

**STATE OF SOUTH DAKOTA
CONSULTING CONTRACT**

Smart Software Solutions, Inc
108 S Pierre St
Pierre, South Dakota 57501

State of South Dakota
Department of Public Safety
On behalf of the 9-1-1 Coordination Board
118 W Capitol Ave
Pierre, South Dakota 57501

Referred to as Consultant

Referred to as State

The State hereby enters into this agreement ("Agreement") for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. SCOPE OF SERVICES:

The Consultant will provide maintenance and technical support for the web-based portal that the Coordinator developed to be used for the 9-1-1 Annual Report. The State's 911 Coordinator will submit work orders to the Consultant.

2. PERIOD OF PERFORMANCE:

This Agreement shall be effective February 1, 2026 through January 31, 2031, unless sooner terminated pursuant to the terms hereof.

3. USE OF EQUIPMENT, SUPPLIES, AND FACILITIES:

The Consultant will not use State equipment, supplies or facilities.

4. CONSULTANT IDENTIFICATION:

Upon execution of this Agreement, Consultant will provide the State with Consultant's Employer Identification Number, Federal Tax Identification Number or Social Security Number.

5. CONTRACT AMOUNT AND PAYMENT:

The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT WILL NOT EXCEED \$15,000. Development work will be billed at a rate not to exceed \$80 per hour and quality assurance work will be billed at a rate not to exceed \$55 per hour.

Upon receipt of a work order, the Consultant shall submit an invoice detailing time and work performed to the State. Consultant will include on all invoices a cumulative calculation of total billing made during the term of the agreement, including the current invoice, against remaining contract funds. The State will not pay Consultant's expenses

as a separate item. Payment will be made pursuant to invoices submitted by Consultant to the State, and consistent with SDCL ch. 5-26.

6. INDEMNIFICATION:

Consultant 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. Consultant 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. Consultant'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, Consultant 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 Consultant, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Consultant in the defense. This section does not require Consultant 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.

7. INSURANCE:

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

A. Commercial General Liability Insurance:

Consultant 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:

Consultant 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:

Consultant 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 owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

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

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

8. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for a breach is affected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's breach. Upon termination the State may take over the work and may award another party a contract to complete the work contemplated by this Agreement. If after the State terminates for a breach by Consultant it is determined that Consultant was not at fault, then Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

9. 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 the terms of sections 6. Indemnification and 13. Controlling Law.

10. 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 grants expenditure authority, or funds become unavailable by operation of law or federal fund reductions, this Agreement will be terminated by the State upon five (5) business days written notice. Consultant agrees that termination for any of these reasons is not a default by the State nor does it give rise to a

claim against the State or any officer, agent or employee of the State, and Consultant waives claim against the same.

11. 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, Consultant 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. Consultant 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:

Consultant 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, Consultant certifies that neither Consultant 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. Consultant further agrees that it will immediately notify the State if during the term of this Agreement, Consultant 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 NO STATE LEGISLATOR INTEREST:

Consultant (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, Consultant hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

12. 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 **Jason Husby** on behalf of the State, and by and to **Michael Ward**, on behalf of Consultant, 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.

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. INDEPENDENT CONSULTANT:

While performing services hereunder, Consultant is an independent contractor and not an

officer, agent, or employee of the State of South Dakota.

15. THIRD PARTY BENEFICIARIES:

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

16. 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.

17. COMPLIANCE

Consultant 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.

18. REPORTING:

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

Consultant'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. Consultant'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 Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

19. SUBCONTRACTING:

Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. Consultant 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 in a manner consistent with this Agreement. Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, tribal, state, and local laws, regulations, ordinances, guidelines, permits and other standards and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. Consultant shall assist in the vetting process.

20. STATE'S RIGHT TO REJECT:

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

21. SEVERABILITY:

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

22. SUPERCESSION:

All other 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.

23. 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.

24. 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.

25. 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.

26. AUTHORITY TO EXECUTE:

A. The execution, delivery and performance of this Agreement has been duly authorized by Consultant and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Consultant to enter into this Agreement and perform its obligations under this Agreement;

B. Consultant is duly authorized to conduct business in and is in good standing in each jurisdiction in which Consultant will conduct business in connection with this Agreement; and

C. Consultant 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 Consultant's performance of the services. Consultant will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

27. 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.

28. DISCLOSURE OF THE CONTRACT:

Neither party 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. The Consultant acknowledges that the State of South Dakota 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, including, without limitation, posting this Agreement on the website pursuant to SDCL 1-27-46. The Consultant agrees that the Agreement and any prices, fees and rates agreed to be paid by the State under the Agreement are not confidential.

29. BUREAU OF INFORMATION AND TECHNOLOGY:

Pursuant to South Dakota Codified Law 1-33-44, the Bureau of Information and Technology ("BIT") 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

attached to this Agreement as Exhibits A and Attachment 1 and 2, and hereby incorporated into this Agreement by reference. It is understood and agreed to by all parties that BIT, as the State's technology governing organization, has reviewed only the technical provision of this Agreement and Exhibits A, and Attachment 1 and 2.

30. STATE ACKNOWLEDGEMENT:

The State acknowledges that it has complied with the requirements of SDCL 5-18D-17 to 5-18D-21 and this Agreement is exempt under SDCL 5-18D-17.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

CONSULTANT

Robert Perry
Cabinet Secretary
Department of Public Safety

Date: _____

Print Name: _____

Title: _____

Date: _____

Kelly Serr
Board Chair
South Dakota 911 Coordination Board

Date: _____

Print Name: _____

Title: _____

South Dakota Bureau of Information and Technology

Date: _____

- State Agency Coding (MSA Center) _____.
- State Agency MSA Company for which contract will be paid _____.
- Object/subobject MSA account to which voucher will be coded _____.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Kelli Erickson 605-773-3105.