**Exhibit E**

**Bureau of Information and Telecommunications**

**Required State Hosted IT Contract Terms**

**Any contract resulting from this RFP will include the State’s required IT terms and conditions as listed below, along with any additional terms and conditions as negotiated by the parties. Due to the changing landscape of IT security and data privacy, the State reserves the right to add additional IT terms and conditions or modify the IT terms and conditions listed below to the resulting contract:**

Pursuant to South Dakota Codified Law § 1-33-44, the Bureau of Information and Telecommunications ("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. As part of its duties as the Executive Branch’s centralized IT agency, BIT requires the contract terms and conditions of this Exhibit E. For purposes of this Exhibit, [Vendor Name] will be referred to as the “Vendor.”

It is understood and agreed to by all parties that BIT has reviewed and approved only this Exhibit. Due to the ever-changing security and regulatory landscape in IT and data privacy, before renewal of this Agreement BIT must review and approve the clauses found in this Exhibit as being the then current version of the clauses and if any additional required clauses are needed. Changes to clauses in this Exhibit must be approved in writing by all parties before they go into effect and a renewal of this Agreement is possible.

The Parties agree, when used in this Exhibit, the term “Vendor” will mean the Vendor and the Vendor’s employees, subcontractors, agents, assigns, and affiliated entities.

1. **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.

1. **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.

1. **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 who duties that require them to have access to the State Data or the hardware the State Data resides on.

1. **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.

1. **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 BIT security policies can be found in the Information Technology Security Policy (“ITSP”) attached as Exhibit . 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.

1. 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.
2. 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.
3. 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.
4. 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.

1. **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:

1. fully investigate the incident,
2. cooperate fully with the State’s investigation of, analysis of, and response to the incident,
3. make a best effort to implement necessary remedial measures as soon as it is possible, and
4. 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.

1. **Security Incidents for Protected Health Information**

Security Incident means the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as defined in 45 CFR 164.304.  The Vendor must alert the State contact within 12 hours of a Security Incident and provide daily updates to the BIT contact at their request.  The Parties agree that this alert does not affect the Vendor’s obligations under the Business Associate Agreement or the requirements of 45 CFR 164.410.  The Parties agree that, to the extent probes and reconnaissance scans common to the industry constitute a Security Incident, 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.  The State can require the Vendor to conduct a review or investigation within the scope and methodology determined by the State.  At the State’s discretion, the review or investigation may be performed by a third party at the Vendor’s expense.

Notwithstanding any other provision of this Agreement and in addition to any other remedies available to the State under law or equity, in the event the investigation or review determines that the Vendor is responsible for the Security Incident, and where the State incurs any costs in the investigation, review, or remediation of the Security Incident, the Vendor must reimburse the State in full for all such costs.  Costs include, but are not limited to, providing notification to regulatory agencies or other entities as required by law or contract.  In the event the investigation or review determines that the Vendor is responsible for the Security Incident, the Vendor must 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, and all costs associated with the remediation of the Vendor’s services or product(s).

1. **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.

1. **Security Acknowledgment Form**

The Vendor will be required to sign the Security Acknowledgement Form which is attached to this Agreement as Exhibit . The signed Security Acknowledgement Form must be submitted to the State and approved by the South Dakota Bureau of Information and Telecommunications and communicated to the Vendor by the State contact before work on the contract may begin. This Security Acknowledgment Form constitutes the agreement of the Vendor to be responsible and liable for ensuring that the Vendor, the Vendor’s employee(s), and subcontractor’s, agents, assigns and affiliated entities and all of their employee(s), participating in the work will abide by the terms of the Information Technology Security Policy (ITSP) attached to this Agreement. Failure to abide by the requirements of the ITSP or the Security Acknowledgement Form can be considered a breach of this Agreement at the discretion of the State. It is also a breach of this Agreement, at the discretion of the State, if the Vendor does not sign another Security Acknowledgement Form covering any employee(s) and any subcontractor’s, agent’s, assign’s, or affiliated entities’ employee(s), any of whom are participating in the work covered by this Agreement, and who begin working under this Agreement after the project has begun. Any disciplining of the Vendor’s, Vendor’s employee(s), or subcontractor’s, agent’s, assign’s, or affiliated entities’ employee(s) due to a failure to abide by the terms of the Security Acknowledgement Form will be done at the discretion of the Vendor or subcontractors, agents, assigns, or affiliated entities and in accordance with the Vendor’s or subcontractor’s, agent’s, assign’s, and affiliated entities’ personnel policies.   Regardless of the actions taken by the Vendor and subcontractors, agents, assigns, and affiliated entities, the State will retain the right to require at the State’s discretion the removal of the employee(s) from the project covered by this Agreement.

1. **Background Investigations**

The State requires any person who writes or modifies State-owned software, alters hardware, configures software of State-owned technology resources, has access to source code or protected Personally Identifiable Information (PII) or other confidential information, or has access to secure areas to undergo fingerprint-based background investigations. These fingerprints will be used to check the criminal history records of both the State of South Dakota and the Federal Bureau of Investigation. These background investigations 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 2-4 weeks to complete this process.

If work assignments change after the initiation of the project covered by this Agreement so that a new person will be writing or modifying State-owned software, altering hardware, configuring software of State-owned technology resources, have access to source code or protected PII or other confidential information, or have access to secure areas, background investigations must be performed on the individual who will complete any of the referenced tasks. The State reserves the right to require the Vendor to prohibit any person from performing work under this Agreement whenever the State believes that having the person 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 investigation. The State will provide the Vendor with notice of this determination.

1. **Data Location and Offshore Services**

The Vendor must provide its services to the State solely from 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.

1. **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 and annually thereafter, a cyber-security training program. The training must include but is not limited to:

1. legal requirements for handling data,
2. media sanitation,
3. strong password protection,
4. 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,
5. security incident response, and
6. Protected Health Information.
7. **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.

1. **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:

1. The device used must be password protected,
2. The data is not put onto mobile media (such as flash drives),
3. No non-electronic copies are made of the data, and
4. 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.

1. **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.

1. **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:

1. 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.
2. The Vendor will not copy, disclose, retain, or use State Data for any purpose other than to fulfill its obligations under this Agreement.
3. 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.