



MASTER Software License and Services AGREEMENT

This Master Software License and Services Agreement (the “**Agreement**”) is entered into as of the 1st of July 2020 (the “**Effective Date**”) between Contra Costa County CA, a political subdivision of the State of California (“**Customer**”), and KNOWiNK, LLC, a Missouri limited liability company (“**KNOWiNK**”).

WHEREAS, Customer wishes to engage KNOWiNK to provide, install and set-up an electronic poll books system known as the KNOWiNK Poll Pad System, to make the System (as defined in **Exhibit C**) available to Customer, to license certain software from KNOWiNK, and to train Customer and/or its designated personnel in the use of the System;

WHEREAS, KNOWiNK is willing to perform such services and the other services described in this Agreement (the “**Services**”) for, and license the Software (as defined below) to, Customer;

NOW THEREFORE, in consideration of the mutual agreements set forth in this Agreement, Customer and KNOWiNK agree as follows:

1. PROVISION OF THE SYSTEM:

KNOWiNK shall implement, deliver and make the System and the Software available to Customer as set forth in this Agreement and the exhibits hereto, including the quote attached hereto as **Exhibit B** and incorporated herein by this reference (the “**Quote**”) and **Exhibit C** (Software as a Service Addendum).

2. LICENSE AND SUPPORT; RESTRICTIONS:

- 2.1. Subject to the terms and conditions of this Agreement, KNOWiNK hereby grants to Customer a personal, nonexclusive, nontransferable, and limited license to use the software, including firmware, embedded in the System that provides execution of the software functions, and as specified on a Quote (the “**Software**”) and the applicable documentation during the Term of this Agreement. Pursuant to the license granted herein, KNOWiNK will provide Customer, and Customer is permitted to use, only the run-time executable code and associated support files of the Software for Customer’s internal requirements as part of the System. The Software may be used only Licensed Locations specified as the jurisdiction on **Exhibit A** (General Information) attached hereto and incorporated herein, and only on the hardware provided to Customer by KNOWiNK. Customer’s use of the Software will be limited to the number of licenses specified in the applicable Quote. Only Customer and its authorized employees, agents or contractors may use or access the Software. To the extent Software contains embedded third party software, third party licenses may apply.
- 2.2. Subject to the terms and conditions of this Agreement, KNOWiNK shall provide: (a) annual software maintenance and support (“**Software Support Services**”) and (b) the implementation, training, support and/or other services (“**Professional Services**”) set forth in this Agreement and the applicable Quote provided in **Exhibit B**. Software Support Services will consist of periodic updates to the Software, issued at KNOWiNK’s discretion. KNOWiNK does not warrant that all errors or defects will be corrected.
- 2.3. Customer may not modify or copy the System or Software. Customer shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or

de-compilation of any Software or attempt to derive the source code thereof. Customer shall not use any Software for application development, modification, or customization purposes, except through KNOWiNK.

- 2.4. The use, duplication, reproduction, release, modification, disclosure, or transfer of the System or Software is restricted in accordance with the terms and conditions contained in this Agreement. All other use is prohibited. Further, the System and Software were developed at KNOWiNK's private expense and are commercial in nature. By using or receiving the System or Software, Customer agrees to the terms and conditions contained in this Agreement including the terms and conditions contained in this paragraph.
- 2.5. Customer acknowledges and agrees that the design of the System and the Software, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, firmware, information, ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, equipment architecture, improvements, code, updates, trade secrets and material are the property of KNOWiNK and its licensors. Customer agrees that the sale of the hardware and license of the Software does not, other than as expressly set forth herein, grant to or vest in Customer any right, title, or interest in such proprietary property. Customer owns all right, title and interest in, to and under the Data (as defined in **Exhibit C**) in the System, and notwithstanding that the Data is located in the System, KNOWiNK has no right, title or interest in the Data.
- 2.6. Subject to the terms and conditions of this Agreement, KNOWiNK will provide Customer with phone support and will provide all other Services, including implementation, any technical support, Software Support Services, and training.

3. **OBLIGATIONS:**

- 3.1. KNOWiNK will ship hardware to Customer from KNOWiNK's designated shipping point. Title to the hardware will change from KNOWiNK to Customer upon delivery to Customer. Shipping dates are approximate and are based, to a great extent, on prompt receipt of all necessary ordering information from Customer. Billing will commence once delivery has been made.
- 3.2. On Non-Election Days KNOWiNK will answer or respond to Customer service call requests within eight (8) hours. On voting days, KNOWiNK's help desk will be available for calls one hour prior to voting beginning until one hour voting ends. On Election Days KNOWiNK will acknowledge and/or address all Customer calls within one hour of receipt.
- 3.3. Each party agrees to comply with applicable laws, rules and regulations in connection with its performance under this Agreement or use of the System, Software or Services. The System, Software and components thereof may be subject to U.S. and other government export control regulations. Customer shall not export or re-export all or a part of the System or the Software.

4. **TERM; TERMINATION:**

- 4.1. The term of this Agreement is from the Effective Date until June 30, 2023 ("**Term**") unless earlier terminated in accordance with this Section.
- 4.2. Either party may terminate this Agreement or any outstanding order if the other party is in material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach has been given. Customer may terminate this Agreement on any anniversary of the Effective Date by providing KNOWiNK written notice thereof at least sixty (60) days prior to the anniversary.
- 4.3. Sections 2.3-2.5, 4, 8, 9, 10.2, 10.3, 10.5 and 13-15 shall survive any termination or expiration of this Agreement or the applicable order. All other rights and obligations shall be of no further force or effect.

5. PRICING:

- 5.1. Prices for hardware are set forth in the Quote and are subject to change by KNOWiNK without notice, including prices for backordered hardware: however, prices in Quotes signed by both Parties are not subject to change. Unless otherwise noted, all prices include shipping and packing costs, and insurance.
- 5.2. Customer shall pay the fees specified in a Quote. After expiration of the Term, KNOWiNK may increase the fees for a renewal term.
- 5.3. Pricing for other Services shall be set forth in the applicable Quote. Additional charges may apply to Services, e.g., travel, communication and other expenses.
- 5.4. All prices are exclusive of applicable taxes. All taxes shall be payable by Customer, unless Customer presents KNOWiNK with a proper certificate of exemption from such tax. If Customer challenges the applicability of any such tax, Customer shall pay the tax and may thereafter seek a refund. In the event KNOWiNK is required to pay any tax at time of sale or thereafter, Customer shall promptly reimburse KNOWiNK therefore.

6. ORDERS:

Customer may request a quotation for additional professional services from time to time. The existence of this Agreement does not obligate Customer to request a quotation or purchase any products or Services from KNOWiNK. KNOWiNK reserves the right to accept or reject any order initiated by Customer in KNOWiNK's discretion. Only signed Quotes will obligate the parties. Each Quote is subject to the terms and conditions of this Agreement.

7. PAYMENT TERMS:

- 7.1. KNOWiNK will invoice Customer for all hardware, software and services including parts replacements or Customer-requested software modification upon shipment to Customer. Except as otherwise provided in the applicable Quote, such invoices shall be paid in full within thirty (30) days after delivery.
- 7.2. If any dispute exists between the parties concerning any payment or invoice, Customer shall promptly pay the undisputed portion of the signed Quote. Such payment will not constitute a waiver by Customer or KNOWiNK of any of their respective legal rights and remedies against each other. Customer has no right of set-off.

8. CONFIDENTIALITY:

- 8.1. "**Confidential Information**" means any information marked confidential by a party hereto and proprietary information of a party that should reasonably be understood to be confidential, including information related to KNOWiNK's business or the System or Software (and applicable documentation), and all Data (as defined in **Exhibit C** attached hereto. Confidential Information does not include information that was (a) at the time of disclosure or through no fault of the receiving party, in the public domain, (b) in the possession of the receiving party at the time of disclosure to it without any obligation to restrict use or disclosure, (c) received by a third party who had a lawful right to disclose such information without any obligation to restrict use or disclosure.
- 8.2. Each party will keep in confidence and protect Confidential Information (electronic or hard copy) from disclosure to unauthorized third parties and restrict its use to performance or use of the Software or System pursuant to this Agreement and other uses expressly permitted under this Agreement. Customer shall take all reasonable steps to ensure that the trade secrets and proprietary data contained in the System and Software and the other Confidential Information are not disclosed, copied, duplicated, misappropriated, or used in any manner not expressly permitted by the terms of this Agreement. Each party acknowledges and agrees that the unauthorized disclosure of Confidential Information may cause substantial economic loss to the respective party or their suppliers and licensors. Notwithstanding the foregoing, the parties acknowledge that

Customer is subject to the California Public Records Act (California Government Code section 6250 *et seq.* (the “Act”)), which obligates Customer to , and Customer will provide KNOWiNK notice if it receives a request from the public under the Act for production of Confidential Information.

- 8.3. Upon termination or expiration of this Agreement or, if earlier, upon termination of Customer’s permitted access to or possession of Confidential Information, Customer shall return to KNOWiNK all copies of the Confidential Information in Customer’s possession (including Confidential Information incorporated in software or writings, electronic and hard copies).
- 8.4. Each party will inform its employees and other agents and contractors of their obligations under this Section 8 and shall be fully responsible for any breach thereof by such personnel.

9. INDEMNIFICATION:

- 9.1. **Indemnity.** KNOWiNK, at its own expense, will defend Customer against any claim that the System or the Software infringes an issued United States patent, registered United States copyright, or misappropriates trade secrets protected under United States law (a “Claim”), and shall indemnify Customer against and pay any costs, damages and reasonable attorneys’ fees attributable to such Claim that are finally awarded against Customer, provided Customer (a) gives KNOWiNK prompt written notice of such claims; (b) permits KNOWiNK to control the defense and settlement of the claims; and (c) provides all reasonable assistance to KNOWiNK in defending or settling the claims.
- 9.2. **Remedies.** If KNOWiNK becomes aware of a Claim, it shall (a) obtain the right of continued use of the System or Software for Customer or (b) replace or modify the System or Software to avoid the Claim. If neither of the foregoing alternatives are available on commercially reasonable terms, then, at the request of KNOWiNK, any applicable Software license and its charges will end, Customer will cease using the applicable System component or Software, Customer will return to KNOWiNK all applicable KNOWiNK hardware and components and return or destroy all copies of the applicable Software, and Customer will certify in writing to KNOWiNK that such return or destruction has been completed. Upon return or KNOWiNK’s receipt of certification of destruction, KNOWiNK will give refund Customer the pro rated price paid to KNOWiNK for the returned or destroyed System Component or Software.
- 9.3. **Exclusions.** KNOWiNK will not defend or indemnify Customer if any claim of infringement or misappropriation (a) is asserted by an affiliate of Customer; (b) results from Customer’s design or alteration of any System component or Software; (c) results from use of any System component or Software in combination with any non-KNOWiNK product, except to the extent, if any, that such use in combination is restricted to the System designed by KNOWiNK; (d) relates to third-party hardware or software alone; or (e) arises from Customer-specified customization work undertaken by KNOWiNK or its designees in response to Customer specifications.
- 9.4. **EXCLUSIVE REMEDIES.** THIS SECTION 9 STATES THE ENTIRE LIABILITY OF KNOWiNK AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT AND TRADE SECRET MISAPPROPRIATION.

10. WARRANTY; LIMITATION OF LIABILITY:

- 10.1. KNOWiNK warrants that all hardware provided hereunder to be free from defects in material or workmanship under normal use and service for a period of one (1) year from the date of delivery. All repair covered by this warranty must be done by KNOWiNK, or other such warranty repair facilities of KNOWiNK as designated by KNOWiNK unless KNOWiNK specifically directs that this service be performed at another location. Any defect corrected within one (1) year and found to be within this scope of the warranty will be repaired by KNOWiNK and all charges for labor and material, will be borne by KNOWiNK. KNOWiNK warrants that all Professional Services will be performed in a professional and workmanlike manner. KNOWiNK warrants that the System

will perform according to the documentation related to the System. THE FOREGOING WARRANTIES CONSTITUTE THE SOLE WARRANTIES MADE BY KNOWiNK, EITHER EXPRESSED OR IMPLIED. THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED WHICH EXTEND BEYOND THE FACE HEREOF, HEREIN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- 10.2. KNOWiNK MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THIRD PARTY HARDWARE, IF ANY, PROVIDED BY KNOWiNK TO CUSTOMER, ALL OF WHICH IS SOLD, LICENSED, OR SUBLICENSSED TO CUSTOMER "AS IS," OTHER THAN AS MAY BE PROVIDED IN ANY PASS-THROUGH WARRANTY. KNOWiNK HAS NO RESPONSIBILITY OR LIABILITY FOR THIRD PARTY HARDWARE, IF ANY, PROVIDED BY DISTRIBUTORS OR OTHER THIRD PARTIES TO CUSTOMER. If KNOWiNK sells, licenses, or sublicenses any Third Party Hardware to Customer, KNOWiNK will pass through to Customer, on a nonexclusive basis and without recourse to KNOWiNK, any third-party manufacturer's warranties covering the equipment or software, but only to the extent, if any, permitted by the third-party manufacturer.
- 10.3. Customer is solely responsible for any hardware or software purchased from an outside source. KNOWiNK will not be liable for such products.
- 10.4. Any tampering, misuse or negligence in handling or use of hardware purchased hereunder renders the warranty void. Further, the warranty is void if, at any time, Customer or any third party attempts to make any internal changes to any of the components of the products provided hereunder; if at any time the power supplied to any part of the product exceeds the rated tolerance; if any external device attached by Customer creates conditions exceeding the tolerance of the product; or if any time the serial number plate is removed or defaced. OPERATION OF THE EQUIPMENT THAT RENDERS THIS WARRANTY VOID WILL BE DEFINED TO INCLUDE ALL OF THE POSSIBILITIES DESCRIBED IN THIS PARAGRAPH, TOGETHER WITH ANY PRACTICE WHICH RESULTS IN CONDITIONS EXCEEDING THE DESIGN TOLERANCE OF THE PRODUCT.
- 10.5. IN NO EVENT SHALL KNOWiNK BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES AND CUSTOMER'S REMEDIES SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF NONCONFORMING SERVICES, UNITS OR PARTS. EXCEPT WITH RESPECT TO KNOWiNK'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, KNOWiNK'S MAXIMUM AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED FEES RECEIVED BY SERVICE PROVIDER DURING THE 12 MONTHS PRECEDING THE APPLICABLE CLAIM.

11. CONFLICTS:

KNOWiNK will not pay to Customer or any of Customer's officials or employees having official responsibility for the procurement transaction, or member of his or her immediate family, any financial benefit of more than nominal or minimal value relating to the award of this Agreement.

12. FORCE MAJEURE:

Neither party to this Agreement shall be considered in default by reason of any failure in its performance under this Agreement if such failure results from, whether directly or indirectly, fire, explosion, strike, freight embargo, global pandemic, Act of God or of the public enemy, war, civil disturbance, act of any government, , or agency or official thereof, material or labor shortage, transportation contingencies, unusually severe weather, , quarantine, restriction, epidemic, or catastrophe, lack of timely instructions or essential information from Customer, or otherwise arising out of causes beyond the control of the party.

13. **RELATIONSHIP OF THE PARTIES:**

13.1. The parties to the Agreement are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. KNOWiNK's employees, agents, and subcontractors will not be entitled to any privileges or benefits of Customer employment. Customer's employees, agents, and contractors will not be entitled to any privileges or benefits of KNOWiNK or employment.

14. **DISPUTE RESOLUTION:**

14.1. The parties will attempt to resolve any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("**Dispute**"), according to the following process, which either party may start by delivering to the other party an oral notice describing the dispute and the amount involved ("**Demand**").

14.2. After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed-upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after this meeting, either party may institute a nonbinding mediation process as is mutually acceptable to the parties.

14.3. Notwithstanding the other provisions of this Section 14, if either party seeks injunctive relief, such relief may be sought in a court of competent jurisdiction without complying with the negotiation and mediation provisions of this Section.

14.4. Neither mediation under this section nor any legal action, regardless of its form, related to or arising out of this Agreement may be brought more than two (2) years after the cause of action first accrued.

15. **GENERAL:**

15.1. KNOWiNK may not assign or otherwise transfer the obligations incurred pursuant to the terms of this Agreement without the prior written consent of the Customer.

15.2. This Agreement is the complete and exclusive statement of the mutual understandings of the parties regarding the subject matter hereof. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement other than was expressly stated herein. This Agreement may not be amended or waived except in writing signed by an officer of the party to be bound thereby.

15.3. THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, TO THE EXCLUSION OF THE LAW OF ANY OTHER FORUM. THIS AGREEMENT IS NOT BINDING UNTIL ACCEPTED BY KNOWiNK IN WRITING.

15.4. In the event any provision of this Agreement shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.

15.5. Any notice required or permitted to be given under this Agreement by one party to the other must be in writing and shall be given to Customer at the address set forth on **Exhibit A**, or to KNOWiNK at the address set forth on the first page of this Agreement, and deemed to have been given: (a) immediately, if delivered personally; (b) on the fifth (5th) business day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to such address. Each party may change its address for notice by giving written notice of the change to the other party; or (c) on the next business day

upon confirmation of delivery, if delivered by overnight delivery by a nationally recognized overnight delivery service.

Authorized representatives of Customer and KNOWiNK have read the foregoing Master Software License and Services Agreement and all documents incorporated into this Agreement and agree and accept such terms effective as of the Effective Date.

CUSTOMER (CONTRA COSTA COUNTY CA):

Signature: *[Handwritten Signature]*
Print Name: SCOTT O. KONOPASEK
Title: ASST Registrar
Date: 8/17/20

KNOWiNK LLC:

Signature: *[Handwritten Signature]*
Print Name: Kevin J. Schott
Title: CFO
Date: 7/27/20

FORM APPROVED
Sharon L. Anderson, County Counsel
By Deputy *[Handwritten Signature]*
Eric Gelston

Exhibit A

General Information

Customer Jurisdiction Name:	Contra Costa County CA Elections
Licensed Location (City/State):	Martinez, CA
Customer Contact(s):	Scott Konopasek
Billing Address:	555 Escobar St
City / State / ZIP:	Martinez, CA 94553
Shipping Address (if different):	
City / State / ZIP:	(925) 335-7808
Contact Telephone:	
Alternate Telephone:	
Fax:	
Email:	scott.konopasek@vote.cccounty.us

KNOWINK Quote and Terms
Date: 7/27/2020

KNOWINK 2111 Olive Street Saint Louis, MO 63103

Jurisdiction: Contra Costa County, CA

Contact: Scott Konopasek

Phone: 925-335-7808

Email: scott.konopasek@vote.cccounty.us

Poll Pad Subscription Purchase Quote and Terms:

*Pricing guaranteed for 60 days from date of quote. Based on your stated requirements, we propose the following:

Item	Recommended Hardware/Software	Estimated Quantity	Unit Price	Total Amount
1	Poll Pad Units <i>Includes: iPad 32gb WiFi + Cellular, Charger, Transport Case, i360 Stand, Stylus (2), 1st Year Software License, MDM Enrollment and Basic Poll Pad Manager, Setup & Delivery</i>	400	\$926.00	\$370,400.00
2	Verizon Wireless Data Plan Activation, per wireless device (Billed annually; required with Wireless Solution)	400	\$15.00	\$6,000.00
3	Verizon Wireless Data Plan, per wireless device (per Election, billed separately from annual activation fee)	400	\$30.00	\$12,000.00
4	e-Pulse Software Suite: <i>Includes: Connectivity, Issue Tracking, Asset Tracking, Advanced Communications, Ballot Tracking & Poll Worker software</i>	1	Included Above	\$0.00
5	e-Pulse iTrack Issue Tracking software	1	Included Above	\$0.00
6	e-Pulse iTrack Asset Tracking software	1	Included Above	\$0.00
7	e-Pulse Advanced Communications software	1	Included Above	\$0.00
8	e-Pulse Ballot Tracking software	1	Included Above	\$0.00
9	e-Pulse Poll Worker software	1	Included Above	\$0.00
10	Onsite Training (per day) <i>Train the Trainer or End-user / Poll Worker training available</i>	1	\$2,500.00	\$2,500.00
Total Year One (1) Poll Pad Package Estimated Cost:				\$390,900.00

Annual Software License and Maintenance

11	Annual Software License, MDM & Maintenance (Years 2-5, billed annually)	400	\$125.00	\$50,000.00
12	ePulse Software Suite Annual Software License & Maintenance (Years 2-5)	1	\$0.00	\$0.00

Item Networking/Data

13	DFM Gateway - Available in 2021		*price TBD	
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Optional Hardware/Software/Support

14	Onsite November Presidential Election Support (per person, per day)		\$5,000.00	
15	Hazard Pay - COVID-19 - will be added to any on-site support or training, until further notice		\$1,000.00	
16	iSync Drive		\$40.00	
17	WiFi Site Survey (per person, per day)		\$2,500.00	

Terms of Subscription

Subject to acceptance of the Master Software License & Services Agreement will be a (5) five year agreement. The term will begin effective on the date of equipment acceptance. All Poll Pad software comes with the standard (12) twelve month warranty. Meraki Solutions come with 3-year hardware licenses (renewable @ \$300/device). Post Election reporting includes required VR Extract and digital e-Roster. All support & training prices include travel expenses.

Contra Costa County

By:

Name:

Title:

Scott Konopasek
 SCOTT O. Konopasek
 Asst Registrar

Know Ink LLC

By:

Name:

Title:

Kevin Schott
 KEVIN SCHOTT
 CFO

Exhibit C (Software as a Service Addendum)

This Software as a Service Addendum is attached to and a part of the Master Software License and Services Agreement and sets forth the terms and conditions applicable to the hosted software and services provided by KNOWiNK under the Agreement.

1. DEFINITIONS:

- a) "System" means the Software, Data, network, servers, operating systems, and related infrastructure provided by KNOWiNK makes accessible to Customer through a web browser.
- b) "Data" - means any information, formulae, algorithms, or other content that the Customer, the Customer's employees, agents and end users upload, create or modify using the System pursuant to this Agreement. Data also includes user identification information, and metadata which may contain Data or from which the Data may be ascertainable.
- c) "Data Breach" - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable state or federal law.

2. SYSTEM AND DATA AVAILABILITY:

- a) KNOWiNK shall make the System available to Customer twenty-four (24) hours per day, 365 days per year excluding maintenance downtime, which shall occur only occur from 11:00 PM PST Saturday to 8:00 AM PST Monday except during Customer election periods (the "**Maintenance Period**").
- b) KNOWiNK shall make the System available to Customer at least 99.9% of the time beginning thirty (30) days prior to Election Day and for six (6) days thereafter excluding the Maintenance Period.
- c) If KNOWiNK does not make the System available to Customer at least 99.9% excluding the Maintenance Period for three (3) or more months in a rolling twelve-month period, the County may terminate this Agreement immediately.
- d) Contractor shall provide Customer advance written notice to the of any major upgrades or changes that will affect System availability, provided, that no such interruptions shall occur within twenty-nine (29) days of a scheduled election.

3. DATA SECURITY:

- a) Contractor shall certify to the County:
 - 1) At least once a year, the sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement as part of Contractor's California Secretary of State Electronic Poll Certification process.
 - 2) Comply with the following:
 - i. The California Information Practices Act of 1977 (Civil Code Sections 1798 et seq.);
 - ii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) 16 Service Organization Control (SOC) 2 Type II audit. Audit results and KNOWiNK's plan to correct any negative findings shall be made available to the County within thirty (30) business days of KNOWiNK's receipt of such results; and
 - 3) Maintain its certification with the California Secretary of State as an electronic poll book provider during the Term of this Agreement
- b) KNOWiNK shall implement and maintain all appropriate administrative, physical, technical and procedural System and Data safeguards at all times during the Term of this Agreement to secure the System and Data from Data Breach, protect the Data and the System from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts.
- c) KNOWiNK shall allow the County reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Addendum and the County's Data, at no cost to the County.
- d) KNOWiNK assumes responsibility for the security and confidentiality of the Data under its control.
- e) KNOWiNK shall provide access to Data only to those employees, contractors and subcontractors who need to access the Data to fulfill KNOWiNK's obligations under this Agreement. KNOWiNK will ensure that, prior to being granted access to Data, staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Addendum; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

4. ENCRYPTION: KNOWiNK shall encrypt all Data in transmission (including via web interface) using Transport Layer Security (TLS) version 1.2 or equivalent and in storage at a level equivalent to or stronger than Advanced Encryption Standard (AES) 128-bit level encryption.
5. DATA LOCATION: All Data will be stored on servers located solely within the Continental United States.
6. RIGHTS TO DATA: The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the County, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.
7. TRANSITION PERIOD:
- a) For 90 days prior to the expiration of this Agreement, or upon notice of termination of this Agreement, KNOWiNK shall assist Customer in extracting and/or transitioning all Data in the format determined by Customer ("Transition Period").
 - b) The Transition Period may be modified in writing by the parties in an amendment to this Agreement.
 - c) During the Transition Period, KNOWiNK shall continue to make the System and Data accessible to Customer without alteration.
 - d) KNOWiNK shall compensate Customer for any damages or losses Customer incurs as a result of KNOWiNK's failure to comply with this section.
 - e) the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within 30 days, Contractor shall issue a written statement to the County confirming the destruction or inaccessibility of the County's Data.
 - f) Customer may, at its option, purchase additional transition services.
8. DISASTER RECOVERY/BUSINESS CONTINUITY:
- g) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, KNOWiNK shall notify Customer by the fastest means available and also in writing. Contractor shall provide such notification within twenty-four (24) hours after KNOWiNK reasonably believes there has been such a disaster or catastrophic failure. In the notification, KNOWiNK shall inform Customer of:
 - 1) The scale and quantity of the Data loss;
 - 2) What KNOWiNK has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
 - 3) What corrective action KNOWiNK has taken or will take to prevent future Data loss.
 - h) Contractor shall restore continuity of the System, restore Data, restore accessibility of Data, and repair the System as needed to meet the Data and System availability requirements under this Agreement.
 - i) KNOWiNK shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with Customer. Customer and/or its authorized agents have the right to lead (if required by law) or participate in the investigation. KNOWiNK shall cooperate fully with the County, its agents and law enforcement.
9. EXAMINATION AND AUDIT:
- a) Upon advance written request, County or its designated representative shall be permitted to access to KNOWiNK's System operational documentation and records, including online inspections that relate to the security of the product purchased by the County.
 - b) Contractor shall allow the County, its authorized agents, or a mutually acceptable third party to test that System and Data controls are in place and working as intended. Tests may include, but not be limited to, the following:
 - 1) Operating system/network vulnerability scans,
 - 2) Web application vulnerability scans,
 - 3) Database application vulnerability scans, and
 - 4) Any other scans to be performed by the County or representatives on its behalf.
 - c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, Customer-approved third party perform an information security audit. The audit results shall be shared with Customer within seven (7) days of KNOWiNK's receipt of such results. Upon KNOWiNK receiving the results of the audit, Contractor

will provide the County with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Agreement.

10. **DISCOVERY:** KNOWiNK shall promptly notify the County upon receipt of any requests, which in any way might reasonably require access to the Data or Customer's use of the System. KNOWiNK shall notify Customer by the fastest means available and also in writing, unless prohibited by applicable law from providing such notification. KNOWiNK shall provide such notification within forty-eight (48) hours after Contractor receives the request. KNOWiNK shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at KNOWiNK regarding this Agreement without first notifying Customer unless prohibited by applicable law from providing such notification. KNOWiNK agrees to provide its intended responses to Customer with adequate time for Customer to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. KNOWiNK shall not respond to legal requests directed to Customer unless authorized in writing to do so by Customer.
11. **INSURANCE REQUIREMENTS:** KNOWiNK shall, at its own expense, secure and maintain for the term of this Agreement, Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall cover breach response cost as well as any regulatory fines and penalties.
12. **DATA SEPARATION:** KNOWiNK shall partition Data from other data in such a manner that access to it will not be impacted or forfeited due to e-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain records, information or data for reasons or activities that are not directly related to Customer's business.