HANCOCK COUNTY ELECTION BOARD RESOLUTION NO. 2019-04
Amend Vote Center Plan – Modify E-PollBbook Vendor

WHEREAS, I.C. §3-11-18.1-15 allows the local Election Board to amend the county's vote center plan; and

WHEREAS, the Hancock County Election Board has determined it is in the interest of the citizens of Hancock County to properly update the plan as needed; and

WHEREAS, the timeframe for adopting this resolution is not prescribed in statute; but rather becomes effective upon the unanimous vote of the entire membership; and

WHEREAS, I.C. § 3-11-10-26.3 allows the county election board to adopt a resolution to change its electronic poll book vendor from ES&S to Knowink; and

NOW, THEREFORE, be it resolved pursuant to I.C. §3-11-18.1-15 the Hancock County Election Board, by unanimous vote of the Board's entire membership, amends the vote center plan to terminate services with ES&S relative to electronic poll books and to proceed with Knowink/Microvote as its electronic poll book vendor pursuant to the Agreement approved and signed on March 19, 2019, a copy of which is attached hereto as "Exhibit A."

Further, this Resolution shall take effect immediately and may only be rescinded by unanimous vote of the entire membership of the Hancock County Election Board

Adopted this 4th day of April, 2019.

John Apple, Board Member

Robert G. Bogigian, Board Member

Lisa M. Lofgreen, Board Member

INDIANA ELECTIONS DIVISION
2019 APR -8 PM 3:49

knowINK

2111 Olive St • St. Louis, MO 63103
Phone: 855-765-5723
Email: sales@knowink.com
Website: www.knowink.com

MASTER Software License and Services AGREEMENT

This Master Agreement (the "**Agreement**") is entered into as of the _14th_ of _March___, 2019 between _Hancock County IN Clerk_____ ("**Customer**"), and KNOWiNK, LLC ("**KNOWiNK**).

WHEREAS, Customer wishes to engage KNOWiNK to provide, install and set-up an electronic poll books ("**EPBs**") system known as the KNOWiNK Poll Pad System (the "**System**"), 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 such software (the "**Software**") 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 deliver and implement the System and the Software as described herein and in the attached quote (Exhibit B, "**Quote**").

2 **LICENSE AND SUPPORT; RESTRICTIONS:**

2.1. Subject to the terms and conditions of this Agreement and for so long as Customer has a current license and support subscription in effect, KNOWiNK grants to Customer a personal, nonexclusive, nontransferable, and limited license to use the Software (which includes firmware, meaning the Software embedded in any System device that allows execution of the software functions) and the applicable documentation. With this right to use, KNOWiNK will provide Customer, and Customer will be 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 at the Licensed Location specified as the jurisdiction on **Exhibit A** and only on the hardware or other computer systems authorized by KNOWiNK in writing. 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, the user 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.

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. Hardware is shipped Ex Works (Incoterms 2010) from KNOWiNK's designated shipping point. Title change from KNOWiNK to Customer is upon shipment 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 shipment has been made.

3.2. On Non-Election Days KNOWiNK will physically or remotely answer or respond to a service call request within eight (8) hours. On Election Day, KNOWiNK's help desk will be available for calls one hour prior to polls opening until one hour after polls close. On Election Day all calls will be acknowledged and/or addressed within one hour.

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 ("**Term**") shall initially be four years, unless earlier terminated in accordance with this Section. Unless otherwise notified to Customer or KNOWiNK in writing, with or without cause, at least 30 days prior to the end of the then-current term, the Term will renew for four-year renewal periods.

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.

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 shall be specified by KNOWiNK in the relevant quotation or proposal and are subject to change 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. The "**Annual Fee**" is the combined, annual fee for licensing (in the case of Software) and support (a "**License and Support Subscription**"). Pricing for the initial Annual Fee is the amount specified in the Quote and/or **Exhibit B**. KNOWiNK may increase the Annual Fee for a renewal term with 30-days notice to Customer before the term renews.

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 from time to time. The existence of this Agreement does not obligate Customer to request a quotation or purchase any products or Services. 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 shall be 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. Such payment will not constitute a waiver by Customer, 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 confidential or proprietary information of a party, including information related to KNOWiNK's business or the System or Software (and applicable documentation), and the terms and conditions of this Agreement. 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 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. Customer acknowledges that unauthorized disclosure of Confidential Information may cause substantial economic loss to KNOWiNK or their suppliers and licensors.

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, 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**. As to the System or Software that is subject to a claim of infringement or misappropriation, KNOWiNK may (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 alternative is 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 Customer a credit for the price paid to KNOWiNK for the returned or destroyed System Component or Software, less a reasonable offset for use and obsolescence.

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 all products provided hereunder to be free from defects in material or workmanship under normal use and service for a period of four (4) years 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 four (4) years 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. THIS CONSTITUTES 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 SUBLICENSED 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 products provided 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. EACH OF 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:

KNOWiNK shall not 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, Act of God or of the public enemy, war, civil disturbance, act of any government, de jure or de facto, or agency or official thereof, material or labor shortage, transportation contingencies, unusually severe weather, default of any other manufacturer or a supplier or subcontractor, quarantine, restriction, epidemic, or catastrophe, lack of timely instructions or essential information from Customer, or otherwise arising out of causes beyond the control of KNOWiNK .

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**"), on a confidential basis according to the following process, which either party may start by delivering to the other party a written 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 start mandatory nonbinding mediation under the commercial mediation rules of the American Arbitration Association ("**AAA**") or such other 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 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 then was is 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 INDIANA, 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.

(*Signature page to follow*)

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 date first referenced above.

CUSTOMER (HANCOCK COUNTY IN CLERK):

Signature: Lisa M. Lofgreen

Print Name: Lisa M. Lofgreen

Title: Hancock County Clerk

Date: 3/19/19

KNOWINK LLC:

Signature:

Print Name: Kevin J. Schott

Title: CFO

Date: 3/19/19.

PRESIDENT, HANCOCK COUNTY BOARD OF COMMISSIONERS

Signature:

Print Name: John Jessup

Date: 3/19/19

Exhibit A

General Information

Customer Jurisdiction Name:	Hancock County, IN
Licensed Location (City/State):	Greenfield, IN
Customer Contact(s):	Lisa M. Lofgreen
Billing Address:	Hancock County Courthouse 9 E. Main St, Room 213
City / State / ZIP:	Greenfield, IN 46140
Shipping Address (if different):	
City / State / ZIP:	
Contact Telephone:	(317) 477-1109
Alternate Telephone:	
Fax:	
Email:	llofgreen@hancockcoingov.org

Exhibit B (Quote), to follow

knowINK
Innovative Election Solutions

POLL PAD®
ANY LINE, ANY TIME, SOLUTION

KNOWiNK Quote and Terms

Date: 3/13/2019

KNOWiNK 2111 Olive Street Saint Louis, MO 63103

MicroVote Sales Contact: Mike Miller Phone: (317) 201-9759 Email: mikemiller@microvote.com

Jurisdiction: Hancock County, IN

Contact: Lisa M. Lofgreen Phone: (317) 477-1109 Email: llofgreen@hancockcoingov.org

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 *Includes: iPad WiFi 32gb, Charger, Star Micronics Bluetooth Receipt Printer, Stand, Stylus, Transport Case, 1st Year Software License, MDM Enrollment, Live Syncing and Basic Poll Pad Manager*	22	$1,500.00	$33,000.00
2	Poll Pad Units *Includes: iPad WiFi 32gb, Charger, Star Micronics Bluetooth Label Printer, Stand, Stylus, Transport Case, 1st Year Software License, MDM Enrollment, Live Syncing and Basic Poll Pad Manager*	13	$1,675.00	$21,775.00
3	State Acceptance Test Certification Fee	1	$1,500.00	$1,500.00
4	IN SVRS Integration	35	$25.00	$875.00
5	Wireless Hotspot Solution - Verizon Jetpack (Refurbished MiFi 7730)	12	$150.00	$1,800.00
6	Verizon Wireless Data Plan Activation (Billed annually; required with Wireless Hotspot Solution)	12	$15.00	$180.00
7	Central Command e-Pulse Command and Control software	1	$15,000.00	$15,000.00
8	Professional Services Package: Installation and Training	1	$3,000.00	$3,000.00
	Total Year (1) One Poll Pad Package Estimated Cost:			**$77,130.00**
	Annual Software License and Maintenance			
9	Year 2 Annual Software License, MDM & IN SVR Maintenance	35	$150.00	$5,250.00
10	Year 3 Annual Software License, MDM & IN SVR Maintenance	35	$150.00	$5,250.00
11	Year 4 Annual Software License, MDM & IN SVR Maintenance	35	$150.00	$5,250.00
12	Year 2 Central Command Annual Software License & Maintenance	1	$3,000.00	$3,000.00
13	Year 3 Central Command Annual Software License & Maintenance	1	$3,000.00	$3,000.00
14	Year 4 Central Command Annual Software License & Maintenance	1	$3,000.00	$3,000.00
	Networking/Data			
15	Verizon Wireless Data Plan (Per Election, billed separately from annual activation fee (Line Item #6)	12	$30.00	$360.00
	Optional Hardware/Software			
16	Star Micronics Label Paper - Additional (Case of 12 rolls)		$250.00	
17	Star Micronics Receipt Paper - Additional (Case of 50 rolls)		$125.00	

Terms of Subscription

Subject to acceptance of the Master Software License & Services Agreement will be a (4) four 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. Post Election reporting includes required VR Extract and digital e-Roster.