

**STATE OF SOUTH DAKOTA  
OFFICE OF PROCUREMENT MANAGEMENT  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA 57501-3182**

**Digital Evidence Management System**

**PROPOSALS ARE DUE NO LATER THAN NOVEMBER 1, 2024**

**RFP #: 24RFP11465  
EMAIL: jamie.reed@state.sd.us**

**BUYER: South Dakota Office of the Attorney  
General (SD ATG), Division of Criminal  
Investigation (SD DCI)**

**READ CAREFULLY**

FIRM NAME:

AUTHORIZED SIGNATURE:

ADDRESS:

TYPE OR PRINT NAME:

CITY/STATE:

TELEPHONE NO:

ZIP (9 DIGITS):

FAX NO:

E-MAIL:

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**PRIMARY CONTACT INFORMATION**

CONTACT NAME:

TELEPHONE NO:

FAX NO:

E-MAIL:

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## 1.0 GENERAL INFORMATION

### 1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

**Background:** The South Dakota Division of Criminal Investigation (DCI) is a statewide law enforcement agency that operates under the South Dakota Attorney General's Office. The South Dakota DCI employs 130 personnel in a variety of areas, including Special Agents, Special Investigators, Analysts, Forensic Scientists, Law Enforcement Trainers, Identification Specialists, Sex Offender Registration, Victim Advocates, Information Technology Specialists and Administrative Support Staff. The primary mission of the South Dakota DCI is to provide high level criminal investigation services to state and local law enforcement partners as well as conducting proactive criminal investigative efforts. The South Dakota DCI also offers many different law enforcement services and run many statewide programs such as the State Forensic Laboratory, Law Enforcement Training Academy, Missing Persons Clearinghouse, Sex Offender Registration, 24/7 program, SAVIN, NIBRs and Statistical Analysis Center, the South Dakota Internet Crimes Against Children (ICAC) Task Force, Electronic Crimes, Technical Services Unit, Elder Abuse, Polygraphs and process criminal and civilian background checks. In addition, the South Dakota DCI partners with other agencies across the state in drug task forces, drug asset forfeiture program, the FUSION Center, Amber Alert and Endangered Missing Advisory and Special Victims Unit Multi-disciplinary Team.

The DCI Field Operations consists of approximately 60 Special Agents and Special Investigators who focus on major criminal investigations, narcotics investigations, ICAC investigations, electronic crime investigations; many of these operations utilize our technical services unit for electronic surveillance. These Special Agents and Special Investigators encounter various forms of digital evidence and digital data that must be stored and maintained as evidence or for investigative documentation purposes.

### 1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER

The SD DCI is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, SD DCI. The reference number for the transaction is 24RFP11465. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

### 1.3 DEFINITIONS USED IN THIS RFP

The following definitions are used in this RFP:

**Offeror** – a company who has submitted a proposal in response to this RFP.

**Vendor** – An Offeror that has been awarded a contract as a result of this RFP.

**State** - South Dakota Office of the Attorney General (SD ATG), Division of Criminal Investigation (SD DCI).

## 1.4 OFFEROR INQUIRIES

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time indicated in the Schedule of Activities. Inquiries must be emailed to Jamie Reed at [Jamie.reed@state.sd.us](mailto:Jamie.reed@state.sd.us) with the subject Line “RFP #24RFP11465”.

The State will respond to offeror’s inquiries (if required) via e-mail. All Offerors will be informed of any inquiries and the State’s response. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP.

Offerors are expected to raise any questions, exceptions, or additions they have concerning the RFP document by the deadline for submission for written inquiries as indicated in the Schedule of Activities. If an Offeror discovers any significant ambiguity, error, conflict, discrepancy, omission or other deficiency in this RFP, the Offeror should immediately notify Jamie Reed, of such error and request modification or clarification of the RFP.

Offeror's Contacts: Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to Jamie Reed as indicated above. Offerors and their agents may not contact any other state employee regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact Jamie Reed as indicated above.

## 1.5 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

RFP Publication	September 18, 2024
Deadline for Submission of Written Inquiries	October 4, 2024
Responses to offeror Questions	October 18, 2024
Proposal Submission Deadline	November 1, 2024
Evaluation of Proposals	November 4-15, 2024
Demonstrations and presentations (as determined by State)	December 2-13, 2024
Proposal Revisions (if required)	January 3, 2025
Anticipated Award Date	January 17, 2025
Contract Negotiation	January 20-March 14, 2025
Anticipated Go-Live	June 13, 2025

## 1.6 PREPARING AND SUBMITTING YOUR PROPOSAL

Elaborate proposals (e.g., expensive artwork) beyond that sufficient to present a complete and effective presentation are not necessary or desired.

### 1.6.1 Incurring costs

The State is not liable for any cost incurred by Offerors in replying to this RFP.

### 1.6.2 Submitting the proposal

All proposals must be completed and received in the SD DCI by the date and time indicated in the Schedule of Activities.

~~Proposals received after the deadline will be late and ineligible for consideration.~~

Offerors may send their proposals in hard copy or electronically via email.

If sending electronically, The electronic version should be provided in MS WORD or in PDF format to jamie.reed@state.sd.us. The email, including attachments, must be limited to 10MB in size. Multiple emails can be sent.

All proposals must be signed by an officer of the Offeror, legally authorized to bind the Offeror to the proposal. Proposals that are not properly signed may be rejected. To facilitate the electronic signature of proposals, Offerors shall provide the email address of the officer legally authorized to bind the Offeror to the proposal by 11:59PM CST, November 1, 2024. If Offerors do not wish to sign electronically, the first page of the RFP must accompany the proposal submission, completed, and signed.

Electronic proposals received after the deadline will be late and ineligible for consideration.

~~Offerors may not send the electronically formatted copy of their proposal via email.~~

If sending hard copy, offerors will mail 5 printed copies of their proposal, along with one electronic copy on a thumb drive, including all attachments, in both Microsoft Word and PDF electronic formats.

The cover sheet of the proposal must be signed, in ink, by an officer of the Offeror, legally authorized to bind the Offeror to the proposal, and sealed in the form intended by the Offeror. Proposals that are not properly signed may be rejected. The cover sheet must be printed and submitted with the proposal. The sealed envelope must be marked with the appropriate RFP Number and title. The words "Sealed Proposal Enclosed" must be prominently denoted on the outside of the shipping container.

All proposals must be signed, in ink, by an officer of the offeror, legally authorized to bind the offeror to the proposal and sealed in the form. Proposals that are not properly signed may be rejected. The sealed envelope must be marked with the appropriate RFP Number and Title. The words “Sealed Proposal Enclosed” must be prominently denoted on the outside of the shipping container.

Proposals must be addressed and labeled as follows:

REQUEST FOR PROPOSAL # 24RFP11465  
DUE DATE: NOVEMBER 1, 2024  
SOUTH DAKOTA DIVISION OF CRIMINAL INVESTIGATION  
JAMIE REED  
1302 E. HIGHWAY 14, SUITE 5  
PIERRE, SD 57501

All capital letters and no punctuation are used in the address. The South Dakota Division Of Criminal Investigation address as displayed should be the only information in the address field.

**Hard copy proposals postmarked after the deadline will be late and ineligible for consideration.**

No proposal shall be accepted from, or no contract or purchase order shall be awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota, or that otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

#### **1.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this proposal, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to its offer.

#### **1.8 NON-DISCRIMINATION STATEMENT**

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin, or disability.

## **1.9 RESTRICTION OF BOYCOTT OF ISRAEL**

For contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, 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 the bid or offer, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, 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 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. The successful bidder or offeror further agrees to provide immediate written notice to the contracting executive branch 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.

## **1.10 RESTRICTION OF PROHIBITED ENTITY**

In accordance with the South Dakota Codified Law 5-18A, any bidder or offeror submitting a bid or offer in response to this document 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.

### **1.11 CERTIFICATION OF NO STATE LEGISLATOR INTEREST**

Offeror (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to any Agreement entered into as a result of this RFP. By signing an Agreement pursuant to this RFP, Offeror hereby certifies that the Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

### **1.12 MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

No oral, telephonic, telegraphic, or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.

### **1.13 PROPRIETARY INFORMATION**

The proposal of the successful offeror(s) becomes public information. Proprietary information can be protected under limited circumstances such as client lists and non-public financial statements. An entire proposal may not be marked as proprietary. Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected. The Executive Summary must contain specific justification explaining why the information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of South Dakota and may be returned only at the State's option.

### **1.14 LENGTH OF CONTRACT**

The contract will be for a five (5) year term and the State, in its sole discretion, may renew the Agreement under the same terms and conditions for up to one additional five-year period.

### **1.15 GOVERNING LAW AND VENUE**

This RFP 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 RFP shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

## **1.16 PRESENTATIONS/DEMONSTRATIONS**

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the Offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offeror's expense.

This process is a Request for Proposal/Competitive Negotiation process. Each Proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the State's request. The State reserves the right to negotiate on any and/or all components of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

## **1.17 DISCUSSIONS**

At the State's discretion, the offeror may or may not be invited to have discussions with the State. The discussions can be before or after the RFP has been submitted. Discussions will be made at the offeror's expense. There will be a Technical Review involving the South Dakota Bureau of Information and Communications ("BIT" hereinafter) relating to the Offeror's responses to the Security and Vendor Questions at the discretion of the State.

## **1.18 NEGOTIATIONS**

This process is a Request for Proposal/Competitive Negotiation process. Each proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the State's request. The State reserves the right to negotiate on any component of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

## **2.0 STANDARD CONTRACT TERMS AND CONDITIONS**

Any contract or agreement resulting from this RFP will include, at a minimum, the substance of the contract terms and conditions as set forth in Appendix A. However, as part of the negotiation process, the language of a specific term or condition listed in Appendix A could be modified upon agreement between the State and the vendor. Additional terms and conditions may be required. The Offeror should indicate in their response any issues they have with specific contract terms. If the Offeror does not indicate that there are any issues with any contract terms, the State will assume those terms are acceptable to the Offeror.

## **3.0 SCOPE OF WORK**



The successful Vendor shall provide qualified staff and support for successful completion of the project. The Owner reserves the right to add or delete related project requirements during the term of the contract as needed. Prices for these changes will be negotiated and finalized as the work requires and as available funding allows. Owner is not responsible for Vendor costs that exceed approved project cost or for any costs resulting from Vendor work undertaken before Owner representative's acceptance and written approval.

**3.1 Vendor Hosted Cloud Solution:** The Vendor will provide projected cost for, and assist in, hosting a solution in a cloud environment. Microsoft Azure Government or AWS GovCloud environments are currently the state standard. If the Vendor is going to propose a cloud solution that is not Microsoft Azure Government or AWS GovCloud environments, the Vendor must provide their FedRAMP certification and proof that you meet the CJIS Security Policy Requirements.

**3.2 Storage:** The Vendor will provide a plan for and cost estimates of storage. Current storage needs are estimated at the current size of approximately one (1) Petabyte, with needs for future infinite growth. Data will be automatically tiered into storage pools based off user demand and performance needs.

**3.3 Management Services:** Provide initial onboarding and ongoing services related to:

~~3.3.1 Management of Azure Enrollment or AWS GovCloud Enrollment~~

3.3.1 Management of Cloud Enrollment

3.3.2 Monitoring and audit

3.3.3 Transfer/Upload of sensitive data/content from current servers to secure cloud environment

3.3.4 Transfer/Upload of video evidence from current servers to secure cloud environment

3.3.5 Video evidence archiving

3.3.6 24/7 support and management for:

3.3.7 Data Archiving

3.3.8 Data Management

3.3.9 Incident Recovery

3.3.10 Backups

3.3.11 Restoration

3.3.12 Community Upload Link feature and capabilities

(this item is optional, but not a requirement)

3.3.13 Milestone, Video Management Software, integration

(this item is optional, but not a requirement)

### **3.4 Hosting and Data Access Requirements**

The state is looking for a Vendor Hosted Cloud Solution. The contract doubles as an agreement for the State to own the data tables and can manipulate data, run reports as needed, pull code tables, access raw data, and develop dashboards as needed through Microsoft Power BI, ESRI, Tableau and associated platforms.

The Offeror shall describe the process by which the State can access data housed within the proposed solution for ingestion into a state data repository, encompassing available

methodologies (e.g., flat file, API), data formatting, frequency of updates, and any inherent constraints. Additionally, provide a high-level architecture diagram, as part of the Solution Diagram, elucidating the proposed solution's data provision mechanism.

### **3.5 Single Sign-On Requirements**

As part of the State's Identity and Access Management (IAM) strategy, the proposed solution will need to integrate with the State of South Dakota's standard identity management service single sign-on (SSO) which enables custom control of how citizens and state employees sign up, sign in, and manage their profiles.

The SSO supports the industry standard OAuth 2.0 protocol. This identity management will handle password recovery and multi-factor authentication (MFA). MFA is required for all application Administrators and may be required for other users. Microsoft's official documentation on the identity provider the State has implemented can be found at: 1) <https://docs.microsoft.com/en-us/azure/active-directory-b2c/> and [https://docs.microsoft.com/en-us/azure/active-directory-b2c/integrate-with-app-code-samples-for-public/citizens\(AzureB2C\)](https://docs.microsoft.com/en-us/azure/active-directory-b2c/integrate-with-app-code-samples-for-public/citizens(AzureB2C)), 2) <https://learn.microsoft.com/en-us/azure/active-directory/architecture/auth-oauth2> and <https://learn.microsoft.com/en-us/azure/active-directory/develop/v2-protocols-oidc> for state employees, businesses, partners, providers, etc. (Azure Active Directory).

If the offeror is not able to fulfill this identity management standard, they will be excluded from the list.

### **3.6 Onboarding/Provisioning Users**

The offeror must describe how new users are onboarded/provisioned in the system using an external identity provider an Identity/SSO/Login Design Document.

### **3.7 Interfaces and Integration**

The offeror must describe how the system can adapt to business necessary interfaces using widely adopted open APIs and standards. Additionally, SD DCI expects that the offeror will make available/expose software services and publish documentation for those software services that would enable third party developers to interface other business applications. A detailed description of system capability shall be included in the proposal.

The state currently utilizing On-Prem Milestone. Future program expansions would provide the ability to offer direct edge to cloud streaming of video surveillance footage from within the Milestone system to the cloud storage solution with the ability to automatically convert the proprietary video format into a standard .mp4 video file while maintaining the original "first instance" file.

### **3.8 Solution Diagram**

The offeror must provide a solution diagram providing specific details of how the entire

solution will meet the requirements of the RFP. This will include integration with the State's infrastructure, existing systems that will integrate with the proposed solution, how data would flow between systems, the technology stack of the solution including any dependencies, and include user onboarding/provision and SSO.

### **3.9 Scope of Components or Phases**

Currently the SD DCI and the SD Attorney General's Office are using external hard drives, thumb drives, CDs/DVDs, and other removeable storage media to collect or share discovery with LE partners. Depending on the type of digital evidence, it is then stored within the agency Central Square Pro-Suite RMS system, the agency shared network drive, individual NAS storage servers or removable media. For all files except video and extremely large files, they are shared through the DCI RMS web client. For video and extremely large files, they are burned to a CD.

Approximately 130 agency users:

- Approximately 10 users with full admin access and permissions
- Approximately 90 users with read/write access and permissions
- Approximately 30 users with read only access and permissions

\*\*\*ICAC investigations/data involving child sexual abuse material (CSAM) or other sensitive material or data will require the ability to limit access to specific users.\*\*\*

Approximately 1,500 investigations a year.

Current digital forensics programs being used in our agency include the following: Cellebrite UFED 4PC, Cellebrite Physical Analyzer, Cellebrite Digital Collector, Magnet AXIOM, Magnet OUTRIDER, X-Ways Forensics

3.9.1 This proposed project is to provide hosted and managed services for securely uploading the storage of all digital evidence and digital data associated with the DCI Field Operations to the cloud environment. The end goal is to reduce and eliminate as much as possible the physical footprint of storage and server hardware, currently in many different physical locations throughout the state. Due to the sensitive nature of some of the data involved with ICAC investigations and major crimes, the storage of this data must be secured via encryption and/or with restricted access to the point where even the vendor cannot see the actual data contents. Other types of digital evidence and digital data may not require the same level of encryption or restricted access. Regardless of encryption or restricted access requirements, all new and existing data must be automatically backed up with full audit capabilities to document who accessed or touched secured data. Also, this data will need to be stored and maintained pursuant to state laws and agency policy, which in some cases may be indefinite storage. This will include evidence/data retention categories and automated alerts. In addition, this cloud storage solution must have the capability for infinite growth.

3.9.2 The proposed cloud storage solution must provide a digital evidence management system (DEMS) that includes the following features:

- The ability to create a case within the DEMS based upon an agency case number or other unique identifier and upload various types of digital evidence to each case.
- The ability to categorize, store and search for digital evidence based upon a specific case number or other unique identifier.
- The ability to apply a specific retention tag or designation to individual items of digital evidence with automatic notifications regarding specific retention periods that have been reached.

3.9.3 The proposed cloud storage solution must also provide the capability to electronically transfer digital evidence and digital data between agency users, law enforcement partners, prosecutors, and other stakeholders. This will include the capability to provide digital evidence discovery to prosecutors outside of the state network infrastructure as well as the ability to transfer or share digital data with law enforcement partners outside of the state network infrastructure. This feature should include the ability to share a secure ~~data upload and/or~~ data download link as well as being able to assign controlled or limited access to a specific file/folder within the cloud storage solution. ~~In addition, this will include a Community Upload Link feature and capability that will allow DCI Field Operations to create an upload link within the cloud storage solution that can be provided to members of the public for the purpose of uploading digital images and video footage regarding critical incidents and other incidents that are being investigated by the DCI. Lastly, this will include full audit capabilities to document the transfer of digital evidence and digital data between all users.~~

3.9.4 The following file types/extensions are currently used/received in our agency. The proposed cloud solution will need to be able to upload and store these file types/extensions into the new system; .jpg, .png, .bmp, .giff, .mov, .mpeg, .avi, .wma, .wav, .mp3, .m1a, .mid, .mdi, .chm, .pdf, .doc, .docx, .xls, and Milestone video format.

3.9.5 The current annual budget for this project is \$100,000.00. This includes implementation, go live, and reoccurring annual costs.

3.9.6 Target go-live date is June 13, 2025.

### **3.10 PROJECT DELIVERABLES/APPROACH/METHODOLOGY**

This section identifies tasks and deliverables of the project as described in Section 3.0. The selected offeror is responsible for providing the required deliverables. These deliverables will be the basis against which the offeror's performance will be evaluated.

**3.10.1** Since the offeror is hosting the solution, provide a diagram giving an overview of the proposed system. It is preferred that this diagram be provided as a separate document or attachment. The file must be named "(Your Name) Hosted System Diagram". If the offeror elects to make the diagram part of the proposal, then the location of the diagram must be clearly indicated in the Table of Contents.

- 3.10.2** The offeror should state whether its proposed solution will operate in a virtualized environment. Offeror also should identify and describe all differences, restrictions, or limitations of its proposed solution with respect to operation, licensing, support, certification, warranties, and any other details that may impact its proposed solution when hosted in a virtualized environment. This information must be included with the solution diagram for the offeror hosted solution.
- 3.10.3** The offeror is required to include a test system for its application. This test system will be used at the discretion of BIT. All resource costs associated with keeping the test system available must be borne by the project owner or the offeror. Any licensing costs for the test system must be included with the costs.
- 3.10.3.1 At BIT's discretion, any code changes made by the offeror, either during this project or thereafter, will be placed in the above test system first. It is at BIT's discretion if the code changes are applied by BIT or the offeror. If the code testing delays a project's timeline, a change management process should be followed, and the State will not be charged for this project change. If the test and production systems are to be hosted by the State, the schedule for the testing of the code changes is to be decided by BIT. Testing of emergency code changes will be scheduled by BIT based on the severity and resource availability.
- 3.10.3.2 The test system will be maintained by the offeror as a mirror image of the production system code base. At BIT's discretion, updates to the production system will be made by copying code from the test system after the test system passes BIT certification requirements.
- 3.10.3.3 If BIT determines that the application must be shut down on the production system, for any reason, the offeror will, unless approved otherwise by BIT, diagnosis the problem on and make all fixes on the test system. The offeror is expected to provide proof, to BIT, of the actions taken to remediate the problem that led to the application being denied access to the production system before the application can go back into production. This proof can be required by BIT even if the fix passes all BIT certification criteria. BIT is willing to sign a non-disclosure agreement with the offeror if the offeror feels that revealing the fix will put the offeror's intellectual property at risk.
- 3.10.4** All solutions acquired by the State that are hosted by the offeror, including Software as a Service, or hosted by a third-party for the offeror will be subjected to security scans by BIT or preapproved detailed security scan report provided by the offeror. The scan report sent in with the proposal can be redacted by the offeror. The State's goal at this point is to see if the contents of the report will be acceptable, not to review the contents themselves. If the offeror will be providing a security scan report, one must be sent with the proposal for approval. Approval is not guaranteed. If the scan report is not acceptable, the State must scan the

offeror's solution. The actual scanning by the State or the submission of a security scan report will be done if the proposal is considered for further review. A detailed security report must consist of at least:

- 3.10.4.1 The system that was evaluated (URL if possible, but mask it if needed).
- 3.10.4.2 The categories that were evaluated (example: SQL injection, cross site scripting, etc.)
- 3.10.4.3 What were the general findings, (meaning how many SQL injection issues were found, what was the count per category)
- 3.10.4.4 Technical detail of each issue found. (where was it found – web address, what was found, the http response if possible)

The cost of any scans done by the offeror or the offeror's costs associated with the State's scans must be part of the offeror's bid. If the offeror is sending a security scan report, it should price the product both as if the State was to do the security scan or if the offeror was to do the security scan.

- 3.10.5** Security scanning will be performed during the software development phase and during pre-production review. These scans and tests can be time consuming and should be allowed for in project planning documents and schedules. Products that do not meet BIT's security and performance requirements will not be allowed to go into production and may be barred from UAT until all issues are addressed to the State's satisfaction. The State urges the use of industry scanning/testing tools and secure development methods be employed to avoid unexpected costs and project delays. Costs to produce and deliver secure and reliable applications are the responsibility of the software entity producing or delivering an application to the State. Unless expressly indicated in writing, the State assumes all price estimates and bids are for the delivery and support of applications and systems that will pass security and performance testing. If the State determines the hardware, website(s), software, and or cloud services have security vulnerabilities that must be corrected, the State will inform the offeror of the nature of the issue and the offeror will be required to respond in writing regarding mitigation plans for the security vulnerabilities. If the product(s) does not pass the initial security scan, additional security scans may be required to reach an acceptable level of security. The offeror must pass a final follow-up security scan for the website(s), software or cloud services for the product(s) to be acceptable products to the State. The State may suspend or cancel payments for hardware, website(s), software, or cloud services that do not pass a final security scan.

Any website or web application hosted by the offeror that generates email cannot use "@state.sd.us" as the originating domain name per state security policy.

- 3.10.6** As part of this project, the offeror will provide a monitoring tool the State can utilize to monitor the operation of the proposed solution as well as all systems

and all subcomponents and connections. It is required that this tool be easy to use and provide a dashboard of the health of the proposed solution. The effectiveness of this monitoring tool will be a component of the acceptance testing for this project.

- 3.10.7** As part of the project plan, the offeror will include development of an implementation plan that includes a back out component. Approval of the implementation plan by BIT should be a project milestone. Should the implementation encounter problems that cannot be resolved and the implementation cannot proceed to a successful conclusion, the back out plan will be implemented. The Implementation and back out documentation will be included in the project documentation.
- 3.10.8** The successful offeror will use the approved BIT processes and procedures when planning its project, including BIT's change management process. Work with the respective agency's BIT Point of Contact on this form. The Change Management form is viewable only to BIT employees. The purpose of this form is to alert key stake holders (such as: Operations, Systems Support staff, Desktop Support staff, administrators, Help Desk personnel, client representatives, and others) of changes that will be occurring within state resources and systems to schedule the:
- 3.10.8.1 Movement of individual source code from test to production for production systems
  - 3.10.8.2 Implementation of a new system
  - 3.10.8.3 A major enhancement to a current system or infrastructure changes that impact clients
  - 3.11.8.4 Upgrades to existing development platforms
- 3.10.9** If as part of the project the state will be acquiring software the proposal should clearly state if the software license is perpetual or a lease. If both are options, the proposal should clearly say so and state the costs of both items separately.
- 3.10.10** Include in your submission details on your:
- Data loss prevention methodology;
  - Identity and access management;
  - Security intelligence;
  - Annual security training and awareness;
  - Manual procedures and controls for security;
  - Perimeter controls;
  - Security certifications and audits.
- 3.10.11** Since the offeror will have State data on its system(s) or on a third-party's system and the data cannot be sanitized at the end of the project, the offeror's

proposal must indicate this and give the reason why the data cannot be sanitized as per the methods in NIST 800-88.

**3.10.12** The offeror's solution cannot include any hardware or hardware components manufactured by Huawei Technologies Company or ZTE Corporation or any subsidiary or affiliate of such entities. This includes hardware going on the State's network as well as the offeror's network if the offeror's network is accessing the State's network or accessing State data. This includes Infrastructure as a Service, Platform as a Service or Software as a Service situations. Any company that is considered to be a security risk by the government of the United States under the International Emergency Economic Powers Act, in a United States appropriation bill, an Executive Order, or listed on the US Department of Commerce's Entity List will be included in this ban.

**3.10.13** If the offeror's solution requires accounts allowing access to State systems, then the offeror must indicate the number of the offeror's staff or subcontractors that will require access, the level of access needed, and if these accounts will be used for remote access. These individuals will be required to use Multi-Factor Authentication (MFA). The State's costs in providing these accounts will be a consideration when assessing the cost of the offeror's solution. If the offeror later requires accounts that exceed the number of accounts that was originally indicated, the costs of those accounts will be borne by the offeror and not passed onto the State. The offeror should review the State's security policies regarding authorization, authentication, and, if relevant, remote access (See ITSP 230.67, 230.76, and 610.1). Use of Remote Access Devices (RAD) by vendor or any subcontractors to access the State's system must be requested when an account is requested. The offeror should be aware that access accounts given to non-state employees, Non-State (NS) accounts, will be disabled if not used within 90 days. A NS account may be deleted after 30 days if it is not used.

**3.10.14 Testing:** The following testing may be required:

3.10.14.1 **Regression Testing-** Regression testing is the process of testing changes to computer programs to make sure that the older programming still works with the new changes.

3.10.14.2 **Integration Testing-** Integration testing is a software development process which program units are combined and tested as groups in multiple ways. In this context, a unit is defined as the smallest testable part of an application. Integration testing can expose problems with the interfaces among program components before trouble occurs in real-world program execution. Integration testing is also known as integration and testing (I&T).

3.10.14.3 **Functional Testing-** Functional testing is primarily used to verify that a piece of software is meeting the output requirements of the end-user or business. Typically, functional testing involves evaluating and comparing each software function with the business requirements. Software is tested



by providing it with some related input so that the output can be evaluated to see how it conforms, relates or varies compared to its base requirements. Moreover, functional testing also checks the software for usability, such as ensuring that the navigational functions are working as required. Some functional testing techniques include smoke testing, white box testing, black box testing, and unit testing.

**3.10.14.4 Performance Testing-** Performance testing is the process of determining the speed or throughput of an application. This process can involve quantitative tests such as measuring the response time or the number of MIPS (millions of instructions per second) at which a system functions. Qualitative attributes such as reliability, scalability and interoperability may also be evaluated. Performance testing is often done in conjunction with load testing.

**3.10.14.5 Load Testing-** Load testing is the process of determining the ability of an application to maintain a certain level of effectiveness under unfavorable conditions. The process can involve tests such as ramping up the number of users and transactions until the breaking point is reached or measuring the frequency of errors at your required load. The term also refers to qualitative evaluation of factors such as availability or resistance to denial-of-service (DoS) attacks. Load testing is often done in conjunction with the more general process of performance testing. Load testing is also known as stress testing.

**3.10.14.6 User Acceptance Testing-** User acceptance testing (UAT) is the last phase of the software testing process. During UAT, actual software users test the software to make sure it can handle required tasks in real-world scenarios, according to specifications. UAT is one of the final and critical software project procedures that must occur before newly developed or customized software is rolled out. UAT is also known as beta testing, application testing or end user testing. In some cases, UAT may include piloting of the software.

**3.10.15** The State, at its sole discretion, may consider a solution that does include all or any of these deliverables or consider deliverables not originally listed. An offeror must highlight any deliverable it does not meet and give any suggested “work-around” or future date that it will be able to provide the deliverable.

#### **4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS**

#### **4.1 TEAM ORGANIZATION:** Provide the following information.

##### **4.1.1 PROJECT ORGANIZATION CHART**

List names, job titles (designate vacancies), and the city and state in which individual will work on this project.

##### **4.1.2 LIST OF ALL CONSULTANTS AND SUBCONTRACTORS**

List all entities to be used for performance of the services described in this RFP. In the work plan, describe which responsibilities will be assigned to consultants or subcontractors and the city and state in which the consultants or subcontractors are located.

#### **4.2 PROJECT STAFFING ROLES**

##### **4.2.1 Agency Project Sponsor**

**Who:** This is an Agency Manager for whom the project is undertaken and who are the primary stake holder and the primary risk taker.

**Role:** Some of the duties performed by the Agency Project Sponsor are:

- Resolves resource and priority conflicts
- Approves the Project Charter and/or Plan
- Holds subordinate managers accountable for their performance
- Direct communication and reporting relationship with the Agency Project Manager.
- Chief advocate for the project.
- Keeps the team focused on appropriate goals
- Keeps the team updated with new information
- Holds the project team accountable planning and executing the project
- Holds the team accountable for delivering agreed-upon results

##### **4.2.2 Development Team Project Manager**

**Who:** This person would be a consultant employee.

**Role:** Some of the duties performed by the Development Team Project Manager are:

- Provides day to day supervision of the employees of the development team
- In close daily contact with the Agency Project Manager to ensure that all requirements are fulfilled
- Able to advise the Agency Project Manager of cost/benefit as well as consequences of any changes in work direction

**Reports to:** Agency Project Manager. Also reports to the Project Steering Team if one exists.

#### **4.2.3 Agency Project Manager**

**Who:** This person would be an Agency employee, appointed by the Project Sponsor.

**Role:** Some of the duties performed by the Agency Project Manager are:

- Day to day oversight of the project
- Approves consultant payments based on contract/work order language
- Provides direction to Agency employees as well as the team

**Reports to:** The Agency Project Sponsor. This person must keep the Project Sponsor informed on a weekly basis regarding progress and status of the project. When issues arise, this person must be able to make recommendations to the team regarding amendments and changes to the deliverables, schedule or budget.

#### **4.2.4 Agency Technical Lead**

**Who:** This person would be an Agency employee, appointed by the Agency Project manager.

**Role:** Some of the duties performed by the Agency Technical Lead are:

- Liaison between agency, consultant, and BIT for project technical needs.
- In close daily contact with the Agency Project Manager to ensure that all requirements are fulfilled
- Able to advise the Agency Project Manager of benefits/consequences of any changes in work direction

#### **4.2.5 Project Security Lead**

**Who:** This person would be a consultant employee and must be identified by the consultant.

**Role:** The security lead shall certify in writing the security of each deliverable. The security lead will have overall responsibility for the security of the application development, management, and update process throughout the contract period.

**Reports to:** The Agency Project Sponsor as part of the project status meetings. When issues arise, this person must be able to make recommendations to the team regarding amendments and changes to the deliverables, schedule or budget.

#### **4.2.6 Project Steering Team**

**Who:** This team consists of at least one member from each affected departmental area and may include an offeror representative.

**Role:** Some of the duties performed by the Project Steering Team:

- Oversee the project in terms of the contract and work order agreements. Specific items of oversight include:
  - What are the deliverables for his or her agency, and are they being met?

- Is the project on schedule? If not, what are the consequences? Should the project be put back on schedule and how will that be done?
- What expenditures have been made? Is the project on budget? If not, what are the circumstances surrounding it?
- Recommendation of approval of any scope changes, or any changes that affect cost and schedule based on cost benefit to the Project Owner

**Reports to:** Their Agency Manager.

**Authority:** Each Steering Team member should have authority to make decisions for their own departmental area.

### 4.3 STAFF RESUMES AND REFERENCES

Resumes and references of key personnel, key personnel are considered to be those who are accountable for the completion of one or more major deliverables, has the responsibility of any or all of the total project management, or is responsible for the completion of the project. Provide resume details for all key personnel, including any subcontractors' project leads, by listing the following in the order in which it appears.

- Name
- Title
- Contact Information (telephone number(s), e-mail address)
- Work Address
- Project Responsibilities (as they pertain to this project)
- Percentage of time designated to this project
- Brief listing of Work Experience in reverse chronological order from present to 2018 (only provide company name, job title(s)/position(s) held, date started, and date left each position, brief description of job duties, responsibilities, and significant accomplishments)
- RFP Project Experience
- Technical Background relative to this project
- Experience in Similar Projects
- Names of the Similar Projects they were involved in
- Role they played in the projects similar to this project
- Project Management Experience
- Technical Knowledge
- Education
- Relevant Certifications
- Three Professional References (name, telephone number, company name, relationship to employee)

#### 4.3.1 Provide the following information:

4.3.1.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements.

- 4.3.1.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project.
- 4.3.1.3 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration.
- 4.3.1.4 Ability and proven history in handling special project constraints.
- 4.3.1.5 Proposed project management techniques.
- 4.3.1.6 Availability to the project locale.
- 4.3.1.7 Familiarity with the project locale.

#### **4.4 STATEMENT OF UNDERSTANDING OF PROJECT**

To demonstrate your comprehension of the project, the offeror should summarize their understanding of what the work is and what the work will entail. This should include, but not be limited to, the offeror's understanding of the purpose and scope of the project, critical success factors and potential problems related to the project, and the offeror's understanding of the deliverables. The offeror should include their specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements. This section should be limited to no more than two pages.

#### **4.5 CORPORATE QUALIFICATIONS**

Please provide responses to the each of the following questions in your proposal.

- A. What year was your parent company (if applicable) established?
- B. What is the business of your parent company?
- C. What is the total number of employees in the parent company?
- D. What are the total revenues of your parent company?
- E. How many employees of your parent company have the skill set to support this effort?
- F. How many of those employees are accessible to your organization for active support?
- G. What year was your firm established?
- H. Has your firm ever done business under a different name and if so, what was the name?
- I. How many employees does your firm have?

- J. How many employees in your firm are involved in this type of project?
- K. How many of those employees are involved in on-site project work?
- L. What percent of your parent company's revenue (if applicable), is produced by your firm?
- M. Corporate resources available to perform the work, including any specialized services, within the specified time limits for the project
- N. Availability to the project locale
- O. Familiarity with the project locale
- P. Has your firm ever done business with other governmental agencies? If so, please provide references.
- Q. Has your firm ever done business with the State of South Dakota? If so, please provide references.
- R. Has your firm ever done projects that are like or similar to this project? If so, how many clients are using your solution? Please provide a list of four or more locations of the same approximant nature as the State where your application is in use along with contact names and numbers for those sites. The State of South Dakota has a consolidated IT system. Either any references given should be from states with a consolidated IT system, to be acceptable or the reference should be a detailed explanation on how you will modify your work plan for a consolidated environment that you are unfamiliar with.
- S. Provide the reports of third-party security scans done at the end of the four projects you provided in your proposal response. If there are no audits of these projects then provide, unedited and un-redacted results of such security testing/scanning from third-party companies or tools that has been run within the past 90 days. The State will sign a non-disclosure agreement, as needed, and redaction of these scan reports can be done within the limits of the State's open records law.
- T. What is your Company's web site?

#### **4.6 REFERENCES**

When providing references, the reference must include the following information:

- A. Name, address and telephone number of client/contracting agency and a representative of that agency who may be contacted for verification of all information submitted
- B. Dates of the service/contract
- C. A brief, written description of the specific prior services performed and requirements thereof

#### **4.7 RELEVANT PROJECT EXPERIENCE**

Provide details about four recent projects that the offeror was awarded and then managed through to completion. Project examples should include sufficient detail so the agency fully understands the goal of the project; the dates (from start to finish) of the project; the offeror's scope of work for the project; the responsibilities of the offeror and subcontractors in the project; the complexity of the offeror's involvement in the project; deliverables provided by the offeror; the methodologies employed by the offeror; level and type of project management responsibilities of the offeror; changes that were made and request for changes that differed from the onset of the project; how changes to the project goals, offeror's scope of work, and deliverables were addressed or completed; price and cost data; quality of the work and the total of what the offeror accomplished in the project.

- A. Client/Company Name
- B. Client Company Address, including City, State and Zip Code
- C. Client/Company Contacts(s)
  - Name
  - Title
  - Telephone Number
  - E-mail address
  - Fax Number
- D. Project Start Date
- E. Project Completion Date
- F. Project Description and Goals
- G. Offeror's Role in Project
- H. Offeror's responsibilities
- I. Offeror's Accomplishments
- J. Description of How Project Was Managed
- K. Description of Price and Cost Data from Project
- L. Description of special project constraints, if applicable
- M. Description of your ability and proven history in handling special project constraints
- N. Description of All Changes to the Original Plan or Contract That Were Requested
- O. Description of All Changes to the Original Plan or Contract That Offeror Completed
- P. Description of How Change Requests Were Addressed or Completed by Offeror
- Q. Was Project Completed in a Timeframe That Was According to the Original Plan or Contract? (If "No", provide explanation)
- R. Was Project Completed Within Original Proposed Budget? (If "No" provide explanation)
- S. Was there any Litigation or Adverse Contract Action regarding Contract Performance? (If "Yes" provide explanation)
- T. Feedback on Offeror's Work by Company/Client
- U. Offeror's Statement of Permission for the Department to Contact the Client/Company and for the Client's/Company's Contract(s) to Release Information to the Department

#### **4.8 PROJECT PLAN**

Provide a project plan that indicates how you will complete the required deliverables and services and addresses the following:

- A. Proposed project management techniques
- B. Number of offeror's staff needed
- C. Tasks to be performed (within phase as applicable)
- D. Number of hours each task will require
- E. Deliverables created by each task
- F. Dates by which each task will be completed (dates should be indicated in terms of elapsed time from project inception)
- G. Resources assigned to each task
- H. Required state agency support
- I. Show task dependencies
- J. Training (if applicable)

4.8.1 Microsoft Project is the standard scheduling tool for the State of South Dakota. The schedule should be a separate document, provided in Microsoft Excel, and submitted as an attachment to your proposal.

4.8.2 If, as part of this project, the offeror plans to set up or configure the software or hardware and plans to do this outside of South Dakota, even in part, then the offeror needs to provide a complete and detailed project plan on how the offeror plans on migrating to the State's site. Failure to do this is sufficient grounds to disregard the submission, as it demonstrates that the offeror fundamentally does not understand the project. Providing a work plan for the steps above that is complete and detailed may be sufficient.

#### **4.9 DELIVERABLES**

This section should constitute the major portion of the work to be performed. Provide a complete narrative detailing the assessment of the work to be performed, approach and methods to provide the requirements of this RFP, the offeror's ability to fulfill the requirements of this RFP, the offeror's approach, the resources necessary to fulfill the requirements, project management techniques, specialized services, availability to the project locale, familiarity with the project locale and a description of any options or alternatives proposed. This should demonstrate that the offeror understands the desired overall performance expectations. This response should identify each requirement being addressed as enumerated in section 8. If you have an alternative methodology or deliverables you would like to propose, please include a detailed description of the alternative methodology or deliverables and how they will meet or exceed the essential requirements of the methodology and deliverables described in Section 6.

#### **4.10 NON-STANDARD HARDWARE AND SOFTWARE**

4.10.1 State standard hardware and software should be utilized unless there is a reason not to. If your proposal will use non-standard hardware or software, you must first obtain State approval. If your proposal recommends using non-standard hardware or software, the proposal should very clearly indicate what non-standard hardware or software is being proposed and why it is necessary to use non-standard hardware or software to complete the project requirements. The use



of non-standard hardware or software requires use of the State's New Product Process. This process can be found through the Standards' page and must be performed by State employees. The costs of such non-standard hardware or software should be reflected in your cost proposal. The work plan should also account for the time needed to complete the New Product Process. See [https://bit.sd.gov/bit?id=bit\\_standards\\_overview](https://bit.sd.gov/bit?id=bit_standards_overview), for lists of the State's standards. The proposal should also include a link to your hardware and software specifications.

- 4.10.2 If non-standard hardware or software is used, the project plan and the costs stated in Section 7 must include service desk and field support, since BIT can only guarantee best effort support for standard hardware and software. If any software development may be required in the future, hourly development rates must be stated. The project plan must include the development and implementation of a disaster recovery plan since non-standard hardware and software will not be covered by the State's disaster recovery plan. This must also be reflected in the costs.
- 4.10.3 There is also a list of technical questions, Security and Vendor Questions which is attached as Appendix B, the offeror must complete. These questions may be used in the proposal evaluation. It is preferred that the offeror's response to these questions is provided as a separate document from the RFP response. Since the offeror will be hosting the solution, the file name must be "(Your Name) Hosted Security and Vendor Questions Response". This document cannot be a scanned document but must be an original. If the offeror elects to make the Security and Vendor Questions part of its response, the questions must be clearly indicated in the proposal's Table of Contents. A single numbering system must be used throughout the proposal.

#### **4.11 BACKGROUND CHECKS**

The offeror must include the following statement in its proposal:

(Company name here) acknowledges and affirms that it understands that the (company name here) employees who have access to production Personally Identifiable Information (PII), data protected under the Family Educational Rights and Privacy Act (FERPA), Protected Health Information (PHI), Federal Tax Information (FTI), any information defined under state statute as confidential or have access to secure facilities will have fingerprint-based background checks. These background checks will be used to check the criminal history records of the State as well as the Federal Bureau of Investigation's records. (Company name here) acknowledges and affirms that this requirement will extend to include any Subcontractor's, Agents, Assigns and or Affiliated Entities employees.

#### **5.0 FORMAT OF SUBMISSION**

- 5.1 Offerors are required to provide an electronic copy of their response. The electronic copy should be provided in MS WORD or in PDF format, except for the project plan, which

must be in MS Project. The submission must be delivered as indicated in Section 1.5 of this document.

- 5.2 Offerors may send the electronically formatted copy of their proposal via thumb drive.
- 5.3 The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.
- 5.4 All proposals must be organized in the following order and tabbed with labels for the following headings:
  - 5.4.1 **RFP Form.** The State's Request for Proposal form (1st page of RFP) completed and signed.
  - 5.4.2 **Executive Summary.** The one-to-two-page executive summary is to briefly describe the offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests should be identified in this section.
  - 5.4.3 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:
    - 5.4.3.1 A complete narrative of the Offeror's assessment of the work to be performed, the offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the offeror's understanding of the desired overall performance expectations.
    - 5.4.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP expressly including the requirements set forth in Section 4.0 of the RFP. The response should identify each requirement being addressed as enumerated in the RFP.
    - 5.4.3.3 A clear description of any options or alternatives proposed. The proposal should be page numbered and should have an index or a table of contents referencing the appropriate page number. Each of the sections listed below should be tabbed.
- 5.5 Offerors are cautioned that use of the State Seal in any of their documents is illegal as per South Dakota Codified Law § 1-6-3.1. Use of seal or facsimile without authorization prohibited--Violation as misdemeanor. No person may reproduce, duplicate, or otherwise use the official seal of the State of South Dakota, or its facsimile, adopted and described in §§ 1-6-1 and 1-6-2 for any for-profit, commercial purpose without specific authorization from the secretary of state. A violation of this

section is a Class 1 misdemeanor.

**5.6** Proposals should be prepared using the following headings and, in the order that they are presented below. Please reference the section for details on what should be included in your proposal.

- Statement of Understanding of Project
- Deliverables
- Non-standard Software and/or Hardware
- Project Plan
- System Diagram (If not a separate document)
- Security and Vendor Questions (If not a separate document)
- Response to the State’s contract terms
- Corporate Qualifications
- Project Experience
- Team Organization
- Staffing

**5.7 Response Glossary**

Any proposal submitted should provide a glossary of all abbreviations, acronyms and technical terms used to describe the services or products proposed. This glossary should be provided even if these terms are described or defined at their first use in the proposal response.

**5.8 Multiple Proposals**

Multiple proposals from an Offeror will be permissible. Each proposal submitted must conform fully to the requirements for proposal submission. If multiple proposals are submitted, each such proposal must be separately submitted and labeled as Proposal #1, Proposal #2, etc., on each page included in the response.

**6.0 COST PROPOSAL**

Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

The offeror must submit a statement in the Proposal that attests the offeror’s willingness and ability to perform the work described in this RFP for the price being offered.

**6.1 STAFFING**

Name	Role	Total Hours on Project	Total Hours on Site	Hourly Rate	Total

				Total:	

**6.2 TRAVEL AND EXPENDITURE TABLE**

Name	Method of Travel	Cost per trip	Number of Trips	Total Cost
			Total:	

Name	Lodging Cost per night	Number of Nights	Lodging Cost	Per diem	Number of Days	Per diem Cost	Total Cost
Totals:							

NOTE: The State asks that vendors accept state per diem. Lodging and per diem rates can be found at <https://bhr.sd.gov/files/travelrates.pdf>.

### 6.3 OTHER COSTS

Show any other costs such as: software, hardware, ongoing costs, etc.

	One Time	Year 1	Year 2	Year 3	Totals
Hardware					
Software					
Maintenance					
License Fees					
Training					
Other...					
Totals					

### 6.4 ADDITIONAL WORK

The offeror may be expected to perform additional work as required by any of the State signatories to a contract. This work can be made a requirement by the State for allowing the application to go into production. This additional work will not be considered a project change chargeable to the State if it is for reasons of correcting security deficiencies, meeting the functional requirements established for the application, unsupported third-party technologies or excessive resource consumption. The cost for additional work should be included in your proposal.

## 7.0 PROPOSAL EVALUATION AND AWARD PROCESS

**7.1 Evaluation Team:** All proposals shall be evaluated by an evaluation team. Evaluation and potential selection of the Offeror shall be based on the information submitted in the proposals. The team may review references, require oral presentations, and conduct on-site visits to Offeror accounts and use the results in evaluating the proposals.

**7.2 Meeting Terms and Conditions:** Proposals will be reviewed to determine if required terms and conditions are met. Failure to meet the required terms and conditions may result in the proposal being rejected. If all Offerors fail to meet one or more of the

required terms and conditions, the State reserves the right to continue the evaluation of proposals and to select the proposal that provides the best value to the State of South Dakota as determined by the evaluation team.

**7.3 Qualification Criteria:** Each proposal shall be evaluated on whether required qualification criteria are met. The qualification criteria that will be used to determine if the Offeror will be considered for an award is based on the information provided in response to Section 4.0 of this RFP.

**7.4 Evaluation Criteria:** After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria. The criteria are listed in order of importance.

**7.4.1** Project Cost

**7.4.2** Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;

**7.4.3** Proposed project management techniques; and

**7.4.4** Resources available to perform the work, including any specialized services, within the specified time limits for the project;

**7.4.5** Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;

**7.4.6** Ability and proven history in handling special project constraints

**7.4.7** Availability to the project locale;

**7.4.8** Familiarity with the project locale;

**7.5 Offeror to Submit Complete Information:** The evaluation and potential selection of a Vendor will be based on the information submitted in the Offeror's proposal. Each Offeror shall furnish a complete description of capabilities to meet or exceed the Scope of Work as described in Section 3 herein. Failure to respond to each of the requirements in the RFP may be the basis for rejecting a response.

**7.6 Offeror to Submit Information Related to Evaluation Categories:** The Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The Offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.

**7.7 Information Relating to Past Performance and Success:** Experience and reliability of the Offeror's organization are considered subjectively in the evaluation process.

Therefore, the Offeror is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this RFP.

**7.8 Qualifications of Personnel:** The qualifications of the personnel proposed by the Offeror to perform the requirements of this RFP, whether from the Offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the Offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.

**7.9 Rejection of Proposals:** The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.

**7.10 Award.** The requesting agency and the highest ranked offeror shall mutually discuss and refine the scope of services for the project and shall negotiate terms, including compensation and performance schedule.

**7.10.1** If the agency and the highest ranked offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with the offeror. The agency may then negotiate with the next highest ranked offeror.

**7.10.2** The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached, or the agency terminates the contracting process.

## **8.0 BEST AND FINAL OFFERS**

The State reserves the right to request best and final offers. If so, the State will initiate the request for best and final offers; best and final offers may not be initiated by an offeror. Best and final offers may not be necessary if the State is satisfied with the proposals received.

If best and final offers are sought, the State will document which offerors will be notified and provide them opportunity to submit best and final offers. Requests for best and final offers will be sent stating any specific areas to be covered and the date and time in which the best and final offer must be returned. Conditions, terms, or price of the proposal may be altered or otherwise changed, provided the changes are within the scope of the request for proposals and instructions contained in the request for best and final offer. If an offeror does not submit a best and final offer or a notice of withdrawal, the offeror's previous proposal will be considered that offeror's best and final proposal. After best and final offers are received, final evaluations will be conducted.

## 9.0 SCANNING

The offeror acknowledges that the State will conduct a security and vulnerability scan as part of the review of the offeror's RFP. This scan will not include a penetration test. The State will use commercially available, industry standard tools to scan a non-production environment with non-production data at mutually agreeable times.

The offeror should fill in the information below and sign the form. The offeror's employee signing this form must have the authority to allow the State to do a security scan. If no security contact is given the State will assume that the State can scan at any time. **At the state's option, any RFP response that does not include a completed and signed form may be dropped from consideration. If there is State data protected by federal or state law or regulation or industry standard involved, the State is more likely to consider a security scan necessary for an RFP to be considered.** Except for State staff, the State will only provide scan information to the offeror's security contact. At the State's option, the State will conduct the scan at a location named by the offeror. The offeror can only request, not require, naming the scanning location. The State may consider a full scan report from industry standard Web Application Vulnerability scanning tools (ex. Invicti, Burp Suite, Nmap, Qualys, Nessus, etc.) as satisfying the scanning requirement. Executive Summaries, penetration test methodology/vulnerability summary reports, and SOC I/SOC II are not considered as sufficient replacements for a vulnerability scan. If required, the State will sign a non-disclosure agreement before scanning or receiving the risk assessment.

Offeror's name: \_\_\_\_\_

Offeror's security contact's name: \_\_\_\_\_

Security contact's phone number: \_\_\_\_\_

Security contact's email address: \_\_\_\_\_

Web address URL or Product Name \_\_\_\_\_. The State will contact the security contact to arrange for a test log for scanning.

Offeror's employee acknowledging the right to scan:

Name (Print): \_\_\_\_\_

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

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

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



Appendix A

**STATE OF SOUTH DAKOTA  
Vendor Contract  
for Services  
Between**

State of South Dakota  
Office of the Attorney General  
1302 East Highway 14  
Pierre SD 57501  
(605)773-3215

---

Referred to as Vendor

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Referred to as State

The State hereby enters into this agreement (the “Agreement” hereinafter) for services with the Vendor. While performing services hereunder, Vendor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

**A. STANDARD PROVISIONS**

**1. VENDOR**

The Vendor will provide the State with its Vendor Number, Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

**2. PERIOD OF PERFORMANCE OF THIS AGREEMENT**

This agreement shall be effective on \_\_\_\_\_ and will end on \_\_\_\_\_, unless sooner terminated pursuant to the terms hereof. The State in its sole discretion may renew the Agreement under the same terms and conditions for up to one additional five (5) year term. Notice of intent to renew shall be given by the State to the Vendor in writing prior to a term’s expiration as provided in the Agreement. If notice of intent to renew is given, the Agreement shall renew unless terminated by either party pursuant to the Termination Provision of the Agreement.

**3. NOTICE**

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to \_\_\_\_\_ on behalf of the State, and by and to \_\_\_\_\_, on behalf of the Vendor, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

#### 4. PROVISIONS

- A. The purpose of this contract is to \_\_\_\_\_. Vendor will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.
- B. The Vendor further agrees, represents, and warrants that:
1. The Vendor will not use state equipment, supplies or facilities.
  - 2.
- C. Will the State pay Vendor expenses as a separate item?  
YES ( ) NO ( )
- If YES, expenses submitted will be reimbursed as identified in this Agreement.
- D. The TOTAL CONTRACT AMOUNT will renew annually along with the contract term and will not exceed \$\_\_\_\_\_.

#### 5. INVOICING AND PAYMENT

The State will make payment for services upon satisfactory completion of the services. Vendor agrees to submit an itemized invoice for services within thirty (30) days following the month in which services were provided. Vendor agrees to submit a final itemized invoice within thirty (30) days of the Agreement end date to receive payment for completed services. As used herein, the term "end date" shall include the completion of any services pursuant to the Agreement, any extension period, or early termination of the Agreement. If a final itemized invoice cannot be submitted in thirty (30) days, then a written request for extension of time and explanation must be provided to the State.

Payment will be made consistent with SDCL ch. 5-26, as such, payment will be made within forty-five (45) days of the receipt of an itemized invoice submitted by the Vendor with a signed state voucher. The Vendor acknowledges that it would be difficult or impracticable for the State to provide the notice of disagreement provided for by SDCL 5-26-5 within the ten days provided for by that section. Accordingly, Vendor hereby agrees that the State shall have thirty (30) days to provide the requisite notice of disagreement

#### 6. OVERPAYMENT

All payments to the Vendor by the State are subject to site review and audit as prescribed and carried out by the State. Any overpayment of this Agreement shall be returned to the State within thirty (30) days after written notification to the Vendor

## 7. LICENSING AND STANDARD COMPLIANCE

Vendor will comply in full with all federal, tribal, state and local laws, regulations, ordinances, guidelines, permits, requirements and other standards applicable to the services provided under this Agreement and will be solely responsible for obtaining current information regarding the foregoing. Nothing herein shall constitute a waiver by the State to any defense to jurisdiction nor shall anything herein constitute an acknowledgement by the State that any tribe has or exercises any jurisdiction over this Agreement or the parties.

## 8. LICENSE AGREEMENTS

Vendor warrants that, prior to the execution of this Agreement, it has provided to the State and incorporated into this agreement dated, physical copies of all license agreements, End User License Agreements, and terms of use regarding its software or any software incorporated into its software. Failure to provide all such license agreements, End User License Agreements, and terms of use shall be a breach of this agreement at the option of the State. The parties agree that neither the State nor its end users shall be bound by the terms of any such agreements not timely provided pursuant to this paragraph and incorporated into this Agreement. Vendor agrees that it shall indemnify and hold the State harmless from any and all damages or other detriment, actions, lawsuits or other proceedings that arise from failure to provide all such license agreements, End User License Agreements, and terms of use or that arise from any failure to give the State notice of all such license agreements, End User License Agreements, and terms of use. Any changes to the terms of the agreements described in this paragraph must first be agreed to by both parties in writing before they go into effect. This paragraph shall control and supersede the language of any such agreements to the contrary.

## 9. TERMINATION

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Vendor breaches any of the terms or conditions hereof, this Agreement may be terminated by the State for cause at any time, with or without notice. If termination for such a default is effected by the State, any payments due to Vendor at the time of termination may be adjusted to cover any additional costs to the State because of Vendor's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Vendor it is determined that Vendor was not at fault, then the Vendor shall be paid for eligible services rendered and expenses incurred up to the date of termination. Upon termination of this Agreement in all other circumstances, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

Upon the effective date of the termination of the Agreement the Vendor will return all Confidential Information, state proprietary information, state data and end user data in a non-proprietary form.

In the event that the Vendor fails to complete the project or any phase thereof within the time specified in the Scope of Work, attached hereto as "Attachment A", or within such additional time as may be granted in writing by the State, or fails to perform the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Scope

of Work or any extensions thereof, the State shall be authorized to terminate the Agreement for default and suspend the payments scheduled as set forth elsewhere in this Agreement.

In the event this Agreement is to be terminated by the State pursuant to the FUNDING paragraph herein (nominally Paragraph 11), the Agreement may be terminated by the State upon five (5) business days written notice.

#### 10. SURVIVAL FOLLOWING TERMINATION

Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive including but not limited to confidentiality, indemnification, records retention, and sovereign immunity provisions.

#### 11. 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 the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

#### 12. ASSIGNMENT AND AMENDMENT

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.

#### 13. 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.

#### 14. MERGER

All prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

#### 15. SEVERABILITY

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

## 16. WORK PRODUCTS

Vendor hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, state data, end user data, and all information contained therein provided to the State by the Vendor in connection with its performance of service under this Agreement, and any Confidential Information as defined in the Confidentiality of Information paragraph herein, shall belong to and is the property of the State and will not be used in any way by the Vendor without the written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Vendor agrees to return all information received from the State to State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.

## 17. THIRD PARTY BENEFICIARIES

This Agreement is intended only to govern the rights and interests of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

## 18. SUBCONTRACTORS

The Vendor may not use subcontractors to perform the services described herein without express prior written consent from the State.

The Vendor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Vendor will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements 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. The Vendor is required to assist in this process as needed.

## 19. STATE'S RIGHT TO REJECT

The State reserves the right to reject any person from the Agreement who the State believes would be detrimental to the project, presents insufficient skills, presents inappropriate behavior or is considered by the State to be a security risk.

## 20. INDEMNIFICATION

Vendor agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. Vendor shall defend the State of South Dakota, its officers, agents, and employees against any claim, including any claim, action, suit, or other proceeding related to the claim. Vendor's obligation to indemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agents, and employees, Vendor shall engage other professionals, subject to the written approval of the State which shall not be unreasonably withheld. Notwithstanding the foregoing, the State may, in its sole discretion and at the expense of Vendor, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Vendor in the defense. This section does not require Vendor to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the State, its officers, agents or employees.

## 21. INSURANCE

At all times during the term of this Agreement, Vendor shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

### A. Commercial General Liability Insurance:

Vendor shall maintain occurrence-based commercial general liability insurance or equivalent form of coverage with a limit of not less than one million dollars (\$1,000,000) for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

### B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Vendor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than one million dollars (\$1,000,000).

### C. Business Automobile Liability Insurance:

Vendor shall maintain business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) for each accident. This insurance shall include coverage for owned, hired and non-owned vehicles.

### D. Worker's Compensation Insurance:

Vendor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota or federal law.

Before beginning work under this Agreement, Vendor 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, Vendor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Vendor shall furnish copies of insurance policies if requested by the State.

## 22. 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 Vendor 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. Vendor 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:

Vendor 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.

C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

By signing this Agreement, Vendor certifies that neither Vendor nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Vendor further agrees that it will immediately notify the State if during the term of this Agreement Vendor or its principals 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.

D. CERTIFICATION OF NO STATE LEGISLATOR INTEREST:

Vendor (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Vendor hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

## 23. BACKGROUND CHECKS

The State of South Dakota requires all employee(s) of the vendor, subcontractors, agents, assigns and or affiliated entities who write or modify State of South Dakota-owned software, alter hardware, configure software of state-owned technology resources, have access to source code and/or protected personally identifiable information or other confidential information or have access to secure areas, to undergo fingerprint-based background checks. These fingerprints will be used to check the criminal history records of the State as well as the Federal Bureau of Investigation's criminal history records. These background checks must be performed by the State with support from the State's law enforcement resources. The State will supply the fingerprint cards and prescribe the procedure to be used to process the fingerprint cards. Project plans should allow two (2) to four (4) weeks to complete this process. If work assignments change after the initiation of the project covered by this agreement so that employee(s) of the vendor, subcontractor's, agents, assigns and or affiliated entities will be writing or modifying State of South Dakota owned software, altering hardware, configuring software of state owned technology resources, have access to source code and/or protected personally identifiable information or other confidential information or have access to secure areas then, background checks must be performed on any employees who will complete any of the referenced tasks. The State reserves the right to require the Vendor to prohibit any employee, subcontractors, agents, assigns and or affiliated entities from performing work under this Agreement whenever the State, in its sole



discretion, believes that having a specific employee, subcontractor, agent assign or affiliated entity performing work under this Agreement is detrimental to the project or is considered by the State to be a security risk, based on the results of the background check. The State will provide the Vendor with notice of this determination.

#### 24. RECORDS RETENTION

The Vendor will comply with any applicable records retention provisions under state and/or federal law. Further, it is the responsibility of the Vendor to identify any and all such provisions regarding record retention.

#### 25. REPORTING PROVISION

Vendor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Vendor, or the State of South Dakota or its officers, agents or employees to liability. Vendor shall report any such event to the State immediately upon discovery.

Vendor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Vendor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Vendor to report any event to law enforcement or other entities under the requirements of any applicable law.

#### 26. CONFIDENTIALITY OF INFORMATION

For the purpose of this Agreement, "Confidential Information" shall include all information disclosed to the Vendor by the State and all information obtained by the Vendor through the provisions of services as contemplated by this Agreement. The Vendor, and any person or entity affiliated with the Vendor shall not disclose any Confidential Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. The Vendor, and any person or entity affiliated with the Vendor shall not: (i) disclose any Confidential Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of Confidential Information except to exercise rights and perform obligations under this Agreement; (iii) make Confidential Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. The Vendor, and any person or entity affiliated with the Vendor is held to the same standard of care in guarding Confidential Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding Confidential Information in the strictest confidence. The Vendor, and any person or entity affiliated with the Vendor shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. Confidential Information shall not include information that:

1. was in the public domain at the time it was disclosed to the Vendor, or any person or entity affiliated with the Vendor;

2. was known to the Vendor, or any person or entity affiliated with the Vendor without restriction at the time of disclosure from the State;
3. that was disclosed with the prior written approval of State's officers or employees having authority to disclose such information;
4. was independently developed by the Vendor, or any person or entity affiliated with the Vendor without the benefit or influence of the State's information;
5. becomes known to the Vendor, or any person or entity affiliated with the Vendor, without restriction, from a source not connected to the State of South Dakota.

Confidential Information can include names, social security numbers, employer numbers, addresses and all other data about applicants, participants, employers or other clients to whom the State provides services of any kind. Vendor understands that this information may be confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6. Vendor agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. Vendor acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws.

If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Vendor agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.

The Vendor will enforce the terms of this Confidentiality Provision to its fullest extent. The Vendor agrees to remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision and to immediately notify the State of such matter.

The Vendor will require every person or entity however affiliated with the Vendor who will have access to Confidential Information to be under a contractual obligation of nondisclosure at least as stringent as that required by this Agreement; and will limit access to any Confidential Information to those persons or entities who have a need to know and who have been instructed that such information is confidential under state law.

The Vendor will comply with any other confidentiality measures and terms included in the Agreement.

Upon termination of this Agreement, if not already done so as part of the services performed under the Agreement, the Vendor agrees to return to the State, at the Vendor's cost, any Confidential Information or documentation maintained by the Vendor regarding the services provided hereunder in a format readily useable by the State as mutually agreed by the Vendor and State.

## 27. FORCE MAJEURE

Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for any delay or failure to perform under the terms and conditions of this Agreement, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, or other causes beyond the party's reasonable control. Provided, however, that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.

## 28. DILIGENCE AND SKILL

- A. In the performance of these services and providing the deliverables under the Agreement, Vendor, and its employees shall exercise the degree of skill and care consistent with customarily accepted practices and procedures for the performance of the type of services required. The Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and deliverables furnished by the Vendor and any subcontractors, if applicable, under this Agreement.
- B. Vendor represents and warrants that:
  - i. It shall give high priority to the performance of the services; and
  - ii. The services shall be performed in a timely manner.
- C. It shall be the duty of the Vendor to assure that its services and deliverables are technically sound and in conformance with all pertinent technical codes and standards.
- D. The Vendor shall be responsible to the State for material deficiencies in the contracted deliverables and services which result from the failure to meet the standard given herein. Vendor shall promptly correct or revise any material errors or omissions in deliverables and re-perform any services which are not in compliance with such representations and warranties at no cost to the State, provided that Vendor's failure to comply is not related or attributable, in whole or in part, to the actions, errors or omissions of the State.
- E. Permitted or required approval by the State of any services or deliverables furnished by the Vendor shall not in any way relieve the Vendor of its responsibility for the professional quality and technical accuracy and adequacy of its work. The State's review, approval, acceptance, or payment for any of the Vendor's services or deliverables herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and except as provided herein the Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by the Vendor's performance or failure to perform under this Agreement.
- F. In the event of a breach of these representations and warranties, the State shall provide telephonic notice to the Vendor. The State may, in its sole discretion, require Vendor to cure such breaches. If it is necessary for Vendor to send at least one qualified and knowledgeable representative to the State's site where the system is located, this will be done at Vendor's sole expense. This representative will continue to address and work to remedy the deficiency, failure, malfunction, defect, or problem at the site. The rights and

remedies provided in this paragraph are in addition to any other rights or remedies provided in this Agreement or by law.

## 29. INTELLECTUAL PROPERTY

In connection with the performance of this Agreement and the provision of services and deliverables under this Agreement, neither party will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. Neither party will improperly use any trade secrets or confidential or proprietary information owned by any third party in performing this Agreement or the services related to this Agreement.

## 30. THIRD PARTY RIGHTS

The Vendor represents and warrants that it has the full power and authority to grant the rights described in this Agreement without violating any rights of any third party, and that there is currently no actual or, to Vendor's knowledge, threatened suit by any such third party based on an alleged violation of such rights by Vendor. The Vendor further represents and warrants that the person executing this Agreement for Vendor has actual authority to bind Vendor to each and every term, condition and obligation to this Agreement, and that all requirements of Vendor have been fulfilled to provide such actual authority.

## 31. WAIVER OF BREACH

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision in this Agreement.

## 32. HEADINGS

The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

## 33. AUTHORITY TO EXECUTE

Vendor represents and warrants that:

- A. Vendor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.
- B. The execution, delivery and performance of this Agreement has been duly authorized by Vendor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Vendor to enter into this Agreement and perform its obligations under this Agreement.
- C. Vendor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Vendor will conduct business in connection with this Agreement.
- D. Vendor has obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this Agreement and currently is in good standing with all

regulatory agencies that regulate any or all aspects of Vendor's performance of the services. Vendor will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

#### 34. SOVEREIGN IMMUNITY

Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers, or employees.

#### B. BUREAU OF INFORMATION AND TELECOMMUNICATIONS (BIT CLAUSES)

Pursuant to South Dakota Codified Law 1-33-44, the Bureau of Information and Telecommunications ("BIT" hereinafter) oversees the acquisition of office systems technology, software and services; telecommunication equipment, software and services; and data processing equipment, software, and services for departments, agencies, commissions, institutions and other units of state government. BIT requires the contract provisions which are set forth this Section B (BIT CLAUSES) of this Agreement. It is understood and agreed to by all parties that BIT has reviewed only Section B of this Agreement.

##### Section I. Confidentiality of Information

For purposes of this paragraph, "State Proprietary Information" will include all information disclosed to the Vendor by the State. The Vendor will not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. The Vendor must not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents, or third party consultants except those who have a need to access such information and who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement. The Vendor is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. The Vendor must protect the confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. The Vendor agrees to return all information received from the State to the State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties. State Proprietary Information will not include information that:

1. was in the public domain at the time it was disclosed to the Vendor,
2. was known to the Vendor without restriction at the time of disclosure from the State,
3. that was disclosed with the prior written approval of State's officers or employees having authority to disclose such information,
4. was independently developed by the Vendor without the benefit or influence of the State's information, and
5. becomes known to the Vendor without restriction from a source not connected to the State of South Dakota.

State's Proprietary Information can include names, social security numbers, employer numbers, addresses and other data about applicants, employers or other clients to whom the State provides services of any kind. The Vendor understands that this information is confidential and protected under State law. The Parties mutually agree that neither of them nor any subcontractors, agents, assigns, or affiliated entities will disclose the contents of this Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that Party's rights under this Agreement. The Vendor acknowledges that the State and its agencies are public entities and thus may be bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with South Dakota open records or open meetings laws.

## **Section II. Cyber Liability Insurance**

The Vendor will maintain cyber liability insurance with liability limits in the amount of \$\_\_\_\_\_ to protect any and all State data the Vendor receives as part of the project covered by this agreement including State data that may reside on devices, including laptops and smart phones, utilized by Vendor employees, whether the device is owned by the employee or the Vendor. If the Vendor has a contract with a third-party to host any State data the Vendor receives as part of the project under this Agreement, then the Vendor will include a requirement for cyber liability insurance as part of the contract between the Vendor and the third-party hosting the data in question. The third-party cyber liability insurance coverage will include State Data that resides on devices, including laptops and smart phones, utilized by third-party employees, whether the device is owned by the employee or the third-party Vendor. The cyber liability insurance will cover expenses related to the management of a data breach incident, the investigation, recovery and restoration of lost data, data subject notification, call management, credit checking for data subjects, legal costs, and regulatory fines. Before beginning work under this Agreement, the Vendor will furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days prior written notice to the State. The Vendor will furnish copies of insurance policies if requested by the State. The insurance will stay in effect for three years after the work covered by this Agreement is completed.

## **Section III. Rejection or Ejection of Vendor**

The State, at its option, may require the vetting of any of the Vendor, and the Vendor's subcontractors, agents, Assigns, or affiliated entities. The Vendor is required to assist in this process as needed.

The State reserves the right to reject any person from participating in the project or require the Vendor to remove from the project any person the State believes is detrimental to the project or is considered by the State to be a security risk. The State will provide the Vendor with notice of its determination, and the reasons for the rejection or removal if requested by the Vendor. If the State signifies that a potential security violation exists with respect to the request, the Vendor must immediately remove the individual from the project.

## **Section IV. Software Functionality and Replacement**

The software licensed by the Vendor to the State under this Agreement will provide the

functionality as described in the software documentation, which the Vendor agrees to provide to the State prior to or upon the execution of this Agreement.

The Vendor agrees that:

- A. If, in the opinion of the State, the Vendor reduces or replaces the functionality contained in the licensed product and provides this functionality as a separate or renamed product, the State will be entitled to license such software product at no additional license or maintenance fee.
- B. If, in the opinion of the State, the Vendor releases an option, future product, purchasable product or other release that has substantially the same functionality as the software product licensed to the State, and it ceases to provide maintenance for the older software product, the State will have the option to exchange licenses for such replacement product or function at no additional charge. This includes situations where the Vendor discontinues the licensed product and recommends movement to a new product as a replacement option regardless of any additional functionality the replacement product may have over the licensed product.

#### **Section V. Service Bureau**

Consistent with use limitations specified in the Agreement, the State may use the product to provide services to the various branches and constitutional offices of the State of South Dakota as well as county and city governments, tribal governments, and school districts. The State will not be considered a service bureau while providing these services and no additional fees may be charged unless agreed to in writing by the State.

#### **Section VI. Federal Intellectual Property Bankruptcy Protection Act**

The Parties agree that the State will be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto. The State also maintains its termination privileges if the Vendor enters bankruptcy.

#### **Section VII. Non-Disclosure and Separation of Duties**

The Vendor will enforce separation of job duties and require non-disclosure agreements of all staff that have or can have access to State Data or the hardware that State Data resides on. The Vendor will limit staff knowledge to those staff whose duties that require them to have access to the State Data or the hardware the State Data resides on.

#### **Section VIII. Cessation of Business**

The Vendor will notify the State of impending cessation of its business or that of a tiered provider and the Vendor's contingency plan. This plan should include the immediate transfer of any previously escrowed assets and data and State access to the Vendor's facilities to remove or destroy any state-owned assets and data. The Vendor will implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the State. The Vendor will provide a fully documented service description and perform and document a gap

analysis by examining any differences between its services and those to be provided by its successor. The Vendor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the State. The Vendor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and impact on the State, all such work to be coordinated and performed in advance of the formal, final transition date.

#### **Section IX. Legal Requests for Data**

Except as otherwise expressly prohibited by law, the Vendor will:

- A. Immediately notify the State of any subpoenas, warrants, or other legal orders, demands or requests received by the Vendor seeking State Data maintained by the Vendor,
- B. Consult with the State regarding the Vendor's response,
- C. Cooperate with the State's requests in connection with efforts by the State to intervene and quash or modify the legal order, demand or request, and
- D. Upon the State's request, provide the State with a copy of both the demand or request and its proposed or actual response.

#### **Section X. eDiscovery**

The Vendor will contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to State Data. The Vendor will not respond to service of process, and other legal requests related to the State without first notifying the State unless prohibited by law from providing such notice.

#### **Section XI. Audit Requirements**

The Vendor warrants and agrees it is aware of and complies with all audit requirements relating to the classification of State Data the Vendor stores, processes, and accesses. Depending on the data classification, this may require the Vendor to grant physical access to the data hosting facilities to the State or a federal agency. The Vendor will notify the State of any request for physical access to a facility that hosts or processes State Data by any entity other than the State.

#### **Section XII. Annual Risk Assessment**

The Vendor will conduct an annual risk assessment or when there has been a significant system change. The Vendor will provide verification to the State's contact upon request that the risk assessment has taken place. At a minimum, the risk assessment will include a review of the:

- A. Penetration testing of the Vendor's system;
- B. Security policies and procedures;
- C. Disaster recovery plan;
- D. Business Associate Agreements; and
- E. Inventory of physical systems, devices, and media that store or utilize ePHI for completeness.



If the risk assessment provides evidence of deficiencies, a risk management plan will be produced. Upon request by the State, the Vendor will send a summary of the risk management plan to the State's contact. The summary will include completion dates for the risk management plan's milestones. Upon request by the State, the Vendor will send updates on the risk management plan to the State's contact. Compliance with this Section may be met if the Vendor provides proof to the State that the Vendor is FedRAMP Certified and has maintained FedRAMP Certification.

### **Section XIII. Independent Audit**

The Vendor will disclose any independent audits that are performed on any of the Vendor's systems tied to storing, accessing, and processing State Data. This information on an independent audit(s) must be provided to the State in any event, whether the audit or certification process is successfully completed or not. The Vendor will provide a copy of the findings of the audit(s) to the State. Compliance with this Section may be met if the Vendor provides a copy of the Vendor's SOC 2 Type II report to the State upon request.

### **Section XIV. Service Level Agreements**

The Vendor warrants and agrees that the Vendor has provided to the State all Service Level Agreements (SLA) related to the deliverables of the Agreement. The Vendor further warrants that it will provide the deliverables to the State in compliance with the SLAs.

### **Section XV. Access Attempts**

The Vendor will log all access attempts, whether failed or successful, to any system connected to the hosted system which can access, read, alter, intercept, or otherwise impact the hosted system or its data or data integrity. For all systems, the log must include at least: login page used, username used, time and date stamp, incoming IP for each authentication attempt, and the authentication status, whether successful or not. Logs must be maintained not less than 7 years in a searchable database in an electronic format that is un-modifiable. At the request of the State, the Vendor agrees to grant the State access to those logs to demonstrate compliance with the terms of this Agreement and all audit requirements related to the hosted system.

### **Section XVI. Access to State Data**

Unless this Agreement is terminated, the State's access to State Data amassed pursuant to this Agreement will not be hindered if there is a:

- A. Contract dispute between the parties to this Agreement,
- B. There is a billing dispute between the parties to this Agreement, or
- C. The Vendor merges with or is acquired by another company.

### **Section XVII. Password Protection**

All aspects of the Vendor's products provided to the State pursuant to this Agreement will be password protected. If the Vendor provides the user with a preset or default password, that password cannot include any Personally Identifiable Information (PII), data protected under the Family Educational Rights and Privacy Act (FERPA), Protected Health Information (PHI),

Federal Tax Information (FTI), or any information defined under federal or state law, rules, or regulations as confidential information or fragment thereof. On an annual basis, the Vendor will document its password policies for all Vendor employees to ensure adequate password protections are in place. The process used to reset a password must include security questions or Multifactor Authentication. Upon request, the Vendor will provide to the State the Vendor's password policies, logs, or administrative settings to demonstrate the password policies are actively enforced.

### **Section XVIII. Provision of Data**

State Data is any data produced or provided by the State as well as any data produced or provided for the State by the Vendor or a third-party.

Upon notice of termination by either party or upon reaching the end of the term of this Agreement, the Vendor will provide the State all current State Data in a non-proprietary format. In addition, the Vendor agrees to extract any information (such as metadata, which includes data structure descriptions, data dictionary, and data) stored in repositories not hosted on the State's IT infrastructure in a format chosen by the State. If the State's chosen format is not possible, the Vendor will extract the information into a text file format and provide it to the State.

Upon the effective date of the termination of this Agreement, the Vendor will again provide the State with all current State Data in a non-proprietary format. In addition, the Vendor will again extract any information (such as metadata) stored in repositories not hosted on the State's IT infrastructure in a format chosen by the State. As before, if the State's chosen format is not possible, the Vendor will extract the information into a text file format and provide it to the State.

### **Section XIX. Threat Notification**

A credible security threat consists of the discovery of an exploit that a person considered an expert on Information Technology security believes could be used to breach any aspect of a system that is holding State Data or a product provided by the Vendor. Upon becoming aware of a credible security threat with the Vendor's product(s) and or service(s) being used by the State, the Vendor or any subcontractor supplying product(s) or service(s) to the Vendor needed to fulfill the terms of this Agreement will notify the State within two business days of any such threat. If the State requests, the Vendor will provide the State with information on the threat.

### **Section XX. Security Incident Notification for Non-Health Information**

The Vendor will implement, maintain, and update Security Incident procedures that comply with all State standards and Federal and State requirements. A Security Incident is a violation of any BIT security or privacy policies or contract agreements involving sensitive information, or the imminent threat of a violation. The State requires notification of a Security Incident involving any of the State's sensitive data in the Vendor's possession. State Data is any data produced or provided by the State as well as any data produced or provided for the State by a third-party. The parties agree that, to the extent probes and reconnaissance scans common to the industry constitute Security Incidents, this Agreement constitutes notice by the Vendor of the ongoing existence and occurrence of such Security Incidents for which no additional notice to the State will be required. Probes and scans include, without limitation, pings and other broadcast attacks in the Vendor's

firewall, port scans, and unsuccessful log-on attempts, if such probes and reconnaissance scans do not result in a Security Incident as defined above. Except as required by other legal requirements the Vendor will only provide notice of the incident to the State. The State will determine if notification to the public will be by the State or by the Vendor. The method and content of the notification of the affected parties will be coordinated with, and is subject to approval by the State, unless required otherwise by legal requirements. If the State decides that the Vendor will be distributing, broadcasting to or otherwise releasing information on the Security Incident to the news media, the State will decide to whom the information will be sent, and the State must approve the content of any information on the Security Incident before it may be distributed, broadcast, or otherwise released. The Vendor must reimburse the State for any costs associated with the notification, distributing, broadcasting, or otherwise releasing information on the Security Incident.

- A. The Vendor must notify the State contact within 12 hours of the Vendor becoming aware that a Security Incident has occurred. If notification of a Security Incident to the State contact is delayed because it may impede a criminal investigation or jeopardize homeland or federal security, notification must be given to the State within 12 hours after law-enforcement provides permission for the release of information on the Security Incident.
- B. Notification of a Security Incident at a minimum is to consist of the nature of the data exposed, the time the incident occurred, and a general description of the circumstances of the incident. If all of the information is not available for the notification within the specified time period, the Vendor must provide the State with all of the available information along with the reason for the incomplete notification. A delay in excess of 12 hours is acceptable only if it is necessitated by other legal requirements.
- C. At the State's discretion within 12 hours the Vendor must provide to the State all data available including:
  - 1. name of and contact information for the Vendor's Point of Contact for the Security Incident,
  - 2. date and time of the Security Incident,
  - 3. date and time the Security Incident was discovered,
  - 4. description of the Security Incident including the data involved, being as specific as possible,
  - 5. the potential number of records, and if unknown the range of records,
  - 6. address where the Security Incident occurred, and
  - 7. the nature of the technologies involved. If not all of the information is available for the notification within the specified time period, the Vendor must provide the State with all of the available information along with the reason for the incomplete information. A delay in excess of 12 hours is acceptable only if it is necessitated by other legal requirements.
- D. If the Security Incident falls within the scope of South Dakota Codified Law Chapter 22-40, the Vendor is required to comply with South Dakota law.

The requirements of subsection D of this Section do not replace the requirements of subsections A, B, and C, but are in addition to them.

## **Section XXI. Handling of Security Incident for Non-Health Information**

At the State's discretion, the Vendor will preserve all evidence regarding a security incident including but not limited to communications, documents, and logs. The Vendor will also:

- A. fully investigate the incident,
- B. cooperate fully with the State's investigation of, analysis of, and response to the incident,
- C. make a best effort to implement necessary remedial measures as soon as it is possible, and
- D. document responsive actions taken related to the Security Incident, including any post-incident review of events and actions taken to implement changes in business practices in providing the services covered by this Agreement.

If, at the State's discretion the Security Incident was due to the actions or inactions of the Vendor and at the Vendor's expense the Vendor will use a credit monitoring service, call center, forensics company, advisors, or public relations firm whose services are acceptable to the State. At the State's discretion the Vendor will offer two years of credit monitoring to each person whose data was compromised. The State will set the scope of any investigation. The State reserves the right to require the Vendor undergo a risk assessment where the State will determine the methodology and scope of the assessment and who will perform the assessment (a third-party vendor may be used). Any risk assessment required by this Section will be at the Vendor's expense.

If the Vendor is required by federal law or regulation to conduct a Security Incident or data breach investigation, the results of the investigation must be reported to the State within 12 hours of the investigation report being completed. If the Vendor is required by federal law or regulation to notify the affected parties, the State must also be notified, unless otherwise required by law.

Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to the State under law or equity, the Vendor will reimburse the State in full for all costs incurred by the State in investigation and remediation of the Security Incident including, but not limited, to providing notification to regulatory agencies or other entities as required by law or contract. The Vendor will also pay all legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Incident.

## **Section XXII. Adverse Event**

The Vendor must notify the State contact within three days if the Vendor becomes aware that an Adverse Event has occurred. An Adverse Event is the unauthorized use of system privileges, unauthorized access to State Data, execution of malware, physical intrusions and electronic intrusions that may include network, applications, servers, workstations, and social engineering of staff. If the Adverse Event was the result of the Vendor's actions or inactions, the State can require a risk assessment of the Vendor the State mandating the methodology to be used as well as the scope. At the State's discretion a risk assessment may be performed by a third party at the Vendor's expense. State Data is any data produced or provided by the State as well as any data produced or provided for the State by a third-party.

### **Section XXIII. Browser**

The system, site, or application must be compatible with Vendor supported versions of Edge, Chrome, Safari, and Firefox browsers. Silverlight, QuickTime, PHP, Adobe ColdFusion, and Adobe Flash will not be used in the system, site, or application. Adobe Animate CC is allowed if files that require third-party plugins are not required.

### **Section XXIV. Security of Code**

Any code written or developed pursuant to the terms of this Agreement must comply with the security requirements of this Agreement.

### **Section XXV. Information Technology Standards**

Any service, software, or hardware provided under this Agreement will comply with State standards which can be found at [https://bit.sd.gov/bit?id=bit\\_standards\\_overview](https://bit.sd.gov/bit?id=bit_standards_overview).

### **Section XXVI. Product Usage**

The State cannot be held liable for any additional costs or fines for mutually understood product usage over and above what has been agreed to in this Agreement unless there has been an audit conducted on the product usage. This audit must be conducted using a methodology agreed to by the State. The results of the audit must also be agreed to by the State before the State can be held to the results. Under no circumstances will the State be required to pay for the costs of said audit.

### **Section XXVII. Security**

The Vendor must take all actions necessary to protect State information from exploits, inappropriate alterations, access or release, and malicious attacks.

By signing this Agreement, the Vendor warrants that:

- A. All Critical, High, Medium, and Low security issues are resolved. Critical, High, Medium, and Low can be described as follows:
  1. **Critical** - Exploitation of the vulnerability likely results in root-level compromise of servers or infrastructure devices.
  2. **High** - The vulnerability is difficult to exploit; however, it is possible for an expert in Information Technology. Exploitation could result in elevated privileges.
  3. **Medium** - Vulnerabilities that require the attacker to manipulate individual victims via social engineering tactics. Denial of service vulnerabilities that are difficult to set up.
  4. **Low** - Vulnerabilities identified by the State as needing to be resolved that are not Critical, High, or Medium issues.

- B. Assistance will be provided to the State by the Vendor in performing an investigation to determine the nature of any security issues that are discovered or are reasonably suspected after acceptance. The Vendor will fix or mitigate the risk based on the following schedule: Critical and high risk, within 7 days, medium risk within 14 days, low risk, within 30 days.
- C. All members of the development team have been successfully trained in secure programming techniques.
- D. A source code control system will be used that authenticates and logs the team member associated with all changes to the software baseline and all related configuration and build files.
- E. State access to the source code will be allowed to ensure State security standards, policies, and best practices which can be found at [https://bit.sd.gov/bit?id=bit\\_standards\\_overview](https://bit.sd.gov/bit?id=bit_standards_overview).
- F. The Vendor will fully support and maintain the Vendor's application on platforms and code bases (including but not limited to: operating systems, hypervisors, web presentation layers, communication protocols, security products, report writers, and any other technologies on which the application depends) that are still being supported, maintained, and patched by the applicable third parties owning them. The Vendor may not withhold support from the State for this application nor charge the State additional fees as a result of the State moving the Vendor's application to a new release of third-party technology if:
  1. The previous version of the third-party code base or platform is no longer being maintained, patched, and supported; and
  2. The new version to which the State moved the application is actively maintained, patched, and supported.

If there are multiple versions of the applicable code base or platform(s) supported by the third party in question, the Vendor may limit its support and maintenance to any of the applicable third-party code bases or platforms.

If a code base or platform on which the Vendor's application depends is no longer supported, maintained, or patched by a qualified third party the Vendor commits to migrate its application from that code base or platform to one that is supported, maintained, and patched after the State has performed a risk assessment using industry standard tools and methods. Failure on the part of the Vendor to work in good faith with the State to secure a timely move to supported, maintained, and patched technology will allow the State to cancel this Agreement without penalty.

### **Section XXVIII. Security Scanning**

The State routinely applies security patches and security updates as needed to maintain compliance with industry best practices as well as state and federal audit requirements. Vendors who do business with the State must also subscribe to industry security practices and requirements. Vendor s must include costs and time needs in their proposals and project plans to assure they can maintain currency with all security needs throughout the lifecycle of a project. The State will collaborate in good faith with the Vendor to help them understand and support

State security requirements during all phases of a project's lifecycle but will not assume the costs to mitigate applications or processes that fail to meet then-current security requirements.

At the State's discretion, security scanning will be performed and security settings will be put in place or altered during the software development phase and during pre-production review for new or updated code. These scans and tests, initially applied to development and test environments, can be time consuming and should be accounted for in project planning documents and schedules. Products not meeting the State's security and performance requirements will not be allowed into production and will be barred from User Acceptance Testing (UAT) until all issues are addressed to the State's satisfaction. The discovery of security issues during UAT are automatically sufficient grounds for non-acceptance of a product even though a product may satisfy all other acceptance criteria. Any security issues discovered during UAT that require product changes will not be considered a project change chargeable to the State. The State urges the use of industry scanning/testing tools and recommends secure development methods are employed to avoid unexpected costs and project delays. Costs to produce and deliver secure and reliable applications are the responsibility of the Vendor producing or delivering an application to the State. Unless expressly indicated in writing, the State assumes all price estimates and bids are for the delivery and support of applications and systems that will pass security and performance testing.

#### **Section XXIX. Secure Product Development**

By signing this Agreement, the Vendor agrees to provide the following information to the State:

- A. Name of the person responsible for certifying that all deliverables are secure.
- B. Documentation detailing the Vendor's version upgrading process.
- C. Notification process for application patches and updates.
- D. List of tools used in the software development environment used to verify secure coding.
- E. Based on a risk assessment, provide the State the secure configuration guidelines, specifications and requirements that describe security relevant configuration options and their implications for the overall security of the software. The guidelines, specifications and requirements must include descriptions of dependencies on the supporting platform, including operating system, web server, application server and how they should be configured for security. The default configuration of the software shall be secure.

At the State's discretion the State will discuss the security controls used by the State with the Vendor upon the Vendor signing a non-disclosure agreement.

#### **Section XXX. Malicious Code**

- A. The Vendor warrants that the Agreement deliverables contain no code that does not support an application requirement.
- B. The Vendor warrants that the Agreement deliverables contains no malicious code.
- C. The Vendor warrants that the Vendor will not insert into the Agreement deliverables or any media on which the Agreement deliverables is delivered any malicious or intentionally destructive code.
- D. In the event any malicious code is discovered in the Agreement deliverables, the Vendor must provide the State at no charge with a copy of or access to the applicable Agreement deliverables that contains no malicious code or otherwise correct the affected portion of

the services provided to the State. The remedies in this Section are in addition to other additional remedies available to the State.

### **Section XXXI. Denial of Access or Removal of Application or Hardware from Production**

During the life of this Agreement the application and hardware can be denied access to or removed from production at the State's discretion. The reasons for the denial of access or removal of the application or hardware from the production system may include but not be limited to security, functionality, unsupported third-party technologies, or excessive resource consumption. Denial of access or removal of an application or hardware also may be done if scanning shows that any updating or patching of the software and or hardware produces what the State determines are unacceptable results.

The Vendor will be liable for additional work required to rectify issues concerning security, functionality, unsupported third-party technologies, and excessive consumption of resources if it is for reasons of correcting security deficiencies or meeting the functional requirements originally agreed to for the application or hardware. At the discretion of the State, contractual payments may be suspended while the application or hardware is denied access to or removed from production. The reasons can be because of the Vendor's actions or inactions. Access to the production system to perform any remedying of the reasons for denial of access or removal of the software and hardware, and its updating and or patching will be made only with the State's prior approval.

It is expected that the Vendor will provide the State with proof of the safety and effectiveness of the remedy, update, or patch proposed before the State provides access to the production system. The State will sign a non-disclosure agreement with the Vendor if revealing the update or patch will put the Vendor's intellectual property at risk. If the remedy, update, or patch the Vendor proposes is unable to present software or hardware that meets the State's requirements, as defined by the State, which may include but is not limited to security, functionality, or unsupported third party technologies, to the State's satisfaction within 30 days of the denial of access to or removal from the production system and the Vendor does not employ the change management process to alter the project schedule or deliverables within the same 30 days then at the State's discretion the Agreement may be terminated.

### **Section XXXII. Movement of Product**

The State operates a virtualized computing environment and retains the right to use industry standard hypervisor high availability, fail-over, and disaster recovery systems to move instances of the product(s) between the install sites defined with the Vendor within the provisions of resource and usage restrictions outlined elsewhere in the Agreement. As part of normal operations, the State may also install the product on different computers or servers if the product is also removed from the previous computer or server within the provisions of resource and usage restrictions outlined elsewhere in the Agreement. All such movement of product can be done by the State without any additional fees or charges by the Vendor.

### **Section XXXIII. Use of Product on Virtualized Infrastructure and Changes to that Infrastructure**



The State operates a virtualized computing environment and uses software-based management and resource capping. The State retains the right to use and upgrade as deemed appropriate its hypervisor and operating system technology and related hardware without additional license fees or other charges provided the State assures the guest operating system(s) running within that hypervisor environment continue to present computing resources to the licensed product in a consistent manner. The computing resource allocations within the State's hypervisor software-based management controls for the guest operating system(s) executing the product will be the only consideration in licensing compliance related to computing resource capacity.

#### **Section XXXIV. Load Balancing**

The State routinely load balances across multiple servers, applications that run on the State's computing environment. The Vendor's product must be able to be load balanced across multiple servers. Any changes or modifications required to allow the Vendor's product to be load balanced so that it can operate on the State's computing environment will be at the Vendor's expense.

#### **Section XXXV. Backup Copies**

The State may make and keep backup copies of the licensed product without additional cost or obligation on the condition that:

- A. The State maintains possession of the backup copies.
- B. The backup copies are used only as bona fide backups.

#### **Section XXXVI. Use of Abstraction Technologies**

The Vendor's application must use abstraction technologies in all applications, that is the removal of the network control and forwarding functions that allows the network control to become directly programmable and the underlying infrastructure to be separated for applications and network services.

The Vendor warrants that hard-coded references will not be used in the application. Use of hard-coded references will result in a failure to pass pre-production testing or may cause the application to fail or be shut down at any time without warning and or be removed from production. Correcting the hardcoded references is the responsibility of the Vendor and will not be a project change chargeable to the State. If the use of hard-coded references is discovered after User Acceptance Testing the Vendor will correct the problem at no additional cost.

#### **Section XXXVII. Scope of Use**

- A. There will be no limit on the number of locations, or size of processors on which the State can operate the software.
- B. There will be no limit on the type or version of operating systems upon which the software may be used.

#### **Section XXXVIII. License Agreements**

The Vendor warrants that it has provided to the State and incorporated into this Agreement all

license agreements, End User License Agreements (EULAs), and terms of use regarding its software or any software incorporated into its software before execution of this Agreement. Failure to provide all such license agreements, EULAs, and terms of use will be a breach of this Agreement at the option of the State. The parties agree that neither the State nor its end users will be bound by the terms of any such agreements not timely provided pursuant to this paragraph and incorporated into this Agreement. Any changes to the terms of this Agreement or any additions or subtractions must first be agreed to by both parties in writing before they go into effect. This paragraph will control and supersede the language of any such agreements to the contrary.

## **Section XXXIX. Web and Mobile Applications**

### **A. The Vendor's application is required to:**

1. have no code or services including web services included in or called by the application unless they provide direct, functional requirements that support the State's business goals for the application,
2. encrypt data in transport and at rest using a mutually agreed upon encryption format,
3. close all connections and close the application at the end of processing,
4. have documentation that is in grammatically complete text for each call and defined variables (i.e., using no abbreviations and using complete sentences) sufficient for a native speaker of English with average programming skills to determine the meaning or intent of what is written without prior knowledge of the application,
5. have no code not required for the functioning of application,
6. have no "back doors", a back door being a means of accessing a computer program that bypasses security mechanisms, or other entries into the application other than those approved by the State,
7. permit no tracking of device user's activities without providing a clear notice to the device user and requiring the device user's active approval before the application captures tracking data,
8. have no connections to any service not required by the functional requirements of the application or defined in the project requirements documentation,
9. fully disclose in the "About" information that is the listing of version information and legal notices, of the connections made, permission(s) required, and the purpose of those connections and permission(s),
10. ask only for those permissions and access rights on the user's device that are required for the defined requirements of the Vendor's application,
11. access no data outside what is defined in the "About" information for the Vendor's application,
12. conform to Web Content Accessibility Guidelines 2.0,
13. have Single Sign On capabilities with the State's identity provider, and
14. any application to be used on a mobile device must be password protected.

### **B. The Vendor is required to disclose all:**

- A. functionality,
- B. device and functional dependencies,
- C. third party libraries used,
- D. methods user data is being stored, processed, or transmitted,

- E. methods used to notify the user how their data is being stored, processed, or transmitted,
- F. positive actions required by the user to give permission for their data to be stored, processed and or transmitted,
- G. methods used to record the user's response(s) to the notification that their data is being stored, processed, or transmitted,
- H. methods used to secure the data in storage, processing, or transmission,
- I. forms of authentication required for a user to access the application or any data it gathers stores, processes and or transmits,
- J. methods used to create and customize existing reports,
- K. methods used to integrate with external data sources,
- L. methods used if integrates with public cloud provider,
- M. methods and techniques used and the security features that protect data, if a public cloud provider is used, and
- N. formats the data and information uses.

If the application does not adhere to the requirements given above or the Vendor has unacceptable disclosures, at the State's discretion, the Vendor will rectify the issues at no cost to the State.

#### **Section XL. Intended Data Access Methods**

The Vendor's application will not allow a user, external to the State's domain, to bypass logical access controls required to meet the application's functional requirements. All database queries using the Vendor's application can only access data by methods consistent with the intended business functions.

If the State can demonstrate the application flaw, to the State's satisfaction, then the Vendor will rectify the issue, to the State's satisfaction, at no cost to the State.

#### **Section XLI. Application Programming Interface**

Vendor documentation on application programming interface must include a listing of all data types, functional specifications, a detailed explanation on how to use the Vendor's application programming interface and tutorials. The tutorials must include working sample code.

#### **Section XLII. Access to Source and Object Code**

The Vendor will provide access to source and object code for all outward facing areas of the system where information is presented, shared, or received whether via browser-based access and programmatic-based access including but not limited to application program interfaces (APIs) or any other access or entry point accessible via the world wide web, modem, or other digital process that is connected to a digital network, radio-based or phone system.

#### **Section XLIII. Data Location and Offshore Services**

The Vendor must provide its services to the State as well as storage of State Data solely from data centers located in the continental United States. The Vendor will not provide access to State Data to any entity or person(s) located outside the continental United States that are not named in this

Agreement without prior written permission from the State. This restriction also applies to disaster recovery; any disaster recovery plan must provide for data storage entirely within the continental United States.

#### **Section XLIV. Vendor's Software Licenses**

The Vendor must disclose to the State any license for all third-party software and libraries used by the Vendor's product(s) covered under this Agreement if the State will not be the license holder. The Vendor is required to provide a copy of all licenses for the third-party software and libraries to the State. No additional software and libraries may be added to the project after this Agreement is signed without notifying the State and providing the licenses to the software and libraries. Open-source software and libraries are also covered by this clause. Any validation of any license used by the Vendor to fulfil the Vendor's commitments agreed to in this Agreement is the responsibility of the Vendor, not the State.

#### **Section XLV. Vendor Training Requirements**

The Vendor, Vendor's employee(s), and Vendor's subcontractors, agents, assigns, affiliated entities and their employee(s), must successfully complete, at the time of hire a cyber-security training program. The training must include but is not limited to:

- A. legal requirements for handling data,
- B. media sanitation,
- C. strong password protection,
- D. social engineering, or the psychological manipulation of persons into performing actions that are inconsistent with security practices or that cause the divulging of confidential information, and
- E. security incident response.

#### **Section XLVI. Data Sanitization**

At the end of the project covered by this Agreement the Vendor, and Vendor's subcontractors, agents, assigns, and affiliated entities will return the State Data or securely dispose of all State Data in all forms, this can include State Data on media such as paper, punched cards, magnetic tape, magnetic disks, solid state devices, or optical discs. This State Data must be permanently deleted by either purging the data or destroying the medium on which the State Data is found according to the methods given in the most current version of NIST 800-88. Certificates of Sanitization for Offsite Data (See [bit.sd.gov/vendor/default.aspx](http://bit.sd.gov/vendor/default.aspx) for copy of certificate) must be completed by the Vendor and given to the State contact. The State will review the completed Certificates of Sanitization for Offsite Data. If the State is not satisfied by the data sanitization then the Vendor will use a process and procedure that does satisfy the State.

This contract clause remains in effect for as long as the Vendor, and Vendor's subcontractors, agents, assigns, and affiliated entities have the State data, even after the Agreement is terminated or the project is completed.

#### **Section XLVII. Banned Hardware and Software**

The Vendor will not provide to the State any computer hardware or video surveillance hardware, or any components thereof, or any software that was manufactured, provided, or developed by a covered entity. As used in this paragraph, “covered entity” means the following entities and any subsidiary, affiliate, or successor entity and any entity that controls, is controlled by, or is under common control with such entity: Kaspersky Lab, Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, Nuctech, or any entity that has been identified as owned or controlled by, or otherwise connected to, People’s Republic of China. The Vendor will immediately notify the State if the Vendor becomes aware of credible information that any hardware, component, or software was manufactured, provided, or developed by a covered entity.

#### **Section XLVIII. Use of Portable Devices**

The Vendor must prohibit its employees, agents, affiliates, and subcontractors from storing State Data on portable devices, including personal computers, except for devices that are used and kept only at the Vendor’s data center(s). All portable devices used for storing State Data must be password protected and encrypted.

#### **Section XLIX. Remote Access**

The Vendor will prohibit its employees, agents, affiliates, and subcontractors from accessing State Data remotely except as necessary to provide the services under this Agreement and consistent with all contractual and legal requirements. The accounts used for remote access cannot be shared accounts and must include multifactor authentication. If the State Data that is being remotely accessed is legally protected data or considered sensitive by the State, then:

- A. The device used must be password protected,
- B. The data is not put onto mobile media (such as flash drives),
- C. No non-electronic copies are made of the data, and
- D. A log must be maintained by the Vendor detailing the data which was accessed, when it was accessed, and by whom it was accessed.

The Vendor must follow the State’s data sanitization standards, as outlined in this Agreement’s Data Sanitization clause, when the remotely accessed data is no longer needed on the device used to access the data.

#### **Section L. Data Encryption**

If State Data will be remotely accessed or stored outside the State’s IT infrastructure, the Vendor warrants that the data will be encrypted in transit (including via any web interface) and at rest at no less than AES256 level of encryption with at least SHA256 hashing.

#### **Section LI. Rights, Use, and License of and to State Data**

The parties agree that all rights, including all intellectual property rights, in and to State Data will remain the exclusive property of the State. The State grants the Vendor a limited, nonexclusive license to use the State Data solely for the purpose of performing its obligations under this Agreement. This Agreement does not give a party any rights, implied or otherwise, to the other’s

data, content, or intellectual property, except as expressly stated in the Agreement.

Protection of personal privacy and State Data must be an integral part of the business activities of the Vendor to ensure there is no inappropriate or unauthorized use of State Data at any time. To this end, the Vendor must safeguard the confidentiality, integrity, and availability of State Data and comply with the following conditions:

- A. The Vendor will implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access, disclosure, use, or theft of Personally Identifiable Information (PII), data protected under the Family Educational Rights and Privacy Act (FERPA), Protected Health Information (PHI), Federal Tax Information (FTI), or any information that is confidential under applicable federal, state, or international law, rule, regulation, or ordinance. Such security measures will be in accordance with recognized industry practice and not less protective than the measures the Vendor applies to its own non-public data.
- B. The Vendor will not copy, disclose, retain, or use State Data for any purpose other than to fulfill its obligations under this Agreement.
- C. The Vendor will not use State Data for the Vendor's own benefit and will not engage in data mining of State Data or communications, whether through automated or manual means, except as specifically and expressly required by law or authorized in writing by the State through a State employee or officer specifically authorized to grant such use of State Data.

## **Section LII. Third Party Hosting**

If the Vendor has the State's data hosted by another party, the Vendor must provide the State the name of this party. The Vendor must provide the State with contact information for this third party and the location of their data center(s). The Vendor must receive from the third party written assurances that the State's data will always reside in the continental United States and provide these written assurances to the State. This restriction includes the data being viewed or accessed by the third-party's employees or contractors. If during the term of this Agreement the Vendor changes from the Vendor hosting the data to a third-party hosting the data or changes third-party hosting provider, the Vendor will provide the State with 180 days' advance notice of this change and at that time provide the State with the information required above.

## **Section LIII. Securing of Data**

All facilities used to store and process State Data will employ industry best practices, including appropriate administrative, physical, and technical safeguards to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure the Vendor's own data of a similar type, and in no event less than commercially reasonable in view of the type and nature of the data involved.

## **Section LIV. Security Processes**

The Vendor will disclose its non-proprietary security processes and technical limitations to the State such that adequate protection and flexibility can be attained between the State and the Vendor. For example: virus checking and port sniffing.

## **Section LV. Import and Export of Data**

The State will have the ability to import or export data piecemeal or in entirety at its discretion without interference from the Vendor. This includes the ability for the State to import or export data to/from other vendors.

## **Section LVI. System Upgrades**

The Vendor must provide advance notice of 30 days to the State of any major upgrades or system changes the Vendor will be implementing unless the changes are for reasons of security. A major upgrade is a replacement of hardware, software, or firmware with a newer or improved version, in order to bring the system up to date or to improve its characteristics. The State reserves the right to postpone these changes unless the upgrades are for security reasons. The State reserves the right to scan the Vendor's systems for vulnerabilities after a system upgrade. These vulnerability scans can include penetration testing of a test system at the State's discretion.

## **Section LVII. Use of Production Data in a Non-Production Environment**

The Vendor cannot use protected State Data, whether legally protected or protected by industry standards, in a non-production environment. Any non-production environment that is found to have legally protected production data, must be purged immediately and the State contact notified. The State will decide if this event is to be considered a security incident. "Legally protected production data" is any data protected under federal or state statute or regulation. "Industry standards" are data handling requirements specific to an industry. An example of data protected by industry standards is payment card industry information (PCI). Protected data that is de-identified, aggregated, or hashed is no longer considered to be legally protected.

## **Section LVIII. Banned Services**

The Vendor warrants that any hardware or hardware components used to provide the services covered by this Agreement were not manufactured by Huawei Technologies Company, Nuctech, or ZTE Corporation, or any subsidiary or affiliate of such entities. Any company considered to be a security risk by the government of the United States under the International Emergency Economic Powers Act or in a United States appropriation bill will be included in this ban.

## **Section LIX. Multifactor Authentication for Hosted Systems**

Since the Vendor is hosting on their system or performing Software as a Service where there is the potential for the Vendor or the Vendor's subcontractor to see protected State Data, then Multifactor Authentication (MFA) must be used before this data can be accessed. The Vendor's MFA, at a minimum must adhere to the requirements of *Level 2 Authentication Assurance for MFA* as defined in NIST 800-63.

**C. AUTHORIZED SIGNATURES:**

In Witness Whereof, the parties signify their agreement effective the date below first written by the signatures affixed below. By signing this agreement, the Bureau of Information and Telecommunications (BIT) is representing that as the State's technology governing organization it has reviewed only the technical provisions of this agreement

**State**

**Vendor**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

BY: BRENT KEMPEMA  
CHIEF DEPUTY ATTORNEY GENERAL  
SOUTH DAKOTA OFFICE  
OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

\_\_\_\_\_  
(Vendor)

\_\_\_\_\_  
(Date)

BY: \_\_\_\_\_  
Madhu Gottumukkala (As to Section B only)  
Commissioner, Bureau of Information  
And Telecommunications

DATE: \_\_\_\_\_

-Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Please contact Kelsey Roth at 605-773-3215.

-This contract will be paid out of the following funds: