballot counting tabulators or on-demand ballot printers, protecting the interests of South Dakota citizens.

Whereas, given the serious concerns regarding KNOWiNK outlined above, I urge you to establish legislative oversight of the contract process, ensure transparent documentation, and maintain accountability to the public. This is critical to immediately protect South Dakota's statewide voter file and election night reporting system from risks posed by bad actors, third-party vendors, and data aggregators, particularly George Soros's ERIC.

The apparent intent to interface the TotalVote system with ERIC suggests actions taken in bad faith by the Secretary of State. I implore you to act swiftly to safeguard South Dakota's electoral integrity.

Sincerely,

Jessica Pollema  
President of the Board, South Dakota Canvassing Group  
State Educator for Cause of America

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SOURCES :

<https://open.sd.gov/contractsDocShow.aspx?DocID=24-3100-005+++++>

<https://open.sd.gov/contracts/31/24-3100-005.pdf>

<https://x.com/realalexjones/status/1852012579838685249>

[https://rumble.com/v5lb7yf-election-integrity-investigation-discovers-how-the-democrats-have-hijacked-.html?e9s=src\\_v1\\_upp](https://rumble.com/v5lb7yf-election-integrity-investigation-discovers-how-the-democrats-have-hijacked-.html?e9s=src_v1_upp)

<https://www.linkedin.com/company/melissa-data/people/> - most employees live in Brazil

<https://thefederalist.com/2024/09/23/trump-hating-colorado-secretary-of-state-loses-another-election-integrity-battle/>

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**INFORMATION PROCESSING SYSTEM,  
SERVICES AND LICENSE CONTRACT FOR**

**VOTER REGISTRATION SYSTEM**

Between

**THE STATE OF SOUTH DAKOTA**

Acting by its

**SECRETARY OF STATE**

And

**KNOWiNK, LLC**

## Introduction

This contract (the "Contract") is made by and between, KNOWiNK, LLC (the "Contractor") and the State of South Dakota, acting by its Secretary of State ("SOS").

The exhibits listed below are attached to this Agreement and by this reference incorporated herein as if set forth in full. If there is a conflict among the documents comprising this Agreement, then the conflict shall be resolved by utilizing the following order of precedence:

### EXHIBITS

1. The terms of this Agreement as may be amended.
2. Vendor Hosted IT Contract Terms
3. Exhibit A – Service Level Agreement (SLA)
4. Exhibit B – South Dakota TotalVote Payment Schedule
5. Exhibit C – South Dakota SOW Exhibit C

The Contractor and the State agree as follows:

## 1. Definitions

The following definitions apply in this Contract, except to the extent modified in Exhibit A, in which case Exhibit A controls.

### a. Acceptance

Determination made by the SOS upon successful User Acceptance Test that the Deliverable has satisfied the Acceptance Criteria itemized in the Statement of Work (SOW), performs to the Specifications, and fulfills the business and technical requirements of the Contract.

### b. Acceptance Criteria

SOS requirements for Deliverable Acceptance which may include Iterations, Sprint goals, measurements of work in progress and other agile development criteria.

### c. Acceptance Date

The date the SOS accepts a Deliverable or System in accordance with this Contract.

### d. Administrator

A designated SOS representative who is responsible for managing the SOS's User access to the Hosting Environment. The Administrator shall be responsible for implementing a role-based security policy process for access to the Hosting Environment.

### e. Alteration

The modification, changing, refashioning, remodeling, remaking, revising or reworking of any part of the System, any Deliverable or any associated process.

### f. Business Day

A day of the week recognized by the SOS as a workday, exclusive of Saturdays, Sundays and any State or federal holiday.

#### **g. Claims**

All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending, or threatened, whether mature, un-matured, contingent, known or unknown, at law or in equity in any forum.

#### **h. Client Agency**

Any department, commission, board, bureau, agency, institution, public authority, office, council, association, instrumentality or political subdivision of the State of South Dakota and non-profit organization organized in this State who is authorized and chooses to make purchases under, and pursuant to the terms of this Contract.

#### **i. Client Agency Data**

Any data or information of the SOS that Contractor receives or creates by any means and in any form in connection with this Contract, Deliverables or Performance, including data and information with respect to any one or more of the following: databases, systems, operations, facilities, and regulatory compliance.

#### **j. Confidential Information**

Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number and residential address, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that SOS classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

#### **k. Confidential Information Breach**

Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the SOS, the Contractor, or State.

#### **l. Contractor IP**

Contractor's materials and other intellectual property (1) in existence prior to this Contract, (2) created, developed or acquired during the Term including, but not limited to, any such development of software and the System exclusively for the State, or (3) identified as Contractor IP in the applicable SOW; or (4) otherwise developed or acquired independent of this Contract and employed by the Contractor in connection with the Deliverables, including, without limitation, Contractor source code utilized in developing the Licensed Software, Deliverables and

Improvements.

**m. Contractor Parties**

Contractor's members, principals, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity or with whom Contractor contracts to Perform under this Contract in any capacity.

**n. Corrective Action Plan, or CAP**

A detailed written plan produced by Contractor at the request of the SOS to correct or resolve a Breach identified by the SOS in accordance with the Breach section of this Contract.

**o. Deliverable**

Each (1) Good, Service, Maintenance Services, Improvement, Material, Documentation, System, process or information of any type, whether stand-alone or intended as part of the integration of the System with existing hardware or software of the State, and whether or not used for administrative, maintenance, consulting, training, data warehousing, operations, support, hosting, or fulfillment of Performance; and (2) warranty of a Deliverable(s) that is listed in the Exhibit B or provided by Contractor as an element of Contractor's overall approach and solution to the requirements of this Contract. Any one of them or a combination of any of them may be developed or produced by Contractor or by a third party as a supplier or subcontractor to Contractor.

**p. Deliverables Implementation Schedule**

A schedule for Performance and delivery, including phases, the Go-Live Date, dates of completion, and the procedures for Acceptance by the SOS, as applicable or appropriate, for specific Deliverables to be provided pursuant to this Contract, or Statement of Work, as applicable, subject to extension by the SOS in accordance with this Contract or Statement of Work, as applicable, and subject to change upon completion of the gathering of detail requirements.

**q. Documentation**

All Specifications; all technical, systems and user reference manuals; all System documentation related to each component of the System, Deliverables and processes; and any Improvements to any of them.

**r. Electronically Stored Information (ESI)**

Data, including Confidential Information that is collected, processed and hosted within the Hosting Environment which data may include the SOS's administrative, civil and criminal matters and investigations, including any and all related written and electronic communications, voicemails, audio and video files. Without limiting the foregoing, ESI shall include Freedom of Information requests and responses.

**s. Force Majeure Event**

Strikes, lockouts, riot, sabotage, rebellion, insurrection, acts of war, acts of terrorism, failure of or inadequate permanent power, fire, flood, earthquake, epidemics, natural disasters, and acts of God.

**t. Goods**

All things which are movable, including, but not limited to, supplies, materials, equipment, hardware, software, specially manufactured things, a component incorporated into another thing and things that are attached to real property and that may be severed from the real property without material harm to the things.

**u. Goods or Services**

Goods, Services, or both, as specified in the Solicitation and set forth in Exhibit A.

**v. Go-Live Date**

The date of enterprise-wide installation of the System, upon and after which the System must Perform enterprise-wide in accordance with the Documentation, as the date may be extended from time to time in accordance with this Contract.

**w. Hosting Environment**

Collectively the platform, environment, and conditions on, in, or under which the Licensed Software is intended to be installed and operate, as set forth in this Contract and the Contract Exhibits, including such structural, functional and other features, conditions and components as hardware, operating software, System architecture and configuration.

**x. Hosted Services**

The provision, management, operation, support, warranty and maintenance of the Licensed Software within the Contractor's setting or location including Contractor's services identified in Exhibit A.

**y. Improvement**

Any Contractor changes, patches, corrections, repairs, replacements, additions, modifications, enhancements, updates, releases, revisions, error fixes, bug fixes or any new versions of Deliverables, or any combination of the foregoing, that are to be or may be provided as a Deliverable from time to time. An Improvement may serve any purpose. Improvements do not include upgrades to software for which Contractor charges its customers, or upgrades by a Licensor that is charging Contractor for such upgrade.

**z. Iteration**

A set of instructions or directions repeated in sequence a specified number of times or until a condition is met. The outcome of each iteration is then the starting point of the next iteration.

**aa. Licensed Software**

Computer program(s) provided by Contractor in connection with the Deliverables, for which SOS acquires a limited perpetual (during the term), personal, non-exclusive, non-transferable license to access and use, but does not acquire the Licensor's title to, such computer program(s).

**bb. Licensor**

The party who licenses all or any part of a Deliverable either to the State, in the case of the Contractor, or to the Contractor, in the case of a third-party provider.



**cc. Maintenance Services**

The software and process support services described in this Contract, or a Statement of Work, as applicable.

**dd. Material**

A level of significance that would have affected any decision of a reasonable person in the SOS's position regarding whether to agree to a particular provision or would affect any decision of a reasonable person in the SOS's position whether to enter into this Contract.

**ee. Materials**

Collectively, software programs, literary works, other works of authorship, documented specifications, designs, analyses, processes, methodologies, concepts, inventions, know-how, programs, program listings, program tools, Documentation, reports, drawings, data bases, spreadsheets, machine readable text, models and work product, whether tangible or intangible.

**ff. Performance**

All acts and things of the Contractor and Contractor Parties, severally and collectively, that are necessary or appropriate to fulfill or accomplish this Contract fully, including the Deliverables and all other Contract obligations. The word "Perform" includes all parts of speech.

**gg. Performance Criteria**

Operation of the Deliverables in compliance with all Specifications and Documentation and complying with the requirements of this Contract and a Statement of Work, as applicable.

**hh. Price Schedule**

Exhibit B to this Contract which when read in conjunction with Exhibit A and Exhibit C, lists the Deliverables available under this Contract and establishes the components, unit pricing and price schedules for each Deliverable.

**ii. Purchase Order**

A written or electronic document that the SOS issues for one or more Deliverables in accordance with the terms of this Contract.

**jj. Records**

All working papers and such other information and materials furnished or prepared by the Contractor in Performing including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

**kk. Replacement Deliverable**

Any new Deliverable that replaces a previously accepted Deliverable.

**ll. Services**

The labor or work, necessary or appropriate for the Contractor to Perform.

**mm. Service Level Agreement (SLA)**

The description set forth in Exhibit A of the service level and maintenance and support agreement or those performance standards, response times and associated obligation between the parties, that may be set forth in this Contract or in a Statement of Work as applicable.

**nn. Solicitation**

A State request, in whatever form issued, inviting bids, proposals or quotes for Deliverables, typified by, but not limited to, an invitation to bid, request for proposal, requests for information or request for quotes. The Solicitation and this Contract shall be governed by the statutes, regulations and procedures of SOS. The Solicitation is incorporated into and made a part of this Contract as if it had been fully set forth in it if, but only if, the Solicitation is in the form of an invitation to bid, request for information or request for quotes. A Solicitation in the form of a request for proposal is not incorporated into this Contract in its entirety, but, rather, it is incorporated into this Contract only to the extent specifically stated in Exhibit A.

**oo. Solicitation Response**

A submittal in response to a Solicitation.

**pp. Source Code**

The Licensed Software, including all corresponding programmer's comments, data files and structures, headers, files, macros, annotations, and documentation.

**qq. Specifications**

Contractor's published technical and non-technical detailed descriptions of each Deliverable's capabilities, or intended use or both, as more fully set forth in this Contract or a Statement of Work, as applicable.

**rr. Sprint**

A set period of time during which a certain project task or activity is completed and then reviewed.

**ss. State**

The State of South Dakota, including SOS, and any office, department, board, council, commission, institution or other agency of the State.

**tt. Statement of Work ("SOW")**

Statement issued in connection with a Purchase Order for a Deliverable available under this Contract which sets forth all work and payment requirements for Contractor's Performance in connection with said Purchase Order.

**uu. System**

Contractor furnished or otherwise supplied Deliverables that collectively and in an integrated fashion fulfill the Performance Criteria and the business and technical requirements of this Contract or SOW, as applicable.

**vv. Term**

The original term of this Contract plus any extensions exercised under this Contract.

**ww. Termination**

An end to this Contract prior to the end of its Term.

**xx. Title**

All ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Deliverable.

**yy. Upgrade**

A change to the primary version number of the Licensed Software, generally providing additional features or functionality.

**zz. Update**

A change to the Licensed Software to correct bugs or defects, patches, or changes to enable the Licensed Software to operate on new or upgraded operating platforms.

**aaa. User**

A SOS representative that may access the System. User access will be subject to role-based security implemented by the SOS's Administrator.

**bbb. User Acceptance Test**

Those procedures that permit the State to authenticate and test the functionality of a Deliverable with real world scenarios to determine if the Deliverable performs in accordance with this Contract.

**ccc. Warranty Period**

The period commencing upon the Acceptance Date for the System for the longer of 6 months or a full election cycle, which includes a primary and general election.

**2. Term of Contract; Contract Extension**

This Contract will be in effect from the date approved by the SD SOS (June 3, 2024) through the completion of the Warranty Period. The parties, by mutual agreement, may extend this Contract for additional terms beyond the Term, prior to Termination or expiration, one or more times for a combined total period not to exceed the complete length of the original Term, but only in accordance with the Section in this Contract concerning Contract amendments.

**3. Description of Deliverables**

The Contractor shall Perform as set forth in Exhibit A, which sets forth and describes the Deliverables and the SLA that are to be provided or made available to the State under this Contract or in a

Statement of Work, as applicable, and the specific requirements and terms applicable to those Deliverables.

#### **4. Deliverables**

Contractor shall sell, transfer, convey and license, as appropriate, to the State each Deliverable and Perform in accordance with this Contract and the Statement of Work, as applicable. The Deliverables are set forth in accordance with Exhibit A and shall be acquired (via license, where applicable,) through duly issued Purchase Orders.

- a. Any Purchase Order accepted by Contractor is subject to the terms of this Contract and shall remain in effect until SOS accepts full Performance of all Deliverables contained in the applicable Purchase Order, unless terminated sooner under the terms of this Contract. Neither party shall be bound by any additional substantive terms that may appear in any Purchase Order. If a Purchase Order includes any such terms, then they shall be void ab initio and have no effect.
- b. Notwithstanding any other provision of this Contract, Contractor shall not make any material change to the Deliverables that alters the nature or scope of the Deliverables or their intended use without the prior written consent of SOS. SOS shall not give its consent unless the changed Deliverables are of a similar nature and have a similar use as the original Deliverables.
- c. No additions to or reductions in the Deliverables and prices for work completed in the Performance of any Purchase Order shall be permitted unless the SOS issues a change order in accordance with this Contract.

The SOS shall issue a Purchase Order when acquiring any Deliverable or Service available under this Contract and, if appropriate, a Statement of Work mutually acceptable to the SOS and the Contractor.

#### **5. Price Schedule, Payment Terms and Billing and Price Adjustments**

- a. Price Schedule. Price Schedule under this Contract is set forth in Exhibit B.
- b. Payment Terms and Billing:
  1. Payment shall be made only after Acceptance of the System or Deliverables, as applicable, and after SOS receives a properly completed invoice. Unless otherwise specified in this Contract, payment shall be due within thirty (30) days after Acceptance. The invoice shall include detailed information for the Accepted Deliverables. Any late payment charges shall be calculated in accordance with the South Dakota General Statutes.
- c. Price Adjustments

Software pricing shall remain firm for the duration of the Contract. Software license and support may increase by up to 5% annually for the duration of this contract.

#### **6. Payments and Credits**

- a. The SOS shall pay for Deliverables only upon Acceptance pursuant to this Contract and a SOW, as applicable, and receipt of a properly documented invoice from the Contractor. At the SOS's request, Contractor shall submit to the SOS such documentation as the SOS deems it to be necessary or appropriate to justify and support the Performance detailed in any invoice, prior to the SOS approving the invoice for payment.
- b. The SOS shall pay Contractor upon Acceptance within net thirty (30) days after acceptance of the Goods or Services and receipt of Contractor's properly documented invoice and

supporting detail, whichever is the later date.

- c. Contractor shall furnish separate invoices for each Purchase Order and shall itemize each charge included in each invoice as a separate line item.

## **7. Cost Modifications**

The parties may agree to a reduction in the cost of this Contract (with a corresponding reduction in work to be performed and or Deliverables) at any time during which this Contract is in effect. Without intending to impose a limitation on the nature of the reduction, the reduction may be hourly, staffing or unit costs, the total cost of this Contract or the reduction may take such other form as the State deems to be necessary or appropriate.

## **8. Order and Delivery**

Subject to completion of the detail requirements gathering process, the Contractor shall Perform in accordance with Exhibit A and at the prices set forth in Exhibit B.

Subject to the Sections in this Contract concerning Force Majeure, Termination and Open Market Purchases, this Contract shall bind the SOS to order the Deliverables from the Contractor, and to pay for the accepted Deliverables in accordance with Exhibit B.

## **9. Purchase Orders**

This Contract itself is not an authorization for the Contractor to begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued Purchase Order against this Contract for Performance.

The SOS shall issue a Purchase Order against this Contract directly to the Contractor and to no other party.

All Purchase Orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and SOS requirements, particularly the SOS's requirements concerning procurement. Purchase Orders issued in compliance with such requirements shall be deemed to be duly issued.

A Contractor Performing without a duly issued Purchase Order in accordance with this Section does so at the Contractor's own risk.

The SOS may, in its sole discretion, deliver to the Contractor any or all duly issued Purchase Orders via electronic means only, such that the SOS shall not have any additional obligation to deliver to the Contractor a "hard copy" of the Purchase Order or a copy bearing any hand-written signature or other "original" marking.

## **10. Time of the Essence**

Time is of the essence with respect to all provisions of this Contract that specify a time for Performance by either Party; provided, however, that this provision shall not be construed to limit or deprive either party of the benefits of any grace or use period allowed in this Contract.

## **11. Waiver**

No waiver of any Breach of this Contract shall be interpreted or deemed to be a waiver of any other or subsequent Breach. All remedies afforded in this Contract shall be taken and construed as

cumulative, that is, in addition to every other remedy provided in this Contract or at law or in equity.

A party's failure to insist on strict performance of any provision of this Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies, or Breach.

## **12. Deliverable Evaluation, Acceptance and Ownership**

Any Deliverable furnished by Contractor under the terms of this Contract will be subject to User Acceptance Testing. User Acceptance Testing (UAT) for each Deliverable begins as of the date the SOS notifies the Contractor in writing that the Deliverable provided for UAT meets Acceptance Criteria and has been successfully delivered and/or installed in the development and testing computer environments. The following procedures will apply during UAT:

- i. The SOS shall provide Contractor with (a) written notice of Acceptance of the Deliverable or (b) a written statement which identifies in reasonable detail, with references to the applicable requirements, the deficiencies preventing Acceptance.
  - ii. Subject to State Responsibilities herein, Contractor shall complete documented corrective actions to make the Deliverable conform in all material respects to the applicable specifications within a mutually agreed upon time-period by the parties in writing. The SOS shall review the corrected Deliverable and notify Contractor in writing of acceptance or rejection in accordance with the foregoing provisions of this Section.
- a. The Acceptance Date for a Deliverable shall be the date of written notice of Acceptance of the Deliverable from SOS to Contractor.
- b. After Acceptance by the SOS of each of the Deliverables required under Exhibit A or a SOW, as applicable, the SOS shall, subject to the State Responsibilities and the SOW perform UAT on the System for Acceptance prior to implementing the System in the SOS's production environment. If UAT for the System is successfully completed, the SOS shall in writing notify the Contractor of the SOS's Acceptance of the System, and the date of such notice will be the Acceptance Date for the System.
- c. If requested by Contractor, SOS shall complete Contractor's acceptance certificate, in a form reasonably acceptable to SOS, so long as such certificate does not amend, alter or modify in any way the terms of this Contract.
- d. The State shall own all Deliverables provided by Contractor under this Contract, subject to subparagraph g) below, and shall have the right to use, alter, modify for non-commercial purposes any Deliverable acquired under this Contract including any and all configuration, programming, inventions or improvements to computer programs or base software or both, specifically developed by the Contractor and paid for by the SOS pursuant to this Contract.
- e. Notwithstanding anything contained herein, Contractor shall own all enhancements to the Contractor IP, including any such inventions or improvements to Contractor IP for State's own purposes. Nothing in this provision shall be construed as transferring to the State any ownership interest or rights to Contractor IP.
- f. Contractor shall have no restriction in utilizing, marketing to sell and or licensing the Contractor IP to other third parties.
- g. To the extent Contractor, or its successor in interest, ceases to exist, Contractor shall assign to SOS its rights to the software designed specifically for SOS.
- h. If the relationship between Contractor and SOS terminates, the State shall maintain a perpetual limited license to use and maintain the System in its latest version as delivered to the State; however, Contractor shall have no obligation to service and or maintain said System in any manner. For avoidance of any doubt, the State shall only have the right to

modify the source code of the System, upon the occurrence of said termination with no existing contractual relationship with the Contractor. State acknowledges that it shall not use the System for any commercial purposes.

- i. The State shall have a nonexclusive, nontransferable, limited perpetual license (during the term) to use (without the right to sublicense) Contractor IP in connection with the State's business needs and operations if Contractor IP is provided to the State by Contractor in order to Perform any Services or provide any Deliverables required under this Contract.
- j. If any Deliverable becomes the actual or prospective subject of any patent, copyright, license or proprietary rights claim or proceeding, Contractor shall do one or more of the following at the option of Contractor:
  - i. Modify the Deliverable or substitute another equally suitable Deliverable (provided that the function of the modified or substitute Deliverable equals or exceeds that of the original Deliverable);
  - ii. Obtain for the SOS the right to continued use of the Deliverable; or
  - iii. If neither 1 nor 2 above is commercially reasonable, SOS shall discontinue use of the Deliverable subject to such claim or proceeding and the Contractor shall refund the SOS the fees paid for the Deliverable.

Each party reserves for itself all proprietary rights not expressly granted to the other. Contractor shall not be limited in developing, using or marketing services or products which are similar to the Deliverables or Services provided under this Contract.

### **13. States License Rights during the term of the Contract:**

Subject to the terms and conditions of this Contract and for so long as Contract is in effect, Contractor grants to State a personal, nonexclusive, nontransferable, and limited license to use the Contractor IP for the System. With this right to use, Contractor will provide State, and State will be permitted to use, only the run-time executable code and associated support files of the software for State's internal requirements as part of the System. Only State and its authorized employees, agents or contractors may use or access the System.

State may not modify or copy the System. State shall not cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any software or attempt to derive the source code thereof, subject only to the limited event set forth in Section 11 above.

The use, duplication, reproduction, release, modification, disclosure, or transfer of the System or related software is restricted in accordance with the terms and conditions contained in this Contract. All other use is prohibited. By using or receiving the System, the user agrees to the terms and conditions contained in this Contract including the terms and conditions contained in this paragraph.

The Contractor represents that the design of the System and the software, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, firmware, information, ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, equipment architecture, improvements, code, source code, object code, application data files, updates, trade secrets and material are the property of Contractor and its licensors.

These provisions shall not modify the States rights under Section 12h , which shall govern upon termination of State's relationship with Contractor.



## **14. Data: Access and Ownership**

### **Access to Contract and State Data**

The Contractor shall provide to the SOS access to any data concerning the Contract and the SOS that are in the possession or control of the Contractor upon demand and shall provide the data to the SOS in a format prescribed by the SOS and the State Auditors of Public Accounts at no additional cost.

### **Ownership of Data**

All ownership, title, licenses, proprietary rights and interest (including, but not limited to, perpetual use) (for purposes of this Ownership of Data Section, collectively, "Title") of and to any and all data, ("Data") that is uploaded, collected, stored, held, hosted, located or utilized by the SOS or Contractor and Contractor Parties directly or indirectly in connection with this Contract at all times is and will always remain vested in the State. At no time will Contractor have Title to such Data, wherever located.

At no cost to the State, the Contractor and Contractor Parties shall, no later than thirty (30) days after (i) receiving a written request from the SOS or (ii) Termination for any reason, deliver and transfer possession to the SOS all of the Data, in a format acceptable to the State.

At no cost to the State, the Contractor and Contractor Parties shall, no later than thirty (30) days, unless otherwise mutually agreed to in writing by the Parties, after (i) receiving a written request from the SOS, (ii) receiving final payment from the SOS, or (iii) Termination for any reason, overwrite and securely delete all of the Data, such that the Data will be expunged in a manner to make retrieval of the Data impossible.

The Contractor's failure to deliver and transfer possession of the Data to a duly authorized agent of the SOS shall constitute, without more, a de facto breach of this Contract. Consequently, the Contractor shall indemnify and hold harmless the SOS and the State, as appropriate, for any and all damages, costs and expenses associated directly or indirectly with such failure. The damages, costs and expenses shall include, but not be limited to, those resulting from any corresponding contracting for credit or identity protection services, or both, and from any subsequent non-State use of any Data. If Contractor Parties will Perform for any purpose under this paragraph, the Contractor represents and warrants that it shall cause each of the Contractor Parties to so Perform and that each has vested in the Contractor plenary authority to cause the Contractor Parties to Perform. For purposes of this Ownership of Data Section, "Perform" shall include, but not be limited to, the obligations relating to the sale, transfer of Title, removal, and transfer of possession of the Data and indemnifying and holding harmless the SOS and the State. The Contractor on its own behalf and on behalf of the Contractor Parties shall also provide, no later than 30 days after receiving a request by the SOS, such information as the SOS may identify to ensure, in the SOS's sole discretion, compliance with the provisions of this Ownership of Data Section. This Ownership of Data Section survives Termination.

## **15. Change Order Within Scope**

The SOS may, at any time, with thirty (30) calendar days' advance written notice to Contractor, request changes to the Deliverables that come within the scope of the Contract or the SOW, as applicable subject to the payment of additional fees. Contractor shall not deny or delay approving the request. The request may include, but is not limited to, modifications or other changes required to correct System deficiencies, and changes required by new or amended State or federal laws and regulations or both that are included in the Deliverables in Exhibit A. Contractor shall make any changes to the Deliverables that are required due to Deliverable deficiencies or failure in accordance with the requirements of this Contract, without charge. Contractor shall at its sole cost and expense conduct any investigation necessary to determine the source of the problem requiring the change. No additions or reductions in the Deliverables and prices for work completed in the Performance of

any Purchase Order shall be permitted unless the SOS issues a change order in accordance with this Section.

## 16. Maintenance and Support

- a. Contractor represents and warrants that after Acceptance of the System by the SOS and throughout the duration of the Warranty Period, Contractor shall provide the following maintenance and support services at additional cost:
  - i. Assistance in accordance with the requirements of Exhibit A; or a SOW as applicable;
  - ii. Improvements related to any and all Deliverables; and
  - iii. Improvements to any and all Deliverables to cause each Deliverable to operate under new versions or releases of the operating system(s), database system(s), application servers or report servers that comprise the SOS's computer operating environment.
- b. Upon expiration of the Warranty Period, maintenance and support and on-going services shall be provided by the Contractor on an annual basis if requested by the SOS and identified in Exhibit B, Price Schedule. Contractor shall invoice the SOS in accordance with Exhibit B, Price Schedule.
- c. Provided the SOS is current on its maintenance and support and on-going services payments, the Contractor shall provide Services itemized in a SOW in addition to the following:
  - i. Assistance in accordance with the requirements of Exhibit A; or a SOW as applicable;
  - ii. Improvements to any and all Deliverables to cause each to operate under new versions or releases of the operating system(s), database system(s), application servers or report servers that comprise the SOS's computer operating environment at no additional cost.
- d. Contractor shall provide a complete list of any platform requirements and specifications to provide technical support services.
- e. The SOS shall provide Contractor full and free access to each Deliverable for the limited purpose of providing Services required under this Contract, subject to the SOS's and the applicable Site's access policies.
- f. Upon conclusion of the Term, provided State is in compliance with the Contract, Contractor and State intend to enter into a Software License and Maintenance Agreement which will set forth the parties continuing obligations in order for the State to maintain a limited license (as further described within this Contract) to use the System.

## 17. Project Personnel

- a. The parties shall complete, date and sign a project team member list identifying Key Contractor Personnel assigned to the project and attach the list to the applicable Purchase Order or SOW, or both. Contractor shall not remove any Key Contractor Personnel except in accordance with the following:
  - i. If one or more of the Key Contractor Personnel, for any reason, becomes or is expected to become unavailable for work for a continuous period exceeding 10 Business Days, or is expected to devote substantially less effort to the work than anticipated at the time that they were approved as Key Contractor Personnel, then the Contractor shall, subject to the concurrence of the Project Administrator, replace that Key Contractor Personnel with

- personnel of at least equal ability and qualifications no later than 5 Business Days after being notified or becoming aware of the Key Contractor Personnel's actual or expected unavailability or the date agreed upon by the Project Administrator, whichever is earlier.
- ii. For any reason, the SOS may demand, in writing, that the Contractor either remove one or more Key Contractor Personnel, or, remove the Key Contractor Personnel and provide a substitute. The request may, but need not, provide a detailed explanation of the circumstances for the proposed removal. The Contractor shall deliver the resumes of the proposed substitute Key Contractor Personnel to the Project Administrator for consideration within 5 Business Days of receiving the substitution request. The Project Administrator shall notify the Contractor of approval or disapproval in writing within 5 Business Days of receiving the resumes. Once the SOS approves, the Contractor shall make the change in the Key Contractor Personnel within 5 Business Days of the approval.
  - iii. Time is of the essence in the removal process of Key Contractor Personnel. Accordingly, the Contractor shall do and perform all acts and things that are necessary or appropriate in order to minimize or eliminate disruptions to the Performance.
- b. If the project team member list will change, then the parties shall date and sign a revised project team member list to reflect any changes to the Key Contractor Personnel. The parties will do so no later than ten (10) Business Days after the effective date of the change and the parties will indicate on the revised list that such revised list supersedes the list being revised. The revised list will be deemed to be attached to the Purchase Order or SOW, or both, as of the date that the last party signs it, without any further act necessary of either party.
  - c. If any Key Project Personnel are found to be residing in, teleworking from, contracting with, or have any form of citizenship, membership, or employment in a prohibited entity as defined in SDCL 5-18A-1(19A), they will be removed from the project and the SOS office notified of the discovery.

## **18. Working and Labor Synergies**

The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties, their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under this Contract.

## **19. Background Checks**

The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

## **20. Other Warranties**

Contractor warrants that:

- a. Each Deliverable installed by Contractor, an authorized agent of Contractor or installed by SOS in accordance with Contractor's instructions, will function according to the Specifications and Performance Criteria on the Acceptance Date for such Deliverable;
- b. Contractor shall provide each Deliverable within the time frames established under this Contract or a SOW, as applicable.

- c. Subject to the terms of the license agreement which the parties herein intend to execute after the successful completion of this Contract, Contractor does not exclude or modify the express warranties of merchantability and fitness for a particular purpose concerning the Deliverables.

## **21. System Warranties**

- a. Contractor represents and warrants that the System shall conform to this Contract, the Specifications, Performance Criteria, Documentation and as applicable, the SOW and that it shall be free from defects in material and workmanship upon the Acceptance Date of the System and through the Warranty Period, unless the Contract is Terminated earlier.
- b. During the Warranty Period, Contractor shall, at no charge, make Improvements to the Deliverables as necessary to maintain ongoing System reliability in accordance with the Specifications, Performance Criteria, Documentation, and as applicable, the SOW.

## **22. Contractor Guaranties and Implied Warranties**

- a. Contractor shall:
  - i. Perform fully under this Contract;
  - ii. Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the SOS's option, replace them;
  - iii. Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the Site, Goods, the Contractor's work, or that of Contractor Parties;
  - iv. With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices.
  - v. Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and

## **23. Breach**

- a. If one party (the "Non-breaching Party") determines that the other (the "Breaching Party") has failed to comply with any of the Breaching Party's corresponding Contract obligations (a "Breach"), then the Non-Breaching Party shall provide written notice of such failure specifying the breach in detail to the Breaching Party in accordance with this Contract. The Non-breaching Party must provide the Breaching Party an opportunity to remedy the Breach within thirty (30) calendar days from the date of the notice. However, if Contractor is the Breaching Party, then the SOS may set forth any remedy period in the notice, so long as that period is otherwise consistent with the provisions of this Contract. The period set forth in the notice is known as the "Remedy Period." The Non- Breaching Party shall extend the Remedy Period if it is satisfied that the Breaching Party is making a good faith effort to remedy the Breach, but the nature of the Breach is such that it cannot be remedied within the Remedy Period.
- b. If the SOS determines that the Contractor has committed a Breach, then the SOS may require the Contractor to, and Contractor shall, prepare and submit to the SOS a CAP in connection with the identified Breach. Contractor shall provide in the CAP a detailed explanation of the deficiencies and other factors that contributed to the cited Breach, Contractor's assessment, or diagnosis of Breach (identifying the deficiencies and factors in reasonable detail, with references to the applicable Specifications), and a specific proposal to remedy or resolve the Breach. Contractor shall submit the CAP to the SOS within fifteen (15) Business Days following the SOS's request for the CAP for the SOS's review and approval. Within fifteen (15) Business Days of receiving the CAP, the SOS must either approve the CAP, or reject it by delivering to

Contractor a written explanation for the rejection. If the SOS fails to accept or reject the CAP within the fifteen (15) Business Days, then the CAP is deemed to have been approved, without more. The SOS's explanation for the rejection must include suggestions for changes to the CAP and the Contractor shall address the suggestions in such a manner to make it likely that the SOS will approve the CAP when the Contractor re-submits it to the SOS for review and approval. If the SOS rejects a CAP, then the parties will repeat this submittal and review process until the earliest of one of the following: (1) the SOS accepts a CAP, (2) the SOS waives its right to receive a CAP, (3) Contractor remedies the Breach, (4) the SOS waives the Breach, or (5) the SOS makes a determination to Terminate this Contract. After the first rejection, each of the parties will have (5) Business Days, instead of (10) Business Days, within which to review the CAP. Each subsequent revision and review will be for up to (3) Business Days each instead of (10) or (5) Business Days.

- c. If the SOS determines that the Contractor has Breached this Contract, then the SOS may only withhold payment in the amounts which specifically relate to the specified breach pending resolution of the Performance issue, provided that the SOS notifies Contractor in writing prior to the date that the payment would have been due.
- d. For purposes of the SOS determining whether there is a Breach under this Contract, or whether any statement in the Representations and Warranties Section of this Contract is false or misleading, the parties deem the Acts of the Contractor Parties to be the Acts of the Contractor itself, as if the Contractor itself was the subject of the Acts which the SOS considers in determining if there was a Breach, or an instance of false or misleading statements, or both.
- e. Should Contractor determine that SOS has breached this contract, and thereafter SOS fails to cure the Breach in accordance with subsection "a" of this section, Contractor will be entitled to assert its claim against SOS for up to the total value of the contract less amounts paid..
- f. The written notice of the Breach may include an effective Termination date. If the Contractor is not making progress toward remedying the identified Breach, unless otherwise modified by the Non-breaching Party in writing before such date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Termination date, then the Non-breaching Party shall provide the Breaching Party no less than twenty-four (24) hours' prior written notice before terminating this Contract.
- g. Notwithstanding any provisions in this Contract, SOS may terminate this Contract with no Remedy Period for Contractor's Breach or violation of any of the representations or warranties in this Contract that cannot be cured and revoke any consent to assignments given as if the assignments had never been requested or consented to, without liability to Contractor or Contractor Parties or any third party. Termination under this Breach section is subject to the provisions of the Termination Section of this Contract. In case of such revocation or Termination, the SOS will have no liability or responsibility to Contractor or Contractor Parties or any third party, or any of them, resulting from the Termination or revocation.
- h. None of the State's rights under this Breach Section diminishes the State's rights under the Termination Section of this Contract.
- i. The waiver by either party of a breach or violation of any provision of this Contract shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision of this agreement.

## **24. Termination**

- a. Notwithstanding any provisions in this Contract, SOS, through a duly authorized employee, may Terminate this Contract whenever SOS makes a written determination that such Termination is in the best interests of the State. SOS shall notify the Contractor in writing of Termination pursuant to this Section, which notice shall specify the effective date of Termination and the

extent to which the Contractor must complete its Performance under this Contract prior to such date.

- b. Notwithstanding any provisions in this Contract, either party, through a duly authorized employee, may, after making a written determination that the other party has Breached this Contract and has failed to remedy the Breach, Terminate this Contract in accordance with the Breach Section of this Contract.
- c. Notices of Termination must be sent certified in accordance with the Notice Section of this Contract. Upon receiving the Termination notice from SOS, the Contractor shall immediately modify or discontinue all Performance affected in accordance with the terms of the notice, undertake commercially reasonable efforts to mitigate any losses or damages and deliver to SOS (as directed in the notice) all Records. The Records are deemed to be the property of the State and the Contractor shall deliver them to SOS (as directed in the notice) no later than thirty (30) days after the Termination of this Contract or fifteen (15) days after the Contractor receives a written request from SOS for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
- d. Except for any work which SOS directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments. The State shall pay Contractor in full for all services and Deliverables as of the effective date of Termination less any additional costs to the State because of Contractor's breach, subject to Acceptance of the Performance. The SOS shall, within thirty (30) days of the effective date of Termination for any reason, reimburse the Contractor for its Performance rendered and accepted by the SOS in accordance with Exhibit A or a SOW, as applicable, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive, and the SOS will not tender to the Contractor any payments for anticipated or lost profits. Upon request by the SOS, the Contractor shall assign to the SOS, or any replacement contractor which the SOS designates, all subcontracts, Purchase Orders and other commitments, deliver to the SOS all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as SOS (as directed in the notice) may request.
- e. Upon Termination of this Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the Sections which survive Termination. All representations, warranties, agreements, and rights of the parties under this Contract shall survive such Termination to the extent not otherwise limited in this Contract and without each one of them having to be specifically mentioned in this Contract.
- f. Termination of this Contract pursuant to this Section shall not be deemed to be a Breach of contract by SOS.

## **25. Continued Performance**

The Contractor and Contractor Parties shall continue to Perform their obligations under this Contract while any dispute concerning this Contract is being resolved

## **26. Setoff**

The State, in its sole discretion, may setoff and withhold any costs or expenses including, but not limited to, costs or expenses such as overtime, that the State incurs resulting specifically from the Contractor's specified unexcused Breach under this Contract and under any other agreement or

arrangement that the Contractor has with the State. State shall not setoff or withhold unless it provided Contractor with the specified unexcused Breach with an opportunity to cure pursuant to the terms of the Contract.

## **27. Cross-Default**

- a. If the Contractor or Contractor Parties Breach, default or in any way fail to Perform satisfactorily under this Contract, then SOS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default, or failure to perform under any or all other agreements or arrangements ("Other Agreements") that the Contractor or Contractor Parties have with SOS. Accordingly, SOS may then exercise at its sole option any and all of its rights or remedies provided for in this Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of SOS, as if the Contractor or Contractor Parties had suffered a breach, default, or failure to perform under the Other Agreements.
- b. If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under any or all Other Agreements with SOS or the State, then SOS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or this Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of SOS or the State, as if the Contractor or Contractor Parties had suffered a breach, default, or failure to Perform under this Contract.

## **28. Sovereign Immunity**

The parties acknowledge and agree that nothing in this Contract shall be construed as a modification, compromise, or waiver by the State of any rights or defenses of any immunities provided by federal law or the laws of the State of South Dakota to the State or any of its agencies, or officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Contract. To the extent that this Section conflicts with any other Section, this Section shall govern.

## **29. Representations and Warranties**

Contractor represents and warrants to the State for itself and, as applicable, the Contractor Parties that:

- a. each is a duly and validly existing under the laws of each such entity's respective states of organization and authorized to conduct business in the State of South Dakota in the manner contemplated by this Contract. Further, as appropriate, each has taken all necessary action to authorize the execution, delivery and Performance of this Contract and have the power and authority to execute, deliver and perform its obligations under this Contract;
- b. each will comply with all applicable State and Federal laws and municipal ordinances in satisfying its obligations to the State under and pursuant to this Contract.
- c. the execution, delivery and Performance of this Contract will not violate, be in conflict with, result in a Breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- d. each is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity. Contractor further agrees that it will immediately notify the State if during the term of this Agreement Contractor or Contractor Parties become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local

government department or agency;

- e. as applicable, each has not, within the three years preceding the Effective Date of this Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under this Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or Performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records or property, making false statements, or receiving stolen property;
- f. each is not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- g. they have notified SOS in writing whether they have had any contracts with any governmental entity Terminated for cause within the three (3) years preceding the Effective Date;
- h. none has employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure this Contract and it has not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Contract or any assignments made in accordance with the terms of this Contract;
- i. to the best of each entity's knowledge, there are no Claims involving Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract;
- j. each shall disclose, to the best of its knowledge, to the State in writing any Claims involving it that would be required disclosure on Form 8-K of the Securities Exchange Act of 1934 no later than ten (10) calendar days after becoming aware or after it should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the State, the ten (10) calendar days in the Section of this Contract concerning disclosure of Contractor Parties litigation shall run consecutively with the ten (10) days provided for in this representation and warranty;
- k. each entity's participation in the Solicitation process is not a conflict of interest.
- l. the proposal submitted by Contractor in response to the Solicitation was not made in connection or concert with any other person, entity or proposer, including any affiliate (as defined in the Tangible Personal Property Section of this Contract) of the proposer, submitting a proposal for the same Solicitation, and is in all respects fair and without collusion or fraud;
- m. each is able to Perform under this Contract using their own resources or the resources of a party who has not submitted a proposal;
- n. if Contractor does not have plenary authority to make the representations and warranties in this Section, as applicable, on behalf of Contractor Parties, then Contractor shall enter into a written contract with Contractor Parties, in which contract Contractor Parties shall make all of the applicable representations and warranties in this Section;
- o. each has paid all applicable workers' compensation second injury fund assessments concerning all previous work done in South Dakota; they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful, or serious violations;
- p. none owes unemployment compensation contributions;
- q. none is delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid



all outstanding road taxes;

- r. all of each entity's vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse; each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms of this Contract and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from SOS, such information as SOS may require to evidence, in their sole determination, compliance with this Section;
- s. each either owns or has the authority to use all the Deliverables;
- t. to the best knowledge of Contractor, the Deliverables do not infringe or misappropriate any patent, copyright, trade secret or other intellectual property right of a third party;
- u. to the best knowledge of Contractor, the SOS's use of any Deliverables in a manner consistent with this Contract shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- v. if any party shall procure any Deliverables, they shall sublicense such Deliverables and that the SOS shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Deliverables; and
- w. each shall assign or otherwise transfer to the SOS or afford the SOS the full benefits of any manufacturer's warranty for the Deliverables, to the extent that such warranties are assignable or otherwise transferable to the SOS.

### **30. Further Assurances**

The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in this Contract, in order to give full effect to this Contract and to carry out the intent of this Contract.

### **31. Advertising**

The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without SOS' prior written approval.

### **32. Contractor Changes**

The Contractor shall notify SOS in writing no later than ten (10) days from the effective date of any change in:

- a. its certificate of incorporation or other organizational document;
- b. more than a controlling interest in the ownership of the Contractor; or
- c. the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. SOS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to SOS' satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of this Contract. The Contractor shall deliver such documents to SOS in accordance with the terms of SOS' written request. SOS may also require, and the Contractor shall deliver, a financial statement showing that

solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under this Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under this Contract until Performance is fully completed.

### **33. Contractor Responsibility**

- a. The Contractor shall be responsible for the entire Performance under this Contract regardless of whether the Contractor itself Performs. The Contractor shall be the sole point of contact concerning the management of this Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of this Contract.
- b. The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

### **34. State Responsibility**

All Services performed by the Contractor include the State Responsibilities outlined and defined within Exhibit A to ensure proper and timely completion of the same. The Contractor may adjust project scope, deadlines, milestones, and Deliverables if SOS fails to remedy a Breach of its Exhibit A obligations during the Remedy Period. Such an adjustment shall not be deemed to be a Breach on the part of Contractor.

### **35. Security and/or Property Entrance Policies and Procedures**

Contractor shall adhere to established security and/or property entrance policies and procedures for each SOS. It is the responsibility of Contractor to understand and adhere to the SOS's policies and procedures prior to entering the SOS Site to Perform under this Contract.

### **36. Disclosure of Contractor Parties Litigation**

Contractor shall require that all Contractor Parties, as appropriate, disclose in writing to Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract, no later than ten (10) calendar days after becoming aware of or after they should have become aware of any such Claims.

### **37. Protection of Confidential Information**

- a. Contractor and Contractor Parties have a duty to and shall, at their own expense, protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with the highest current industry standards and best practices, as they may be amended from time to time.
- b. Contractor and all Contractor Parties shall develop, implement, and maintain a comprehensive written information security policy for the protection of Confidential Information that meets or exceeds current industry standards and best practices as they may be amended from time to time. The safeguards contained in the written information security policy must meet or exceed the standards for the protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in written policy of SOS concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
  - i. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;

- ii. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept and an auditable electronic system of logging and tracking the viewing, accessing or both of Confidential Information;
  - iii. A process for reviewing policies and security measures at least annually;
  - iv. Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - v. Encrypting of Confidential Information that is stored on laptops, portable devices, and storage media or that is being transmitted electronically.
- c. Contractor and Contractor Parties shall notify SOS as soon as practical, but no later than the next Business Day, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred which, in the sole opinion of the SOS after consultation with the Attorney General, constitutes a breach of security as defined in South Dakota Codified Law, or otherwise (Breach), the Contractor shall, within three (3) Business Days after the notification, present a credit monitoring and protection plan to the Secretary of the State for review and approval. Such credit monitoring and protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to, reimbursement for the cost of placing and lifting one (1) security freeze per credit file. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Contractor's nor any Contractor Party's costs and expenses for the credit monitoring and protection plan shall be recoverable from SOS, or any State of South Dakota entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Contract.
- d. Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to the provisions of this Contract concerning the obligations of the Contractor to SOS
- f. Contractor agrees to remove any employee or agent from performing work under this Agreement that has or is suspected of having disclosed Confidential Information and to immediately notify the State of such matter.

### **38. Confidentiality; Non-Disclosure**

The State shall exercise at least the same degree of care to safeguard any trade secrets or confidential information of Contractor as the State does its own property of a similar nature and shall take reasonable steps to ensure that neither the confidential information of Contractor nor any part of it will be disclosed for reasons other than its own business interests. Such prohibition on disclosures does not apply to disclosures by the State to its employees, agents or representatives, provided such disclosures are reasonably necessary to the State's use of the Deliverable, and provided further that the State will take all reasonable steps to ensure that the Deliverable is not disclosed by such parties in contravention of this Contract. The State's performance of the requirements of this Section shall be subject to the State of South Dakota SDCL Chapter 1-27 Public Records and Files.

All Records, SOS Data, and any Data owned by the State in any form, in the possession of the Contractor or Contractor Parties, whether uploaded, collected, stored, held, hosted, located or utilized by Contractor and Contractor Parties directly or indirectly, must remain within the continental United States.

### 39. Indemnification

- a. Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Contract for the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or this Contract. Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. Contractor's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or non-copyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- b. Contractor shall not be responsible for indemnifying, defending or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State. Nothing herein is intended to relieve the State from its own negligence or misfeasance or for Contractor to assume any such liability on behalf of the State.
- c. Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of Contractor or any Contractor Parties. The State shall give Contractor reasonable notice of any such Claims.
- d. Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms of this Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims or both.
- e. Contractor shall carry and maintain at all times during the Term of this Contract, and during the time that any provisions survive the Term of this Contract, sufficient commercial general liability insurance to satisfy its obligations under this Contract. Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to SOS prior to the Effective Date of this Contract. Contractor shall not begin Performance until the delivery of the policy to SOS. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the SOS or the State was contributorily negligent.
- f. Limitation of Liability

Contractor's liability to the State shall be limited to two (2) times the total amount paid or payable to Contractor by the State under this Contract, including any amendments; except that, with respect to this Contract under which multiple project awards are made, "amount paid or payable" will mean the total amount paid or payable to the Contractor under the Purchase Orders and applicable SOW for the Deliverable(s) or Service(s) for each project awarded to Contractor. The limitation of liability in this subparagraph under this Section shall not limit Contractor's liability for:

- i. Any actual or alleged claim that the Deliverables or Services under this Contract infringe, misappropriate, or otherwise violate any intellectual property rights, including copyright and patent, by any software or other intangible deliverable, including open-source software that may be included in the System, Deliverables, or Services provided under this Contract, or to any other liability for infringement of third-party intellectual property rights;
- ii. Claims arising against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct;
- iii. Contractor's breach of its data security privacy obligations, including, without limitation, those

- obligations in this Contract; or
- iv. Contractor's gross negligence, fraud, or willful misconduct.
  - g. Neither party shall be liable for consequential, special, punitive, or incidental damages, or lost profits from any cause under this Contract; however, the full value of the Contract and Exhibit A shall not be deemed consequential, special, incidental, or lost profit damages for purposes of Termination for Breach on the part of the State, but rather, actual damages.
  - h. This Section shall survive the Termination of this Contract and shall not be limited by reason of any insurance coverage

#### **40. Assignment**

The Contractor shall not assign any of its rights or obligations under this Contract, voluntarily or otherwise, in any manner without the prior written consent of SOS, which such consent shall not be unreasonably withheld. SOS may void any purported assignment in violation of this Section and declare the Contractor in breach of Contract. Any Termination by SOS for a breach is without prejudice to SOS's or the State's rights or possible Claims.

#### **41. Americans with Disabilities Act**

Contractor represents that it is familiar with the terms of the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq, and that it is in compliance with the law. Failure of Contractor to satisfy this standard either now or during the Term as it may be amended will render this Contract voidable at the option of the State upon notice to Contractor. Contractor warrants that it will hold the State harmless from any liability that may be imposed upon the State as a result of any failure of Contractor to be in compliance with the Americans with Disabilities Act.

#### **42. Executive Orders and Other Enactments**

- a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation, or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its Term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to Perform under this Contract if it chooses to contest the applicability of the Enactments or the State's authority to require compliance with the Enactments.

#### **43. Non-Discrimination**

- a. For purposes of this Section, the following terms are defined as follows:
  - i. "Commission" means the Commission on Human Rights and Opportunities;
  - ii. "Contract" and "contract" include any extension or modification of the Contract or contract;
  - iii. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
  - iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper

- purpose;
- v. "Good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
  - vi. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
  - vii. "Marital status" means being single, married as recognized by the state of South Dakota, widowed, separated or divorced;
  - viii. "Mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
  - ix. "Minority business enterprise" means any small contractor or supplier of materials fifty- one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority; and
  - x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

- b. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of South Dakota; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section ; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as

subcontractors and suppliers of materials on such public works projects.

- c. Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- d. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- e. The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission.
- f. The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- g. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of South Dakota, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this.
- h. The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission.

#### **44. Force Majeure**

- a. The parties shall not be excused from their respective Contract obligations except in the case of Force Majeure Events and as otherwise provided for in this Contract.
- b. If a Force Majeure Event prevents a party from complying with any obligation or satisfying any conditions under this Contract, then that failure to comply will not constitute a Breach if (A) that party uses reasonable efforts to comply; (B) that party's failure to comply is not due to its failure to (i) take reasonable measures to protect itself against Force Majeure Events or (ii) develop and maintain a reasonable contingency plan to respond to Force Majeure Events; and (C) that party complies with its obligations under subsection (c) of this Section.
- c. If a Force Majeure Event occurs, then the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on its obligations under this Contract, and how long the noncomplying party expects the noncompliance to last. Thereafter, the noncomplying party shall update that information as reasonably necessary, or as the other party may reasonably request, whichever is more frequent. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to

resume complying with its Performance and obligations under this Contract.

- d. Failure to provide written notice of any Force Majeure Event as soon as the failing party becomes aware of it, or failure by the other party to Act in response to the notice, does not excuse any delays or failures in Performance or obligations.

## 45. Notice

- a. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this Section collectively called "Notices") shall be deemed to have been affected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt provided that notice of default or termination shall be sent by registered or certified mail. All such Notices shall be in writing and shall be addressed as follows:

If to SOS:  
South Dakota Secretary of State  
Attn: Thomas J. Deadrick  
500 E. Capitol Avenue  
Pierre, SD 57501

If to the Contractor:

KNOWINK LLC  
Attn: Kevin Schott  
460 North Lindbergh  
St. Louis Mo. 63141

Copy to:

YAAKOV Y. KLEIN, ESQ. | FRANKEL, RUBIN, KLEIN, PAYNE & PUDLOWSKI, P.C.  
231 South Bemiston Avenue, Suite 1111 | Clayton, Missouri 63105

- b. Details regarding invoices and all technical or day-to-day administrative matters pertaining to this Contract shall be directed to:

SOS: The individual specified in the applicable Purchase Order.

Contractor: The individual designated by Contractor in the response to the Solicitation or as the Contractor may otherwise designate in writing to the SOS.

## 46. Headings

The headings given to the Sections in this Contract are inserted only for convenience and are in no way to be construed as part of this Contract or as a limitation of the scope of the particular Section to which the heading refers.

## 47. CERTIFICATIONS

- a. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

Executive Order 2020-01 provides that for contractors, vendors, suppliers or subcontractors with five (5) or more employees who enter into a contract with the State that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this Agreement Contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject



matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Contractor further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

b. COMPLIANCE WITH SDCL ch 5-18A:

Contractor certifies and agrees that the following information is correct:

The bidder or offeror is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful bidder or offeror further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

## **48. Funding**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State upon five (5) business days written notice. Contractor agrees that termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State or any officer, agent or employee of the State, and Contractor waives any claim against the same.

## **49. Number and Gender**

Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

## **50. Amendments, Supremacy, Entirety of Contract**

No amendment to or modification of this Contract shall be valid or binding unless made in writing, signed by the parties. Any and all Purchase Orders, Statements of Work or other documents authorized in connection with this Contract shall be subject to the terms of this Contract. Any additional terms within any such Purchase Order, Statement of Work, or other document that contradict the terms of this Contract shall have no force or effect and shall in no way affect, change or modify any of the terms of this Contract. This Contract contains the complete and exclusive statement of the terms agreed to by the parties.

## **51. Severability**

If any term or provision of this Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of this Contract shall be valid and enforced to the fullest extent possible by law.

## **52. Risk of Loss and Insurance**

The State shall not be liable to Contractor for any risk of Deliverable loss or damage while Deliverables are in transit, or while in the SOS's possession, except when such loss or damage is due directly to the SOS's negligence or intentional misconduct. Nothing in this Section is intended nor shall it be construed, in any manner, as waiving or compromising the sovereign immunity of the State.

The insurance required by this Section shall be written on an occurrence basis as opposed to a "claims made" basis and shall be on such forms, and contain such endorsements and terms, as shall be acceptable to SOS.

Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the Term of this Contract, the insurance described below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

### **a. Commercial General Liability**

Throughout the Term and during the time that any provisions survive the Term, Contractor shall maintain, at Contractor's sole cost and expense, a policy or policies of commercial general liability insurance, including contractual liability coverage, in an amount not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, all persons and injuries to or destruction of property, in any one accident or occurrence, and, subject to that limit per accident, a total (or aggregate) limit of \$2,000,000 per occurrence for all damages arising out of bodily injuries to, or death of, all persons and injuries to or destruction of property per policy period. The Contractor shall cause the State and its officers, agents, and employees to be named as an additional insured on the policy and shall provide (1) a certificate of insurance (2) the declaration page and (3) the additional insured endorsement to the policy to SOS all in an electronic format acceptable to SOS prior to the Effective Date evidencing such coverage. The Contractor shall not begin Performance until the delivery of these 3 documents to SOS.

Contractor shall provide an annual electronic update of the 3 documents to SOS on or before each anniversary of the Effective Date during the Term. The State shall be entitled to recover

under the insurance policy even if a body of competent jurisdiction determines that the State is contributorily negligent.

b. Automobile Liability

\$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage extends to owned, hired and non-owned automobiles. If the Contractor does not own an automobile, but one is used in the execution of this Contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of this Contract, then automobile coverage is not required.

c. Workers' Compensation and Employer's Liability

Contractor shall maintain Worker's Compensation and Employer's Liability insurance in compliance with the laws of the state of South Dakota, which coverage shall include Employer's Liability coverage with minimum limits of \$100,000 for each accident, \$500,000 for disease, and \$100,000 for each employee, per policy period.

d. Excess / Umbrella Liability

Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.

e. Information Security Privacy

Throughout the Term, Contractor shall carry, at Contractor's sole cost and expense, an information security and privacy Insurance policy with limits not less than \$1,000,000 per occurrence or claim, \$1,000,000 annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract and shall include, but not limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including infringement of copyright, trademark, trade dress, invasion of privacy violations information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

f. Professional Liability

During the Term, and for a period of three (3) years thereafter, the Contractor shall carry Professional Liability Insurance in the amount of \$5,000,000 per Claim and Annual Aggregate. Contractor shall provide the State a certificate of insurance evidencing such Professional Liability Insurance coverage upon written request on an annual basis and shall not begin Performance until such a certificate has been provided to the SOS.

Before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement including naming the State, its officers and employees, as additional insureds, as set forth above. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Contractor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of insurance policies if requested by the State.

### 53. SOS Approval of Subcontractors

SOS must approve any and all subcontractors utilized by the Contractor prior to any such subcontractor commencing any work. Contractor acknowledges that any work provided under this Contract to any State entity is work conducted on behalf of the State and that the Secretary of State or his/her designee may communicate directly with any subcontractor as the State deems to be necessary or appropriate. Contractor must be responsible for all payment of fees charged by the subcontractor(s). A performance evaluation of any subcontractor must be provided promptly by the Contractor to SOS upon request. Contractor must provide the majority of the work associated with this Contract. It is understood that there may be times where conflicts due to scheduling may arise, which would lend the Contractor to utilize subcontractors to meet the SOS's needs. When this occurs, Contractor must alert SOS for approval of desired subcontractor before work is started.

Contractor will include provisions in its subcontract requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State and to provide insurance coverage in a manner consistent with this Contract. Contractor will cause its subcontractors, agents, and employees to comply with applicable federal, tribal, state, and local laws regulations, ordinances, guidelines, permits and other standards and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. Contractor shall assist in the vetting process.

#### 50. INDEPENDENT CONTRACTOR

While performing services hereunder, Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

#### 51. Controlling Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

*SIGNATURE PAGE FOLLOWS*

The parties are executing this Contract on the date below their respective signatures.

KNOWiNK, LLC (CONTRACTOR)

Kevin Schott

BY: Kevin Schott (Jun 10, 2024 14:00 CDT)

Name: Kevin Schott

Title: CFO  
Duly Authorized

Date: 06/10/2024

STATE OF SOUTH DAKOTA  
Secretary of State

Monae L. Johnson

BY: Monae L. Johnson (Jun 10, 2024 14:10 CDT)

Name: Monae L. Johnson

Title: Secretary of State

Duly Authorized

Date: 06/10/2024

STATE OF SOUTH DAKOTA  
Bureau of Information and Telecommunications

Jeffrey Clines

BY: Jeff Clines (Jun 10, 2024 15:32 CDT)

Name: Jeffrey Clines

Title: Commissioner  
Duly Authorized

Date: 06/10/2024

## EXHIBIT A

### DESCRIPTION OF DELIVERABLES AND SERVICE LEVEL AGREEMENT

#### Architecture Components

Voter Registration System (“System”) shall include voter registration, election management, campaign finance and election night reporting modules. Each module will contain several detailed capabilities as described in this Exhibit A and as may be further specified in a Purchase Order or SOW. The capabilities shall be accessed and performed through configurable System user roles. Administrators, such as local or State administrators, shall be able to assign permissions for specific users and election officials to have access based on their requirements for multiple System capabilities.

Citizens and public users shall also be able to access the system components through a public portal. The System shall provide the public with a range of functions such as, but not limited to, voter registration, updating information, providing signatures, receiving notices, submitting ballots and other functions within core modules.

The System shall securely exchange voter information in collaboration with select State records systems and current interfaces. This data shall be captured to validate voters and comply with State election laws.

#### System Capabilities

The System shall comply with all existing State and Federal laws. The System architecture shall ensure that data exchanges are provided via application programming interface (APIs) and Secure File Transfers between the System and State System. System data must sync with State systems to accurately manage elections. The System shall allow public users to access their own accounts to verify their registration status via a public portal using an intuitive User Interface (UI) in a secure manner using Multi-Factor Authentication (MFA).

#### Infrastructure Capabilities and Features

The System shall ensure that there are enough resources at critical times to avoid System outage. These resources shall include:

- Availability Zones (AZs), and application and network load balancers. These ensure that application and network traffic is distributed to available and healthy cloud virtual machines (VMs), services, and clusters. This will ensure that the System meets high availability and reliability requirements.
- VMs that have enough compute, memory, disk, throughout the environment to meet high performance, capacity, and low latency requirements. Contractor shall work with the State to understand requirements and workload to deploy the right sized VMs and service tiers to the environment.
- Auto-scaling services to handle peak workloads, which is especially critical during the election periods, to handle the upsurge in activity and meet scalability requirements.

- Database instances with a primary and a standby to ensure recoverability in the event of a failure at a given location. This ensures data is continually synced so that there is no data loss and key metrics such as the Recovery Time Objective (RTO) and Recovery Point Objective (RPO) are achieved. This is especially important during election periods, where an “Active-Active” recovery approach will likely be deployed to ensure minimal to no disruption in service to meet recoverability objectives.
- For network, Contractor shall leverage cloud native API gateway, and DNS services to integrate and route service endpoints. This can be integrated with any third-party network and/or firewall tools that the State may utilize. This resource will ensure that the network piece is highly available, performant, and secure.

For all cloud resource deployments, Contractor shall utilize Infrastructure-as-Code (IaC) templates in order to ensure repeatable, consistent, and standardized templates that deploy multiple resources in VNets for regions, availability zones, subnets, route tables, VMs, databases, auto-scaling, load balancers, and many more unique services.

Contractor technical staff shall work with Secretary of State’s Office and such other State agencies as Secretary of State’s Office identifies to tailor cloud network components to jurisdictional requirements and cloud architecture to setup cloud network accounts, VNet, firewalls, route tables, and network traffic inspection and monitoring components, service endpoints, and ingress/egress network rules. Contractor shall specifically address network high availability, cloud virtual private gateways, certificates for transport layer security, and security for data-in-transit. Contractor shall also accommodate unique third-party network software tools and integrate as necessary.

Contractor shall ensure that the System is closely monitored against past, current and future cyber threats. Contractor shall maintain close relationships with its Cloud Providers and other government and private allies to leverage a Teamwork approach to Cybersecurity. Contractor shall perform granular and extensive data reporting, auditing, monitoring, and alerting in the cloud environment along with function and feature automation to defend against threats from all vectors.

Prior to project kickoff all Contractor staff shall be trained in security measures to keep information systems and customer information secure and confidential, at least in accordance with the requirements of this Contract. All Contractor staff shall comply at all times with Secretary of State’s Office IT Security Policy and Standards. Contractor shall maintain an Information Security Policy that complies with NIST 800-53 security requirements.

The Voter Registration module shall include, but is not limited to, several confidential fields (PII), including driver license numbers, dates of birth, partial social security numbers, along with information about confidential voters. Providing functionality and security for the System shall be a high priority.

Contractor’s Cybersecurity and Information security policies and procedures shall comply with all relevant guidelines and requirements of the NIST Cybersecurity Framework ISO 27000:2013 benchmarks, the EAC and CISA standards. The Contractor shall include the following security features in the System to ensure that all South Dakota Voter Registration data is protected:

## **Access**

The System shall prevent unauthorized access. This includes providing user IDs and passwords to control access to applications and data. The System shall incorporate security administration to prevent unauthorized access to the System and data whether this be through denying access to a particular function or by encrypting Confidential Information when it is sent to external entities or by encrypting a session when an end-user is making online updates to Confidential Information.

Access to data shall only be given to the appropriate roles and permissions and are granted and restricted by SOTS and local election administrators. The System shall allow an authorized user to create a "Status Flag" for a voter with any protections, i.e., Address Confidentiality Program (ACP). Once this Status Flag is created, only authorized users will have access to the voter record and the voter record will not appear in any exports or searches.

The System shall allow for redaction to block out social security numbers, driver's license numbers, birthdates, signatures, and other materials both in the System and in reports that run through the System. The System will allow only certain authorized users, defined by their user settings, to access redacted information.

The System shall have multiple user levels that can access different levels of System functions and data. These levels and capabilities shall be defined through the user roles and permissions.

Direct database access shall only be granted to authorized users and the data those users have access to will be limited to the specific job they are performing. Database access shall be restricted to specific IP addresses, as defined by SOTS protocols, roles, and permissions.

### **Authorization Procedures**

The System will allow access to Confidential Information only to such authorized users as Secretary of State's Office identifies. Additionally, the System shall log every time a user views a voter record.

Confidential voters are usually required to vote by mail in order to keep their name and information off the poll roster. Specialized training and sensitive training materials will be provided for these users.

The System shall incorporate role-based redaction per Secretary of State's Office standards. With the amount of Confidential Information that is contained on many voter materials, the System shall include redaction as an important privacy tool. Redaction must be able to enable users to block out Social Security Numbers, Driver's License Numbers, Birthdates, Signatures, and other materials which Secretary of State's Office deems to necessary or appropriate both in the TotalVote System and in reports that are run through the System. Redacted information must be viewable only to authorized users or in processes which are established by setting and defining user roles.

### **Multifactor Authentication**

System shall provide multi-factor authentication through a combination of Yubikeys (or eTokens), phone applications like Microsoft Authenticator or Duo, Active Directory including ADFS, and username/password login. System shall allow users specifically assigned by Secretary of State's Office to access the System using a variety of authentication factors.

### **Auditability/Monitoring**



System shall maintain a full audit trail for every transaction, including viewing voter records. The user, date/time and changes (showing the previous and current values) shall be logged for every transaction. Change history shall be read-only and only viewable by Secretary of State's Office and local users with permissions granted by Secretary of State's Office.

The System shall also retain auditing information such as, but not limited to:

- User
- Date and Time completed
- Source

System shall also provide a number of tools to use inside of Change History such as:

- Sort, and Sub sort on any column.
- Search for any value inside of the data table.
- Filter the data table to view a subset, certain action types, dates, or to see all the changes for a single field by date.

The System shall allow users the use of a "Show" object to enable users to designate whether they want to see just actions against the record, or whether information from other grids should also be displayed. Such information shall include any and all information available in the other grid, such as but not limited to:

- Notes
- Correspondence sent
- Voter History
- Absentee- Early Voting History
- Petition History

### **Latest Security Controls**

**REDACTED**

#### **Vulnerability Scanning**

#### **Threat Identification/Hunting**

**REDACTED**

#### **Network Security**

**REDACTED**

### **Data Management and Interface Exchanges**

Contractor shall provide a seamless interface with all required federal and State agencies. Interfaces shall communicate in real time or at regularly scheduled intervals. These interfaces will allow South Dakota's voter records to be checked against an assortment of other data, including death records, felon records, and both in-State and cross-state moves.

Contractor shall work with SECRETARY OF STATE'S OFFICE to capture data via APIs or grab secure files, set up queues, map schema, identify objects, formats, and manage data in SQL server. For files, batch processes shall be done on an agreed upon schedule. API calls are scheduled on a more frequent basis in response to triggers to meet requirements. The SQL server database tables and required fields, keys, IDs, and elements support capabilities to perform System Core application functions. Data shall be encrypted at-rest using native database encryption and cloud key management service, and in-transit using secure ports, protocols, and SSL for SFTP used to ingest State files. Business logic is developed using .NET Core

running on SQL server. .NET Core API features are configured for various components such as controllers, pages, and various API services.

System integration shall include but not be limited to the following:

On the federal/national level:

- USPS and National Change of Address (NCOA) information through Melissa Data
- American Association of Motor Vehicle Administrators (AAMVA) and Social Security Administration (SSA)

- Electronic Registration Information Center (ERIC)
- VIP 5.1 Specification

On the State and local level:

- Point-based addressing and district data
- Department of Public Health/Vital Records (Deaths)
- Department of Corrections (Felons)
- Department of Motor Vehicles
- Ballot Printers and Tabulators

## System Software

Contractor shall provide a complete replacement of the current TotalVote Legacy System with Contractor's TotalVote Core suite of products. Contractor shall provide all of the functionality available to election officials within the current Voter Registration System plus all of the additional functionality currently available in TotalVote.

### Voter Registration

System shall provide data fields for all aspects of voter registration including but not limited to: name, address, date of birth, gender, telephone, mailing address, political party, military address, email address, previous address, previous name, driver's license number, last four digits of social security number and any other information as required by State or federal law. System shall automatically calculate voter eligibility based on age and shall also calculate party enrollment eligibility based on the statutory requirements.

System shall also reduce the number of duplicate voter registration records by checking for existing voters and death and felon matches when records are updated as part of a nightly process. The resulting possible matches from this nightly process are shown in the home queue to be administered.

The Voter Registration Module includes but is not limited to:

- Online Voter Registration
- Voter Identity Validation
- Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)
- Voter Signature Validation
- Notice Management

### GIS

Contractor shall provide complete management of GIS-based address points. TotalAddress is initialized with physical residential address points and a minimum set of map layers including precinct part/split layer, city, zip code and a Statewide county boundary layer. Once every voter is identified with a point on the map in TotalAddress, Shapefiles will be added as layers on the map. These layers will include counties,

cities, municipalities, precincts, or any other applicable layers that SECRETARY OF STATE'S OFFICE determines to be appropriate. As layers are added, TotalVote will automatically assign voters to the correct precinct and polling locations based on their location. The System will use this information to create every ballot style.

### **Election Management**

The System shall include an Election Management System that is intuitive and user-friendly, to be used to set up every aspect of an election. This module shall be compatible with all major tabulation systems.

The System shall replace the SECRETARY OF STATE'S OFFICE existing election management system and enable users to setup elections and build ballots before every election. The Election Management System (EMS) shall simplify multijurisdictional election results reporting by receiving the results in the System and automatically combining and reporting results to the public.

The Election Management Module includes but is not limited to:

- Ballot Management and Processing
- Early Voting Management
- Election Worker
- Precinct & Jurisdiction Management
- Voter Roster Management
- Voter Selection and Capture
- Voting Results Closeout
- Petition Management

### **Absentee Ballot Management**

The System shall accommodate absentee voters and include many specialized processes to track the different types of Absentee voters (including UOCAVA voters) and the different stages of the Absentee process. The System shall track the activity including when and how absentee ballots are sent (mail, fax, email), when the ballot (sent via email) is viewed and when the ballot is returned. Summary reports on activity shall be generated automatically each day and sent to the appropriate election officials.

Ballots shall be checked out through barcode scanning and the voter record will be updated through data file import from the Contractor or small batch processing by the election office. Voter records are automatically updated to reflect ballot fulfillment is complete.

When ballots are returned, they shall be checked in via barcode scan of the external envelope to update the absentee record as ballot received. If the ballot is rejected, a reason is applied. If the envelope is accepted, it is routed to the tabulation team for counting at the appropriate time.

### **EAVS Reporting**

System shall generate any reports required by the Election Assistance Commission's Election Administration and Voting Survey (EAVS) by collecting quantitative data pertaining to the National Voter Registration Act, UOCAVA, and other election administration issues, including the counting of provisional

ballots and poll worker recruitments. The collection of this data shall be built into the System to comply with the EAC EAVS requirements.

### **Petition Management**

As signatures are submitted, each individual packet of petitions will be entered into the System and the signatures validated against signatures in the voter file. For local petitions, the System will confirm whether the signer is eligible to sign the petition, based on their voter registration address. As petition packets are entered into the System, the System shall track the number of mistakes that were made on each packet and what category those mistakes belong to. As signatures are gathered and submitted, the petition's filers shall be able to track the number of signatures approved and still needed through the Public Portal.

Once all petition packets are entered, a report can be generated that totals up all the estimated number of signatures and rejected signatures to get a total number of valid signatures.

### **System Administration**

System shall have multiple user levels that are assigned different levels to access System functions and data. These levels and capabilities are defined by user roles and permissions. Granted permissions allow, or prohibit, users from viewing, entering, and editing data as well as other actions available in the System.

Permissions shall range from Global System Administration to temporary data entry clerks in local election offices. The Global System Administrator shall have access to all functions and actions within the System and such permission. A Temporary Data Entry Clerk shall be limited to data entry by being granted access to only the data fields in the voter record. Roles shall also be preset to expire, allowing officials to disable access to temporary workers at a set date and time.

### **Reports**

System shall have multiple built-in, preformatted reports. In addition, System shall also include Quick Search and Advanced Search options. The Quick Search shall allow users to search for a voter using last name, first name or voter ID number. The Advanced Search shall allow users the ability to search and sort on almost every voter field in the database including voter status, locality, city, zip code, political party and middle name.

The Reporting Module includes but is not limited to:

- Election Night Reporting
- Voter History Reports & Analysis
- Report Builder Module

### **Database Information and Ownership**

Contractor affirms that the Secretary of the State is the sole owner and custodian of all data in the System provided by Contractor and the Secretary of the State shall have the unrestricted right to access and use all data in the system through reasonable means.

### **Development and Deployment**

Details about each environment such as endpoints, service types, REST APIs, where applications are to be deployed, will be captured and standardized in a formal deployment process to be used for each release.

Contractor will use a test environment hosted in a separate VNET. Contractor shall perform testing to validate capabilities to meet Contract requirements. This will be done on resources running in the test environment until testing is successful and meets test case criteria.

After testing, Contractor shall switch over to the production environment using either a Blue-Green, rolling, or phased deployment. Contractor will integrate with additional cloud services such as IAM, monitoring, logging, security, storage, API management, and others. These services are connected through VNET endpoints. They will support capabilities such as disaster recovery, reporting, and election analysis.

### **PROJECT METHODOLOGY**

The proposed project approach shall be a collaborative approach with the SECRETARY OF STATE'S OFFICE:

- PMI-based project management framework
- ScrumScrum and Iterative Approach to application development and delivery
- Continuous Stakeholder Engagement and Stakeholder satisfaction

Contractor's project management team will work closely with the SECRETARY OF STATE'S OFFICE project management team during the initial project planning to formalize the proposed project plan and will form the umbrella under which the System implementation takes place.

Contractor presents a hybrid project lifecycle that uses a combination of predictive and scrumscrum components. Accordingly, Performance will involve both definable work (such as production rollout and training) and high-uncertainty work (such as new design and new features).

### **Predictive Approach**

The team will develop and use detailed plans and checklists to carry out data migration, architecture design/build, data interface design/build, transition to operations, training, and production rollout activities. The Contractor developers who are actively working on software shall be focused exclusively on their development work and will not be active participants in the production planning until their development is completed.

### **Scrum-Based Software Development Approach**

The Contractor shall use Scrum methodology for the Project. Accordingly, The Scrum-based approach follows the principle that the highest priority for the Contractor is to satisfy SECRETARY OF STATE'S OFFICE through early and continuous delivery of working software. Software modules will be built using an iterative release approach with frequent check-ins with the customer to validate the results. At regular intervals, the development team will meet internally to identify areas of improvement as well as identify those processes that are working well.

During the planning phase of the project, the SECRETARY OF STATE'S OFFICE will participate in the gap analysis session. Contractor will provide a walk-through of the System software to the SECRETARY OF STATE'S OFFICE team to demonstrate how the System software generally meets basic requirements. This is a high-level demonstration which will not capture subtle gaps or changes that the SECRETARY OF STATE'S OFFICE may request later when the requirements are analyzed in depth during iteration reviews. Even those requirements marked as "ready out of the box" will undergo review by the SECRETARY OF STATE'S OFFICE during the testing events of the project.

Key members of the SECRETARY OF STATE'S OFFICE team will have access to Contractor's Microsoft DevOps environment as they will be asked to provide needed details, testing feedback, and Acceptance within this platform.

Following the review, Contractor will work with SECRETARY OF STATE'S OFFICE to schedule incremental product releases for testing.

- **Product Implementation**

Activities, Tasks, and Milestones:

- Configure Development, Test and Production Environments
- Data Conversion

- Address Points
- System Data Integration (APIs and File Transfers)
- Product Delivery
- Walk Through Session #1 – Voters
- Walk Through Session #2 – Geographic Entities
- Walk Through Session #3 – Absentee Ballot Management
- Walk Through Session #4 – Petition Management
- Walk Through Session #5 – System Administration

### **Training and Knowledge Transfer**

Activities, Tasks and Milestones:

- Application Training
- Software Training
  
- Annual Maintenance and Support Training

During this phase Contractor will ensure that Train-the-Trainer users have been trained with the required skills to use the System, including any operational process changes. Contractor will be responsible for conducting comprehensive application training during Train-the-Trainer trainings.

### **Project Implementation and Go Live Support**

Activities, Tasks, and Milestones:

- Final Data Conversion
- Data Validation Testing
- Production Application Cutover
- Go Live Support

Contractor will develop an extensive and carefully structured plan to provide services for the implementation of the System. These services will include organization and execution of cutover activities necessary to transition to the new System.

- **Project Close Out & Support and Maintenance**

Activities, Tasks, and Milestones:

- Code Escrow
- Project Documentation & Artifacts Transfer

This phase formalizes the project's end and documents that all requirements have been met and all Deliverables have been received by SECRETARY OF STATE'S OFFICE.



Contractor shall provide SECRETARY OF STATE'S OFFICE with all the tools, documentation, and training necessary to administer the TotalVote application as a functional consumer of the product for the duration following and including implementation and the agreed upon warranty period.

Contractor shall establish a code escrow deposit with Contractors trusted vault provider and in the event of force majeure authorize vault provider to relinquish source code artifacts to enable continuation of support by Secretary of State.

### **Data Conversion**

Contractor shall extract all existing data from the State repository. Every data element from the State repository and local databases that will be migrated to the System will be mapped and documented, including values. Any and all data corrections will be documented by the Contractor.

### **SECRETARY OF STATE'S OFFICE Resources**

Contractor shall work directly with a Database Analyst (DBA) from the SECRETARY OF STATE'S OFFICE Team to create processes to extract data and images from the legacy System.

### **Data Extraction and Preparation**

The DBAs of both teams will collaborate to create extract, transmit and load procedures (ETL) for moving the data and images to the System. The DBAs will coordinate with the Business Analyst(s) and the Quality Analyst(s) to ensure the extraction, cleansing and converting of all data is completed in a manner that is fully consumable into the business process and software logic of the System.

### **Data Mapping Rules**

The SECRETARY OF STATE'S OFFICE DBA Team will provide a data dictionary of the legacy Systems data structure and full data extracts. The Contractor DBA will work to fully analyze the data sets against the data structure of every field. Contractor will document the mapping of data to the System and present small trial conversions for verification. Legacy fields that do not have an "exact fit" will be reviewed with the SECRETARY OF STATE'S OFFICE Team to determine the best course.

### **Resources for Data Scrubbing**

The Contractor DBA may identify outlying data that does not fit the definition of the field and requires "data scrubbing" or cleanup in preparation for conversion. Data scrubbing may be necessary on both the State and local level. These will be logged as conversion tasks. The SECRETARY OF STATE'S OFFICE Team DBA will manage the tasks associated with data cleanup. These tasks may be handed off to be managed by various members of the SECRETARY OF STATE'S OFFICE Team depending on the nature of the problem and who owns the process that manages the data.

### **Strategies for Final Conversion**

With final conversion, the legacy Systems will remain searchable, to be used as a reference for the new System conversion. Contractor's process will not rely on data sampling to ensure quality data. Contractor's conversion process will verify the converted content of all tables by comparing metrics supplied by backend queries against the legacy Systems.

### **Test Data Migration**

Prior to the final data migration, the Contractor shall run at least one test migration to identify problems, bottlenecks and to capture metrics at key migration checkpoints. The resulting timing metrics will provide the input for scheduling of the final conversion. This conversion approach ensures that all records are correctly transferred without the need to conduct random spot checks of data from individual records. It also provides timing statistics necessary for scheduling the conversion.

### **User Acceptance Testing**

User Acceptance Testing is performed and managed by the SECRETARY OF STATE'S OFFICE Team in the test Environment with known defects documented. With Scrum Development Methodology, as each iteration is verified by Contractor's Quality Team, releases will be delivered to the SECRETARY OF STATE'S OFFICE Test System. Either the Contractor Project Manager or the Contractor Project Liaison will demonstrate the Contractor tested and delivered components to be tested. Prior to testing, the team will have already concurred on Acceptance criteria for new functionality, test methods to be used, and known defects. The SECRETARY OF STATE'S OFFICE Team will then perform Acceptance testing on the delivered components. The SECRETARY OF STATE'S OFFICE Team may perform varying degrees of Acceptance Testing, potentially including integration testing, depending on the degree to which other System application components are dependent on much the delivered component. Any error or defect found during user Acceptance testing will be corrected by the Contractor.

### **Training**

User Training for the System will take place after development has been completed for all modules and prior to User Acceptance Testing (UAT). Contractor will use a "train the trainer" methodology to train SECRETARY OF STATE'S OFFICE personnel to become 'super users' of the software.

### **Training Approach and Curriculum**

For the "train-the-trainer" training sessions, Contractor shall work with the SECRETARY OF STATE'S OFFICE Team to finalize a user training schedule and plan.

Contractor will provide the following remote "train the trainer" sessions for SECRETARY OF STATE'S OFFICE designated training staff:

- Provide training to SECRETARY OF STATE'S OFFICE trainers on all modules completed throughout the Project (relevant to both State and local users)
- Assist SECRETARY OF STATE'S OFFICE staff in the use of Contractor provided training materials
- Facilitate a dry run of the training session and make recommendations to SECRETARY OF STATE'S OFFICE staff on clarity, flow, and accuracy of training presentation
- Make modifications to training materials as necessary

## **WARRANTY AND SUPPORT**

### **Warranty**

Contractor shall provide handholding and support to users for four weeks after go-live to ensure a smooth deployment for the System users. Additionally, Contractor shall provide a warranty period, so that any System defects found in the first 6 months after go-live can be fixed.

### **Maintenance and Support**

The following services are provided as a part of the standard maintenance and support under the Master Software and Services Agreement:

- Bug Training and technical support in support of the releases due to bug fixes are also included at no charge. Product Enhancements, as determined by Contractor, will be quoted as a separate, additional cost. Most State legislatively driven solution changes would classify as enhancements, however, any changes made to federal law shall be provided at no additional cost.
- Patches and Upgrades to support ongoing architectural changes and MS Windows, Browser updates and Microsoft SQL Server upgrades.
- Regular status meetings/conference calls.
- During the first election and primary for which the System will be used, the Contractor shall have a technical expert available during the hours of the election and primary to assist with any technical issues that may arise during the election or primary day.

### **Maintenance Releases and Patches**

Contractor classifies releases and patches in two categories:

- Standard
- Emergency

Standard releases and patches are provided on a regular schedule. Each release and patch are tested, and all necessary training and documentation is included. Emergency releases and patches are provided upon request from a designated SECRETARY OF STATE'S OFFICE Representative and can be provided within 24 hours of completion of the work requested.

### **Major and Minor Release Cycles**

All major and minor release cycles are catered to SECRETARY OF STATE'S OFFICE specific requirements.

**Frequency for Major and Minor Upgrades**

Major and minor upgrades are handled on a mutually agreed upon schedule, typically annual and monthly bases respectfully.

**Typical Downtime for Major and Minor Upgrades**

The major and minor upgrades are conducted after-hours and usually require less than one hour of downtime. Any emergency upgrade that requires System downtime during regular business hours is only conducted upon request from designated personnel.

**Effort Level for Upgrades**

The majority of upgrades are conducted utilizing automated scripts and are managed by Contractor's senior support personnel to ensure minimum downtime and effort.

**Upgrade and Patch Process**

During the warranty period, all patches and upgrades will be free of charge. Patches and upgrades are also covered under the support and maintenance agreement after the warranty period.

**Database Schema Extension and Upgrade/Patch Process**

All database schemas are conducted through automated scripts that shall update, add, or remove database objects. Any updates that require data transformation is also managed through automated scripts. Any external interfaces that are impacted due to any database changes are also updated.

**Configuration and Customizations during Upgrades**

As mentioned above, all customization and configurations are handled through automated scripts.

**Documentation – Administrator & End Users**

Contractor shall provide documentation for System administrators as well as support for end users. End user support, including user manuals and guides, shall be available within the System application and accessible through any browser. Following go-live, the SECRETARY OF STATE'S OFFICE will manage any and all documentation updates.

**Legislatively Driven Updates**

Contractor shall incorporate ongoing changes in federal legislation and regulations as an integral part of Contractor's System development and change management methodology. As part of Maintenance and Support, Adaptive Maintenance allows for changes to be built into the System. During the course of the project, the Contractor shall work with the SECRETARY OF STATE'S OFFICE team to incorporate new State law requirements or regulations as follows.

- When any new legislation or regulations are introduced, Contractor is informed by SECRETARY OF STATE'S OFFICE.
- Contractor will evaluate the functionality/technical impact of these regulations and any variance they result in from the application architecture/functionality.

- Contractor analyzes the gap and estimates the effort it will take to add these to the System.
- This flows into normal change control where the effort estimates are presented to the SECRETARY OF STATE'S OFFICE and upon mutual agreement on the effort, the cost impact and schedule impact are formalized in a change order.
- The change order work is then executed and as part of the functional changes, all test scripts are updated, or new ones written to test the functional and technical changes.
- These changes are then tested by the SECRETARY OF STATE'S OFFICE SMEs to make sure the System is compliant with the new regulations.

### **State Responsibilities**

- a. State agrees to participate in all required meetings, interviews, and collaboration activities as identified and scheduled during the project kickoff event and subsequent project management meetings.
- b. State is responsible to provide or cause access and information for any/all internal systems, any/all third-party systems, any/all dependent data sources, and/or components with dependencies to the development roadmap and/or implementation timeline, including, but not limited to, those systems which are provided or maintained by other vendors, customer partners, or SECRETARY OF STATE'S OFFICE – should access/information to dependent systems not be allowed or available in a timely manner, details for roadmap and implementation timeline items with such dependencies will be limited and/or incomplete.
- c. State shall designate a single point of contact to whom all Contractor communications may be addressed and who has the authority to act on all aspects of the Services throughout the duration of the project; such contact shall be available during Monday through Friday, 8:00am to 5:00pm Eastern Standard Time, excluding holidays, as defined by SECRETARY OF STATE'S OFFICE.
- d. If on-site work is necessary, State shall provide and or cause reasonable access to all applicable State sites and facilities, including where necessary, computer equipment, telecom equipment, facilities, workspace, and telephone for the Contractor's use during the implementation and development of the System.
- e. SECRETARY OF STATE'S OFFICE will explain questions in regard to State Election Law, as it pertains to function and performance of the System.
- f. State subject matter experts must have critical knowledge of the operations and the business itself.
- g. The State shall, within a reasonable timeframe provide written feedback on all project artifacts, documents, presentations, or completed software functionality developed or updated by the Contractor.
- h. To the extent that SECRETARY OF STATE'S OFFICE is the owner of any development tools necessary for the Contractor's Performance, SECRETARY OF STATE'S OFFICE shall provide software licenses, as mutually agreed upon, for such development tools for the duration of the Project.
- i. State shall supply access information and credentials to identified engineer(s) from the Contractor for all

existing equipment, computing environments, and/or data, pursuant to existing state security protocols that need to be accessed, configured, or may need to be reviewed or modified before Project commencement. Access to "Production" needs to be reviewed and agreed upon prior to work.

### **Other Contractor Responsibilities**

- The Contractor will not be responsible for technical support and/or troubleshooting System outages / errors that occur in any State dependent or related systems or environments that impact the Deliverables or System – the Contractor will not be responsible for delays that result from the failure of the State to resolve such outages and/or errors in a timely manner.
- The Contractor will not be responsible for errors that result from bad/inaccurate data being provided to the Contractor during Performance and the implementation of the Deliverables.
- Contractor will assign all staff as to best-fit total requirements and no individual employee is being specifically promised or quoted for this Project.
- State agrees to allow the Contractor the ability to publicly discuss and showcase the work being performed for State. This provides the Contractor the ability to demonstrate credibility with other clients in support of future business growth and to demonstrate customer success.

**STAFFING**

Contractor will maintain sufficient and competent Deliverable staff and other resources consistent with the requirements of this Contract and any resulting Purchase Order and SOW satisfy all Contractor obligations for each Deliverable and System.





Contractor represents and warrants that appropriately skilled individuals will be assigned to the project.

## **PROJECT MANAGEMENT**

At the onset of the Project, Contractor will establish the processes and tools required to manage and control the Project, in consultation with the SECRETARY OF STATE'S OFFICE.

Contractor will track the Project status and update applicable portions of the Project Schedule to reflect the status of the Project against the baseline Project Schedule. In addition, Contractor will update risks and issues logs for the Project proactively identifying risks and issues to be reviewed with the SECRETARY OF STATE'S OFFICE.

Contractor will provide the SECRETARY OF STATE'S OFFICE with written Project Status Reports. The Project Status Report will capture, at minimum, the status of the Project including:

- Simple graphical statuses (i.e., red/yellow/green color codes) of scope, schedule, resources, and budget
- Accomplishments of the last reporting period and objectives for the next reporting period
- Contractor and SECRETARY OF STATE'S OFFICE responsibilities for the next reporting period
- One-page graphical summary of all major tasks and subtasks in the Project Schedule
- Action items including respective owner(s) and due dates
- Key dependencies including external dependencies and between tasks and activities
- Important decisions made and/or outstanding decisions to be made, with target dates
- Pending scope change requests with appropriate justification

Contractor shall track the state of each functional and non-functional requirement from new to accepted (by SECRETARY OF STATE'S OFFICE) within the Microsoft DevOps environment and shall create and provide "always current" dashboard views to the SECRETARY OF STATE'S OFFICE team displaying project metrics at the detailed level.

Contractor will develop and maintain a Project Information Library in a single online repository used to store, organize, track, control, and disseminate all information and artifacts produced. The Project Information Library will be used by Contractor, SECRETARY OF STATE'S OFFICE staff, and other key stakeholders.

The Project Information Library will include a file structure with defined access and permissions, including administrator rights for SECRETARY OF STATE'S OFFICE staff. It will also include a web or portal interface for individuals to remotely view/manage

Project information and documentation and provide comments or capture issues for the Project Team.

Contractor will store all work products and Deliverables in the Project Information Library for the duration of the Project. Work products and Deliverables must be uploaded to, and made available through, the Project Information Library after completion of the related Project event or activity. For Deliverables, the delivery timing governs the latest by which the Deliverables must be uploaded to the Project Information Library. For any other items, the materials shall be made available to the SECRETARY OF STATE'S OFFICE no more than one (1) week after the Project event or activity. At the end of the Project, Contractor will archive relevant Project artifacts and turn the Project Information Library over to the SECRETARY OF STATE'S OFFICE. At no cost to the State, the Contractor and Contractor Parties shall, after (i) receiving a written request from the SECRETARY OF STATE'S OFFICE, (ii) receiving final payment from the SECRETARY OF STATE'S OFFICE, or (iii) Termination for any reason, over-write and securely delete all of the Data, such that the Data will be expunged in a manner to make retrieval of the Data impossible.



PMT	Payment Category	Estimated Days	% of Project Price	Payment Price	15% Retainage	Total
	<b>Project Initiation</b>	5	8%	\$ 306,000.00	\$ 54,000.00	\$ 360,000.00
	<b>Data Conversion</b>	60	15%	\$ 573,750.00	\$ 101,250.00	\$ 675,000.00
	<b>Project Planning</b>		5%	\$ 191,250.00	\$ 33,750.00	\$ 225,000.00
	Approve Change Control Plan	30		\$ 47,812.50		
	Approve System Security Plan: Security plan delivered to SD will cover TotalVote compliance and control attestation specific to Fed Ramp and NIST SP 800 guidelines. SD Security team to review with TV Staff and achieve acceptance.	30		\$ 47,812.50		
	Approve Training Plan: TV to deliver release based demonstrations and training for appointed SOS members, with included recordings, and manuals.	30		\$ 47,812.50		
	Approve Project Schedule: Deliver initial project schedule based on the gaps to achieve the deliverables outlined within Exhibit B and adjust to meet optimum with SD capacity. Achieve signoff on schedule, which will be updateable via change control plan process. <b>Will be delivered AFTER Gap Analysis to determine the level of development necessary.</b>	30		\$ 47,812.50		
	<b>Solution Design</b>		15%	\$ 573,750.00	\$ 101,250.00	\$ 675,000.00
	Stand up of Total Vote Application Infrastructure (Development, Testing, Production)	80		\$ 191,250.00		
	Data Mapping : Establish Data Mapping Standards and Definition between TV and SD data sources via tabular documentation.	80		\$ 191,250.00		
	Interface Design : Build interface specs to include endpoints, API keys, network availability, and receive and review API contracts if available.	55		\$ 191,250.00		
	<b>Delivery</b>		18%	\$ 688,500.00	\$ 121,500.00	\$ 810,000.00
	Release 0 : Initial OOBE infrastructure and Core Code Release with demonstration of function. VR and admin districts precincts users permissions with demonstration of function. TotalAddress Points and Layers useable by VR module with demonstration of function. Election Management & Ballot Management. Creating and issuing correct ballots to voters with demonstration of function. Public Portal, Petitions Mgmt, OLV. R.	60		\$ 749,700.00		
	<b>GAP Analysis and Development</b>		7%	\$ 267,750.00	\$ 47,250.00	\$ 315,000.00
	GAP Release 1 Voter Registration (Requirements defined in GAP analysis)	30		\$ 53,550.00		
	GAP Release 2 Total Address ( Requirements defined in GAP analysis)	30		\$ 53,550.00		
	GAP Release 3 Election Management (Requirements defined in GAP analysis)	45		\$ 53,550.00		
	GAP Release 4 Public Portal, Petitions Management (Requirements defined in GAP analysis)	45		\$ 53,550.00		
	GAP Release 5 Final OOBE Base Release	75		\$ 53,550.00		
	<b>TotalVote Labs</b>		12%	\$ 459,000.00	\$ 81,000.00	\$ 540,000.00
	TotalVote Labs Election Night Reporting Base Release	30		\$ 104,250.00		
	GAP analysis Election Night Reporting	30		\$ 45,000.00		
	TotalVote Labs Campaign Finance Base Release	30		\$ 45,000.00		
	GAP analysis for Campaign Finance	30		\$ 260,550.00		
	Final TotalVote Labs Release	30		\$ 45,000.00		
	<b>Training and Knowledge Transfer</b>		10%	\$ 382,500.00	\$ 67,500.00	\$ 450,000.00
	Software Training: Software Training for Administrative staff creating usernames managing counties, permissions, MFA token mgmt, configuration to properly manage software in house for Tier 1 support			\$ 41,650.00		
	a. Application Training: Pre UAT for each Released Module with a Demonstration to SOS designated Trainee's. Trainees will conduct Train the trainer and hold responsibility for internal Trainee stakeholders.	10		\$ 41,650.00		
	a.b. Release 0 training:	10		\$ 41,650.00		
	a.c. Release 1 training:	10		\$ 41,650.00		
	a.d. Release 2 training:	10		\$ 41,650.00		
	a.e. Release 3 training:	10		\$ 41,650.00		
	a.f. Release 4 training:	10		\$ 41,650.00		
	a.g. Release 5 training:	10		\$ 41,650.00		
	Election Night Reporting Training	10		\$ 41,650.00		
	Campaign Finance Training	20		\$ 41,650.00		
	<b>Project Implementation and Go Live Support</b>		8%	\$ 306,000.00	\$ 54,000.00	\$ 360,000.00
	a. Final Data Conversion: Final conversion and db sync completed	10		\$ 200,000.00		
	a. Data Validation Testing: Modern system reports accurate vs legacy system data reports as outlined in final data migration report.	10		\$ 44,400.00		
	c. Production Application Cutover: Cease legacy system work and begin Modern system execution.	5		\$ 44,400.00		
	d. Go Live Support	30		\$ 44,400.00		
	<b>Project Close Out</b>		2%	\$ 76,500.00	\$ 13,500.00	\$ 90,000.00
	Project Documentation & Artifacts Transfer: Documentation including user manuals, relevant training materials, architecture documentation, security documentation.	30		\$ 83,300.00		
	<b>TotalVote Total Minus Retainage</b>			\$ 3,825,000.00		
	<b>TotalVote Retainage</b>		15% Retainage	\$ 675,000.00		
	<b>TotalVote Total</b>		<b>Total</b>	\$ 4,500,000.00		
	TotalVote Annual Support and Maintenance			\$ 33,333.33	Month	
	Campaign Finance Annual Support and Maintenance			\$ 4,167.00	Month	
	<b>Monthly Maintenance and Support Total</b>			\$ 37,500.33	Month	

## South Dakota TotalVote Payment Schedule - Exhibit B

<b>Payment</b>	<b>Payment \$</b>	<b>Total</b>
<b>Initial Licensing</b>	\$ 1,500,000.00	\$ 1,500,000.00
<b>Month 1</b>	\$ 193,750.00	\$ 1,693,750.00
<b>Month 2</b>	\$ 193,750.00	\$ 1,887,500.00
<b>Month 3</b>	\$ 193,750.00	\$ 2,081,250.00
<b>Month 4</b>	\$ 193,750.00	\$ 2,275,000.00
<b>Month 5</b>	\$ 193,750.00	\$ 2,468,750.00
<b>Month 6</b>	\$ 193,750.00	\$ 2,662,500.00
<b>Month 7</b>	\$ 193,750.00	\$ 2,856,250.00
<b>Month 8</b>	\$ 193,750.00	\$ 3,050,000.00
<b>Month 9</b>	\$ 193,750.00	\$ 3,243,750.00
<b>Month 10</b>	\$ 193,750.00	\$ 3,437,500.00
<b>Month 11</b>	\$ 193,750.00	\$ 3,631,250.00
<b>Month 12</b>	\$ 193,750.00	\$ 3,825,000.00
<b>Retainage (Invoiced upon Go Live)</b>	\$ 675,000.00	\$ <b>4,500,000.00</b>
<b>Total</b>	\$ <b>4,500,000.00</b>	

**Annual Software License and Support (Invoiced upon Go Live)**

**\$ 300,000.00**

**Annual Hosting (Invoiced upon Development Environment Creation)**

**\$ 120,000.00**

**Statement of Work**  
**State of South Dakota**  
**Secretary of State**  
**05.16.24**  
**Version 1.0**

Contractor will provide a comprehensive election management system for use by State and county election officials to run state and local elections according to state and local laws and regulations. Contractors' system will include end-to-end election capabilities including:

- User access with assigned user roles and maintenance using multi factor authentication.
- Current and historical voter registration and voter roll maintenance with the ability to pre-register underage voters, manage temporary alternate addresses, processing of voter correspondence, and real time validation of voter identity.
- Ability to manage precincts/ sub precincts, districts, and their association as well as the managing districts, offices, and office holders.
- Interfacing with national and local agencies such as ERIC, Dept of corrections, Driver's License Division, Division of Vital Statistics, and SSA.
- Election setup and administration including candidates, races, ballot questions, party, and polling place management.
- Capabilities to initiate and process ballots delivered by mail, email, etc.; reissue ballots and cure ballots issues.
- Petition management with the capability to create sample packets, compare petition signatures to current voters.
- Capability to create and maintain candidate biographies.
- Data accessibility and system activity logging.
- Canned and ad-hoc operational, audit and exception reporting to support all phases of the election lifecycle.
- Online voter registration application and voter portal site.

**Objectives**

Contractors' system will address the following headers:

1. **User Management**
  - a. The use of multi factor authentication (MFA)
  - b. Ability to add, modify, suspend, or remove user access, permissions, and roles.
  - c. Ability for State users to work as county users.
  
2. **GIS Capability**
  - a. Ability to do redistricting either due to a Census update or to county changes, the system must be able to update voter records with new precincts.
  - b. Ability to do address geocoding and precinct assignment when entering or editing addresses.

- c. Ability to view visual maps that show street names, house numbers, and plot points for the address being processed.
  - d. Ability to manually plot an address to get X/Y coordinates and precinct.
3. **Public Interface**
- a. Provide a secure online voter registration portal, or be able to interface with one, for eligible voters and pre-registration of underage voters.
  - b. Availability of a secure online portal where voters can get information on their registration status and upcoming elections, races, candidates, and polling places for their precinct, etc.
4. **County Preference Management**
- a. Ability to add, modify, or delete county and clerk contact information.
  - b. Ability to set and update printers and settings.
  - c. Ability to work with municipalities that cross county boundaries.
5. **Party Management**
- a. Ability to add, modify or delete political parties and their information.
  - b. Ability to designate which voters can participate in a party's primary election.
6. **Precinct, District and Office Management**
- a. Manage precincts and sub-precincts (splits)
  - b. Manage districts, offices, and office holders.
  - c. Manage precinct to district associations.
  - d. Ability to create and maintain voter participation areas.
7. **Polling location Management**
- a. Polling location management with the ability to mark a location as an "Early Vote Center", a "Normal Vote Center", or both.
  - b. Ability to manage association of polling locations/vote centers with precincts by election.
8. **Election Management**
- a. Ability to create election templates including setting election name, election date, registration deadlines, political party participation and election types.
  - b. Ability to add, modify, or delete races in each election and advance candidates through elections (i.e., primary to general).
  - c. Ability to add, modify or delete candidates for a given election, their advancement in the races (candidate status), and candidate forms management including filing and signature gathering.
  - d. The ability to add, modify or delete ballot questions and issues and customize the responses.
  - e. Ability to add, modify, or delete judicial retention questions in an election.

- f. Ability to copy all candidates and races from one given election to another given election.

## 9. Voter Management

### a. Voter Record

- i. Ability to queue voter registration records, from multiple sources, and present them to system users for processing (adding or merging).
- ii. Ability to search for a voter record using multiple criteria. Ability to manage voters' personal information and verify their identity.
- iii. Voter status changes manually and automatically based on business rules.
- iv. Ability to capture and save signatures to a voter's record including on demand from DLD.
- v. The ability to manage and restrict voters' party affiliation changes.
- vi. Ability for voters to select a primary ballot other than for their affiliated party.
- vii. Ability to manage voters' privacy classification.
- viii. Addressing:
  - 1. The ability to manage domestic and international mailing addresses.
  - 2. The ability to manage ballot alternate delivery methods and destinations (including fax and email) domestic and international for designated dates.
- ix. Ability to manage communication with voters including confirmation cards, voter information cards and others.
- x. The ability to add notes to the voter record.
- xi. Ability to manage voters needing special accommodations.
- xii. Ability to preregister underage voters, protect their data and auto activate their records when they become eligible to vote.

### b. Documents and Signatures

- i. Ability to capture and store individual or batch scanned documents or signatures and associate them with the correct voter.
- c. Ability to view historical changes for a voter including registration, voting, ballot, petition, documents, and signature histories.
- d. Ability to process new online and manual registrations and updates, match the registration to an existing voter, if it exists.
- e. Ability to process new registrations and updates from DLD, match the registration to an existing voter, if it exists.
- f. Ability to identify duplicate voters based on varying criteria and resolve them.
- g. Ability to transfer voters to another county.
- h. The ability to merge two or more voter registrations and / or voter records including associated documents.

## 10. External Interfaces



- a. The ability to process Dept. of corrections felons file and restrict voters who are currently incarcerated from voting in elections.
- b. The ability to generate a list of active voters and related information for use in jury selection.
- c. The ability to process Dept. of vital statistics files so that deceased individuals can be removed from the voter roll.
- d. The ability to process and manage data from external sources (ERIC, NCOA, etc.) to update voter rolls.
- e. The ability to validate voter identity through SSA real-time.
- f. The ability to validate voter identity through DLD real-time.

#### 11. Ballot Management

- a. Ballot extracts for
  - i. By Mail
  - ii. UOCAVA (by mail, email & fax)
  - iii. Reissued ballots
- b. The ability to create and process provisional ballots.
- c. The ability to generate a sample ballot and post it on the voter portal so voters can preview the sample ballot for their respective precinct in each election.
- d. Ability to incorporate ballot processing from
  - i. Ballot processing equipment using the State's specific format and process
  - ii. Manual batch scanning
  - iii. Undeliverable mail/ballots
- e. The ability to identify and spoil or unspoil ballot(s) for a voter for a given election with an option to reissue a new ballot.
- f. The ability to identify and resolve duplicate voting history for a voter in an election.
- g. Ability to track curable ballots and letters to completion.
- h. The ability to run required reports to validate and reconcile election and ballot activities.

#### 12. Petition Management

- a. Ability to add, modify, and delete petitions, including setting signature thresholds, on a statewide and county level for traditional and candidate petitions.
- b. Allow users to determine packet numbering range.
- c. Ability to generate and save/print sample packet template(s) and forms for collecting petition signatures
- d. Allow users to compare signer data against voter records, including signature and residence, for verification and assign a status manually or automatically based on business rules.
- e. Ability to view and export processed signer records by status either at a packet or petition level.

- f. Ability to generate and save/print petition operational and audit reports
- g. Ability to access past petitions and all their relevant information.

**13. Annual Processing**

- a. Manage pre-registered voters that will be eligible to vote in the next election.
- b. Manage voters who need to be inactivated due to inactivity.
- c. Manage voters who should be marked as removable due to inactivity.

**14. Reporting and Data Access**

- a. Availability of canned operational reports for all modules above.
- b. Ability of users to set up preferences and subscribe to reports.
- c. Public service requests - reports for public, political party, and internal use.
- d. The ability to create and run ad hoc reports.
- e. Availability of State or county dashboards.

**15. Data Backup Accessibility: The Ability to Meet State Data Backup Requirements**

- a. Ability to create and maintain snapshots or system backups several times per year.
- b. Ability to access the data in those backups for business needs.

**16. System Activity Logging**

- a. User access logging
- b. User modification logging
- c. System batch process logging

**PART A: Definitions**

Acceptance Criteria: These are the necessary conditions of satisfaction that must be met for the item or deliverable to be considered accepted by SDSOS. They are specific to each deliverable. Also known as Deliverable Acceptance Criteria.

Bug: Also sometimes referred to as issue, this is an error, flaw, failure, or fault in a computer program or system that causes it to produce an incorrect or unexpected result, or causes it to behave in unintended ways.

Change Control Plan: This is the process for dealing with changes within the project that differ from the original scope.

Enhancement: This is any release, version, improvement, modification, upgrade, update, or addition to the Solution that Contractor makes available following the change control procedure upon the customer's request and an agreed upon change request.

TotalVote: This is Contractor's centralized voter registration and election management system. It will be the basis for the Solution.

User Acceptance Testing (UAT): This is a type of software testing in which users utilize a new software product as they would in performing their daily work, and assess it in terms of usability. Feedback is given to the development team for possible changes. This is done before the final release of the software into production.

VR (Voter Registration System): This is a software module that will be included in the Solution, and will support activities related to voter registration.

### PART B: Deliverables

#### Deliverable 0 – Licensing

Task Item	Del. #	Description
Licensing	0.1	<p>Contractor will deliver Solution licensing fee invoice to SOS. A license will be granted immediately upon payment of licensing fee.</p> <p><b>Deliverable Format:</b> Invoice</p> <p><b>Acceptance Criteria:</b> Licensing Invoice matches Contract terms and conditions.</p>

#### Deliverable 1 – Project Initiation

Task Item	Del. #	Description
Project Org Chart	1.1	<p>Contractor will provide project org chart to SOS.</p> <p><b>Deliverable Format:</b> Adobe PDF document</p> <p><b>Acceptance Criteria:</b> Project team outlines roles and escalation process.</p>
Preliminary Project Schedule	1.2	<p>Contractor will provide preliminary schedule (items prior to GAP analysis) to SOS.</p> <p><b>Deliverable Format:</b> Adobe PDF document</p> <p><b>Acceptance Criteria:</b> Schedule covers items prior to GAP analysis.</p>

#### Deliverable 2 – Data Conversion

Task Item	Del. #	Description
Data Conversion	2.1	<p>Data Extract Data Conversion Image Conversion Data Import</p> <p><b>Deliverable Format:</b> Counting queries</p>

		<b>Acceptance Criteria:</b> Counting queries match legacy system queries.
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### Deliverable 3 – Project Planning

Task Item	Del. #	Description
Change Control Plan	3.1	<p>The Change Control Plan is in place to ensure that scope is adhered to within the project. It will outline how to request changes and receive estimates on items not included in the original SOW.</p> <p><b>Deliverable Format:</b> Adobe PDF document</p> <p><b>Acceptance Criteria:</b> Provides instructions on requesting an estimate and estimate approval for items not included in the original SOW.</p>
System Security Plan	3.2	<p>Security plan delivered to SD will cover TotalVote compliance and control attestation specific to Fed Ramp and NIST SP 800 guidelines. SD Security team to review with TV Staff and achieve acceptance.</p> <p><b>Deliverable Format:</b> Adobe PDF document</p> <p><b>Acceptance Criteria:</b> System Security plan submitted to SOS.</p>
Training Plan	3.3	<p>TV to deliver release-based demonstrations and training for appointed SOS members, with included recordings, and manuals.</p> <p><b>Deliverable Format:</b> Adobe PDF document</p> <p><b>Acceptance Criteria:</b> Training plan outlines the train the trainer process.</p>
Project Schedule	3.4	<p>Deliver initial project schedule based on the gaps to achieve the deliverables outlined within Exhibit B and adjust to meet optimum with SD capacity. Achieve signoff on schedule, which will be updateable via change control plan process. <b>Will be</b></p>

		<p><b>delivered AFTER Gap Analysis to determine the level of development necessary.</b></p> <p><b>Deliverable Format:</b> Adobe PDF document</p> <p><b>Acceptance Criteria:</b> Schedule outlines dates for specific delivery items until the end of the project (go live).</p>
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#### Deliverable 4 – Solution Design

Task Item	Del. #	Description
Stand up Development branch of infrastructure.	4.1	<p>Development branch must be created for KNOWiNK staff.</p> <p><b>Deliverable Format:</b> Hosting Invoice</p> <p><b>Acceptance Criteria:</b> Development branch created.</p>
Stand up Test branch of infrastructure.	4.2	<p>Upon creation of the Test branch, SOS staff will receive user login information and access.</p> <p><b>Deliverable Format:</b> Hosting Invoice</p> <p><b>Acceptance Criteria:</b> SOS staff have access to Test branch.</p>
Stand up Production branch of infrastructure.	4.3	<p>Production branch will be created near the end of the project. This is where all LIVE work will be captured.</p> <p><b>Deliverable Format:</b> Hosting Invoice</p> <p><b>Acceptance Criteria:</b> SOS staff will receive login credentials.</p>
Data Mapping	4.4	<p>Establish Data Mapping Standards and Definition between TV and SD data sources via tabular documentation.</p> <p><b>Deliverable Format:</b></p> <p><b>Acceptance Criteria:</b></p>
Interface Design	4.5	<p>Build interface specs to include endpoints, API keys, network availability, and receive and review API contracts if available.</p>

		<b>Deliverable Format:</b>  <b>Acceptance Criteria:</b>
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### Deliverable 5 – Delivery

Task Item	Del. #	Description
Release 0: OOBE	5.1	<p>Initial OOBE infrastructure and Core Code Release with demonstration of function. VR and admin districts precincts users' permissions with demonstration of function. TotalAddress Points and Layers usable by VR module with demonstration of function. Election Management &amp; Ballot Management. Creating and issuing correct ballots to voters with demonstration of function. Public Portal, Petitions Management, OLVR.</p> <p><b>Deliverable Format:</b> TotalVote Base System login</p> <p><b>Acceptance Criteria:</b> Demo provided of OOBE system to SOS.</p>

### Deliverable 6 – GAP Analysis and Development

Task Item	Del. #	Description
GAP Release 1	6.1	<p>Voter Registration GAP analysis performed. Following GAP analysis, development will begin and upon completion will be released to SOS as GAP Release 1.</p> <p><b>Deliverable Format:</b> Meeting with demo of GAP functionality.</p> <p><b>Acceptance Criteria:</b> Demo provided that covers agreed upon GAPs.</p>
GAP Release 2	6.2	<p>Total Address</p> <p><b>Deliverable Format:</b> Meeting with demo and GAP analysis.</p> <p><b>Acceptance Criteria:</b> Demo provided that covers agreed upon GAPs.</p>
GAP Release 3	6.3	Election Management

		<p><b>Deliverable Format:</b> Meeting with demo and GAP analysis.</p> <p><b>Acceptance Criteria:</b> Demo provided that covers agreed upon GAPs.</p>
GAP Release 4	6.4	<p>Public Portal, Petitions Management</p> <p><b>Deliverable Format:</b> Meeting with demo and GAP analysis.</p> <p><b>Acceptance Criteria:</b> Demo provided that covers agreed upon GAPs.</p>
GAP Release 5	6.5	<p>Final OOBE Base Release</p> <p><b>Deliverable Format:</b> Meeting with demo and GAP analysis.</p> <p><b>Acceptance Criteria:</b> Demo provided that covers agreed upon GAPs.</p>

**Deliverable 7– TotalVote Labs**

Task Item	Del. #	Description
TotalVote Labs Election Night Reporting Base Release	7.1	<p>Election Night Reporting base module will be demonstrated to SOS staff.</p> <p><b>Deliverable Format:</b> Meeting with demo.</p> <p><b>Acceptance Criteria:</b> Meeting with demo completed.</p>
GAP analysis Election Night Reporting	7.2	<p>GAP analysis performed on Election Night Reporting module to ensure SOS does not lose current functionality.</p> <p><b>Deliverable Format:</b> Meeting with demo and GAP analysis.</p> <p><b>Acceptance Criteria:</b> GAP analysis conducted during meeting.</p>
TotalVote Labs Campaign Finance Base Release	7.3	<p>Campaign Finance base module will be demonstrated to SOS staff.</p> <p><b>Deliverable Format:</b> Meeting with demo.</p>

		<b>Acceptance Criteria:</b> Meeting with demo completed.
GAP analysis for Campaign Finance	7.4	GAP analysis performed on Campaign Finance module to ensure SOS does not lose current functionality.  <b>Deliverable Format:</b> Meeting with demo and GAP analysis.  <b>Acceptance Criteria:</b> GAP analysis conducted during meeting.
Final TotalVote Labs Release	7.5	Meeting with demo.  <b>Deliverable Format:</b> Final demo on Campaign Finance and Election Night Reporting modules.  <b>Acceptance Criteria:</b> Demo provided that covers agreed upon GAPs.

#### Deliverable 8 – Training and Knowledge Transfer

Task Item	Del. #	Description
Software Training	8.1	Software Training for Administrative staff creating usernames managing counties, permissions, MFA token management, configuration to properly manage software in house for Tier 1 support  <b>Deliverable Format:</b> Meeting to cover training with recording.  <b>Acceptance Criteria:</b> Recording of meeting provided to SOS.
Application Training	8.2	Pre-UAT for each Released Module with a Demonstration to SOS designated Trainee's. Trainees will conduct Train the trainer and hold responsibility for internal Trainee stakeholders.  <b>Deliverable Format:</b> Meeting recording.  <b>Acceptance Criteria:</b> Meeting recordings provided to SOS following demonstrations.



Election Night Reporting Training	8.3	<p>Training on Election Night Reporting module.</p> <p><b>Deliverable Format:</b> Meeting recording.</p> <p><b>Acceptance Criteria:</b> Meeting recordings provided to SOS following demonstration.</p>
Campaign Finance Training	8.4	<p>Training in Campaign Finance module.</p> <p><b>Deliverable Format:</b> Meeting recording.</p> <p><b>Acceptance Criteria:</b> Meeting recordings provided to SOS following demonstration.</p>

### Deliverable 9 – Project Implementation and Go Live Support

Task Item	Del. #	Description
Final Data Conversion	9.1	<p>Final conversion and database sync completed</p> <p><b>Deliverable Format:</b> Data imported into Production branch.</p> <p><b>Acceptance Criteria:</b> Counting queries that match the legacy system.</p>
Data Validation Testing	9.2	<p>Modern system reports accurate vs legacy system data reports as outlined in final data migration report.</p> <p><b>Deliverable Format:</b> Counting queries provided.</p> <p><b>Acceptance Criteria:</b> Counting queries match legacy system.</p>
Production Application Cutover	9.3	<p>Cease legacy system work and begin modern system execution.</p> <p><b>Deliverable Format:</b> Legacy system no longer used.</p> <p><b>Acceptance Criteria:</b> Solely using the new TotalVote system as system of record.</p>
Go Live Support	9.4	<p>Support for SOS staff to be provided by Project Manager available for issues 24/7 one week before and one week following go-live.</p> <p><b>Deliverable Format:</b> Email</p>

		<b>Acceptance Criteria:</b> Emergency contact information and guidance on how to submit issues to Project Manager.
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**Deliverable 10 – Project Close Out**

Task Item	Del. #	Description
Project Documentation and Artifacts Transfer	10.1	Documentation including user manuals, relevant training materials, architecture documentation, security documentation.  <b>Deliverable Format:</b> Adobe PDF and Word Documents  <b>Acceptance Criteria:</b> User manuals, training materials, security documentation and architecture documentation provided to SOS.

**Part C: Software License and Support**

1. **UPDATES AND UPGRADES:** Any upgrades and updates provided by Contractor are subject to the terms of this Contract. Updates comply with the Security requirements in the Contract.
2. **BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems.
3. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is required by the Contract, Contractor will use commercially reasonable efforts to respond to SDSOS in a reasonable time when SDSOS makes technical support or maintenance requests.

**SOFTWARE WARRANTY:**

Contractor warrants for a period of six months from the date of acceptance (go-live) that the software portions of the Goods and Custom Deliverable, including Software as a Service, that Contractor directly or indirectly provides will:

- a. Perform in accordance with the specific requirements of this SOW and all specifications and documentation for the software;
- b. Be suitable for the ordinary purposes for which such goods and custom deliverables are used;
- c. Be suitable for any special purposes that SDSOS has relied on Contractor’s skill or judgment to consider when it advised the State about the Goods or Custom Deliverables;
- d. Have been properly designed and manufactured; and
- e. Be free of significant defects. Contractor shall provide SDSOS with bug fixes and inform SDSOS of any known software bugs or software defects that may affect the state’s use of the software.

## Exhibit D

### Bureau of Information and Telecommunications Required IT Contract Terms

Acknowledgement: State of South Dakota Information Technology Security Policy

Contractor: The individual signing this form on behalf of their entire company affirms that he/she has the authority to commit the Contractor and all its employees to follow the terms of this agreement.

Kevin Schott

Kevin Schott (Jun 10, 2024 14:00 CDT)

06/10/2024



Jeff C. Ingalls (Jun 10, 2024 15:32 CDT)

06/10/2024

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
BIT Contact

\_\_\_\_\_  
Date

Kevin Schott

KnowInk, LLC

\_\_\_\_\_  
Printed Contractor name and Company name

## Fwd: Public Record Request

----- Forwarded message -----

From: **Soulek, Rachel** <[Rachel.Soulek@state.sd.us](mailto:Rachel.Soulek@state.sd.us)>

Date: Tue, Mar 11, 2025 at 11:08 AM

Subject: Public Record Request

Cc: SOS-Elections <[Elections@state.sd.us](mailto:Elections@state.sd.us)>, Johnson, Monae <[Monae.Johnson@state.sd.us](mailto:Monae.Johnson@state.sd.us)>

Dear Ms. Meyer,

You requested any Memorandum of Agreement or Memorandum of Understanding for voter file information sharing that the Secretary of State's Office has entered into. The South Dakota Secretary of State's Office has not entered into any agreements for voter file information sharing with other states or jurisdictions.

Thank you

## Rachel Soulek

*Director, Division of Elections*

Office of Secretary of State

500 East Capitol Ave., Ste. 204

Pierre, SD 57501

Phone 605.773.3537 / Fax 605.773.6580

Email: [Rachel.Soulek@state.sd.us](mailto:Rachel.Soulek@state.sd.us)

Website: <http://sdsos.gov>

### *Confidentiality Notice*

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