

**CONTRACT BETWEEN
THE STATE OF WYOMING, SECRETARY OF STATE'S OFFICE
AND
SABER CORPORATION**

1. **Parties.** The parties to this Contract are the State of Wyoming, Secretary of State's Office, ("State" or "Agency"), whose address is State Capitol Building, 200 West 24th Street, Cheyenne, Wyoming 82002, and Saber Software, Inc. ("Saber" or "Contractor"), whose address is 1800 SW First Ave., Suite 350, Portland, Oregon 97201.

2. **Purpose of Contract.** Saber shall provide the State of Wyoming with a statewide voter registration and election management system ("System") that is compliant with the requirements of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301-15545 (HAVA), which is intended to improve the administration of elections throughout the United States. Section 303(a)(i) requires states to create, for use in federal elections, a single uniform, centralized and interactive computerized statewide voter registration list, containing registration information as required by law and a unique identifier for every registered voter. The System must also meet all necessary requirements of Wyoming State statutes. The System must be implemented by December 15, 2007.

3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and all required approvals have been granted. By law, contracts for professional or other services must be approved by the Attorney General and by the Procurement Services Division of the Department of Administration and Information per Wyo. Stat. § 9-1-403(b)(v) and all contracts for services costing over one thousand five hundred dollars (\$1,500.00) must be approved by the Governor or his designee pursuant to Wyo. Stat. § 9-2-1016(b)(iv). The term of this Contract shall be from the date of the last required signature through December 31, 2008, unless the maintenance and service options for the years 2009 and 2010 are exercised by the State. In that case, the Contract may extend through December 31, 2010.

There is no expectation that the options will be exercised. However, if the State elects to exercise its option to extend the Contract for additional one-year terms, the payment for each additional year (2009 and 2010) shall be consistent with the pricing charts listed in Attachment A.

4. **Payment.** The State agrees to pay Saber for the services described in this Contract and further described and outlined in Saber's Proposal for Wyoming's Voter Registration Project (hereinafter Attachment A, which includes Appendices A and B, attached thereto), which is made a part of this Contract and is incorporated and attached hereto as Attachment A. The total payment under this

Contract shall not exceed ten million dollars and no cents (\$10,000,000.00). Payment shall be made only to Saber when services are successfully completed by Saber in accordance with the terms and conditions of this Contract. As described in Attachment A, the total payment under this Contract is comprised of the following:

A. Implementation Labor Costs

The State agrees to pay the Implementation Labor Costs described in Attachment A in nine (9) equal monthly installments of four hundred fifteen thousand dollars and no cents (\$415,000). Saber shall issue monthly invoices for these payments at the end of each month, beginning April 2007 and ending December 2007.

A retainage of 10% will be withheld for all Implementation Labor Costs listed on each invoice. When the System has been completely and successfully implemented consistent with the terms of this Contract, the State will make a one-time payment to Saber consisting of the cumulative retainage amounts withheld from each invoice. This one-time payment shall be made only after receipt of an invoice that will be submitted no earlier than December 1, 2007.

B. 2 Site Hosting Costs

The State shall pay to Saber the 2 Site Hosting Costs as described in Attachment A in equal monthly installments of thirty-four thousand seven hundred twenty dollars and no cents (\$34,720.00). Saber shall issue monthly invoices for these payments at the end of each month, beginning August 2007.

C. Platinum Support Costs

The State shall pay to Saber the Platinum Support Costs as described in Attachment A in equal monthly installments of sixty thousand four hundred sixteen dollars and sixty-seven cents (\$60,416.67) for each month that Saber provides Platinum Support service to the State for the first year of support. Saber shall issue monthly invoices for these payments at the end of each month, beginning January 2008. The first year of support will be from January 1, 2008 to December 31, 2008.

Subsequent to the first year of support, the fees payable for option years will be as set forth in Attachment A. Saber shall issue monthly invoices for these payments at the end of each month in which support services are provided. In no event shall the State be responsible to begin paying fees for support prior to January 2008.

D. Annual Maintenance Costs on Hardware and Software

The State shall pay to Saber the Annual Maintenance Costs on the Hardware and Software as indicated in Attachment A in equal monthly installments of eleven thousand four hundred and ninety-six dollars and eight cents (\$11,496.08) for the period June 1, 2008 to December 31, 2008. However, in no event, shall the State be responsible to pay these costs prior to one (1) year after the State purchases the hardware and third-party software from Saber. Annual Maintenance Costs for subsequent option years will be in the amounts provided for in Attachment A.

A retainage of 10% will be withheld for all costs under categories B through D (above) listed on each invoice. If the System performs without material deviation from the specifications provided in this Contract, including Attachment A, the State will make a one-time payment to Saber consisting of the retainage amounts withheld under categories B through D. This one-time payment shall be made only after receipt of an invoice that will be submitted no earlier than December 1, 2008.

E. Hardware and Software Procurement Costs

The State shall pay to Saber the costs of the Hardware and third-party Software as indicated in Attachment A as Saber purchases such Hardware and third-party Software, delivers it to the State, and submits an invoice to the State. This payment shall be made only after receipt of invoice.

No retainage will be withheld by the State for the Hardware and third-party Software Procurement Costs.

F. License Fee

In exchange for the use license provided below, the State shall pay Saber a one-time license fee for the baseline WYOREG software in the amount of seven hundred fifty thousand dollars and no cents (\$750,000.00). This one-time payment shall be made only after receipt of an invoice that will be submitted no earlier than March 30, 2007.

No retainage will be withheld by the State for the license fee.

All invoices submitted for payment must include Saber's Federal Taxpayer Identification Number (TIN). Further, the invoices submitted by Saber shall indicate the requested payment for each category (A through F above), shall describe the work performed during the billing period, and shall indicate the amount of retainage, if any, to be withheld. No payment shall be made for work performed before the date upon which the last required signature is affixed to this Contract. The State shall pay each invoice within 45 days after receipt.

The State shall have 10 business days from receipt of each invoice to determine if the services listed on the invoice have been successfully performed and conform to the Contract requirements. If any of the services do not conform to the Contract requirements, the State may issue a rejection notice within the 10 days and require Saber to perform the services in conformity with the Contract requirements. If the State determines that the services listed on the invoice have not been successfully performed in compliance with the Contract, the State is authorized to withhold payment for the unsuccessfully performed services listed on the invoice until Saber corrects the deficiencies and successfully performs the services. After Saber corrects the deficiencies and successfully performs the services, the State shall make payment to Saber within 45 days.

If the State determines that the services listed on the invoice have been successfully performed, the State shall make payment to Saber within 45 days of receipt of the invoice.

No payment of travel/miscellaneous expenses will be allowed under the Contract. Saber will pay its own expenses, with no payment by the State.

5. Responsibilities of Saber. Subject to the terms and conditions of this Contract, Saber's services include the following duties and responsibilities:

A. Prior to December 15, 2007, successfully and completely implement the System that is compliant with the requirements of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301-15545 and that will meet all necessary requirements of Wyoming State statutes, as expressed in this Contract, including Attachment A.

B. Customize, implement and support the System according to Attachment A and pursuant to the project schedule contained in Attachment A.

C. Procure the equipment, hardware and third-party software outlined in Attachment A that is necessary to successfully implement the System.

D. Maintain the State's hardware and third-party software located at Saber's 2 Site Hosting locations as indicated in Attachment A, including upgrading and replacing all hardware and software when such upgrades and replacements are available from the third-party hardware and software suppliers pursuant to the manufacturers' warranties, support and maintenance agreements, and/or licensing agreements. Unless otherwise agreed to by the parties, Saber will not be responsible for procurement of new hardware or software that is not covered under manufacturers' warranty or support agreements. Saber shall provide documentation to the State of any hardware and third-party software failure.

E. Upon payment of the license fee described above, Saber shall provide the State with the right to use the baseline WYOREG software described in section 7.G below. Upon payment of the license fee, Saber shall also provide the State with a fully functional copy of the source code, in machine readable format, of the baseline WYOREG software, for use consistent with the license provided below. Upon each release of the system software, Saber will provide the State with a fully functional copy of the source code, in machine readable format, for each new release.

F. Assign mutually agreed upon key personnel to the System project as outlined in Attachment A. Saber shall take reasonable commercial efforts to ensure that such key personnel continue to provide the services and products required by the State and the Contract for the duration of this Contract.

A mutually agreed upon individual who will be primarily dedicated to the System project (the “Contractor Project Manager”) will be designated in the key personnel provision of Attachment A. The Contractor Project Manager will be the primary contact with the State in dealing with Saber under this Contract, and will have overall responsibility for managing and coordinating the delivery of the System.

Except in the event of resignation, death, disability or termination, Saber shall notify the State in writing at least 20 business days prior to replacing any Saber key personnel. The hiring, replacement, or release of Saber key personnel is subject to prior written approval by the State. In the event of any replacement of Saber key personnel, the replacement individual will have suitable ability and qualifications reasonably acceptable to the State. Saber shall provide for an appropriate transition (overlap) period for the new individual and use commercially reasonable efforts to minimize any disruption such replacement may cause in the performance of Saber’s obligations under this Contract.

If the State determines, in good faith and consistent with applicable laws and industry practices, that the continued assignment of any Saber key personnel may not be in the best interests of the State or its success of the System project, the State will notify Saber in writing of its concerns. Promptly after delivery of the notice, the parties shall consult about the matters stated in the notice and Saber will either (1) institute mutually agreeable corrective action, or (2) replace the individual within a mutually agreed upon time frame.

Saber also guarantees the performance of all non-key personnel assigned to the project. If the State reasonably determines, in good faith and consistent with applicable laws and industry practices, that the continued assignment of any non-key personnel may not be in the best interests of the State or consistent with the success of the System project, Saber will replace those personnel without cost or charge to the State within 30 days after Saber receives written notice from the State of its concerns, unless the State withdraws such notice following discussion between the parties.

G. Act in good faith in the performance of its respective responsibilities under this Contract and not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required by the State in order to perform its responsibilities under this Contract.

6. **Responsibilities of the State.** Responsibilities of the State are identified in Attachment A.

7. **Special Provisions.**

A. **Limitation of Payments.** The State's obligation to pay Saber for services rendered pursuant to this Contract is conditioned upon the availability of state or federal government funds which are allocated to pay Saber. If funds are not allocated and available for the State to pay Saber for these services, the State may terminate this Contract at the end of the period for which the funds are available.

The State shall notify Saber at the earliest possible time if this Contract will or may be affected by a shortage of funds. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed so as to permit the State to terminate this Contract to acquire similar services from another party.

B. **Monitor Activities.** The State shall have the right to monitor all Contract related activities of Saber and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all Saber personnel in every phase of performance of Contract related work. The State shall provide Saber with 48 hours' notice of its intent to visit any Saber facility where work is being performed on the Project other than Saber's Wyoming Project Office.

C. **No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract shall be paid by either party.

D. **Nondiscrimination.** Saber shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (*et seq.*), the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.*, and the Age Discrimination Act of 1975. Saber shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin or disability in connection with the performance of this Contract. Saber shall include the provisions of this section in every subcontract awarded over Ten Thousand Dollars (\$10,000.00) so that such provisions are binding on each subcontractor.

E. Publicity. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Saber, shall identify the State as the sponsoring agency and shall not be released without prior written approval from the State.

F. Title of Risk of Loss. Saber shall bear all risks of loss, damages, or destruction of the hardware and third-party software that it procures for the State prior to delivery to Saber's onsite hosting locations. After the hardware and third-party software is delivered to Saber's onsite hosting locations, and after payment is made by the State to Saber, the State owns the hardware and third-party software procured by Saber. At that time, to the extent that any loss or damage to the hardware and third-party software is not due to the negligence of Saber, the State bears the risk of loss or damage for the hardware and third-party software. If the State's hardware or third-party software is damaged or destroyed due to the negligence of Saber, Saber is solely responsible for the damage to the hardware and third-party software, including the costs necessary to replace and install the new hardware and third-party software. However, in the event that the State's hardware and third-party software is damaged or destroyed not due to Saber's negligence, and the hardware and software is covered under Saber's insurance policy, Saber shall waive its right of recovery under subrogation or otherwise.

Further, Saber shall bear all risks of loss, damages or destruction of the training laptops that it procures for the State until the laptops have been delivered to the State.

G. Intellectual Property Rights. Materials prepared or developed exclusively for the State by Saber pursuant to this Contract ("Prepared Materials") shall be deemed to be a work made for hire, and shall be the exclusive property of the State and not part of the commercially available Electus Software; provided, however, that upon the State's final acceptance of the system, the State shall grant Saber an irrevocable, nonexclusive, perpetual, non-transferable, limited license to use, and permit others to use, the Prepared Materials. For the avoidance of doubt, all improvements, fixes, and modifications to Saber's pre-existing software, including without limitation Saber's Electus Software, that are developed during the course of performing this Contract shall not be considered Prepared Materials or works made for hire. Also for the avoidance of doubt, the parties agree that Saber's "Electus Software" shall include those elements of the Electus product that will form the basis of the system that Saber develops for the State (the "baseline WYOREG product").

All pre-existing materials, including without limitation, Saber's Electus Software, all improvements, fixes, and modifications to Saber's pre-existing Electus Software, and all other software, reports, data, manuals, or other documents, drawings or materials prepared independently by Saber but used in performance of its obligations under this Contract (Saber's "Proprietary Materials"), shall remain the exclusive property of Saber, and Saber shall retain ownership of its Proprietary Materials.

Effective upon Saber's receipt of the license fee described above, Saber grants the State an irrevocable, nonexclusive, perpetual, non-transferable, limited license to use, and permit others to use, any Proprietary Materials that Saber delivers to the State pursuant to this Contract.

The use license granted to the State pursuant to this Contract is a limited license to use delivered Proprietary Materials for the State's ordinary, internal purposes, to the extent necessary to develop, implement, operate and maintain the System, including, without limitation, the right to modify the code for the State's own use.

All commercially available, third-party software that Saber delivers to the State pursuant to this Contract is provided to the State subject to the third party software owner's standard licensing agreement. As long as the State continues to pay Saber for support and maintenance, Saber will be responsible for the third-party software licensing fees identified in Attachment A.

H. Warranties. Saber warrants that it will perform the services and provide the deliverables under this Contract in a good and workmanlike manner, and that it will perform all work assigned to it in a manner that is, at a minimum, consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time services are provided.

Saber further warrants that the deliverables specified in this Contract and Attachment A will perform the functions as described in this Contract. All equipment and supplies furnished under this Contract shall be free from material defects in materials and workmanship and will be installed and will conform to the applicable design specifications as outlined in Attachment A.

Saber also warrants that the System will achieve the purpose for which it is intended as detailed within this Contract and Attachment A.

Saber further warrants that, during the term of this Contract, as may be extended at the State's option, the System, including all of its services performed and deliverables provided pursuant to this Contract, will perform in compliance with the specifications and criteria outlined in Attachment A.

I. Transition of Service. Upon expiration or earlier termination of this Contract or any services provided hereunder, Saber shall accomplish a complete transition of the services, including architecture, licenses, State-owned hardware and software, database, application development tools, application testing, training, and help desk from Saber to the State, or to any replacement provider designated by the State. Saber shall cooperate fully with the State and such replacement provider and promptly take all steps required to assist in effecting a complete transition.

J. Penalties. Saber acknowledges and agrees that any delay or failure by Saber to timely perform its obligations in accordance with this Contract will delay and disrupt the State's operations and will result in significant loss, expense and damages to the State. Furthermore, Saber acknowledges and agrees that it may be extremely impractical and difficult to determine actual damages that the State may sustain. The following provisions in this section describe the penalties that Saber shall pay to the State as a result of non-performance or untimely performance hereunder by Saber and that such penalties are reasonable.

In the event Saber fails to achieve any of the following milestones on or before the deadline associated with each milestone, the State may impose a late fee of five thousand dollars and no cents (\$5,000.00) per calendar day for each day after the deadline that the milestone is not achieved:

1. **Final FRS:** Complete Definition of the WY specific Requirements to establish the scope for the WYOREG software. Requirements will be prioritized for delivery for 2007 and Support Year 2008.
Date: June 15, 2007
2. **Second WYOREG Prototype Software Code Delivery:** Prototype with at least 80% of Requirements.
Date: July 30, 2007
3. **Completion of UAT:**
Date: August 31, 2007
4. **Data Migration of the Pilot Counties:**
Date: August 31, 2007

5. **Completion of the Pilot:**

Date: September 30, 2007

6. **Complete Statewide Implementation:**

Date: December 15, 2007

To the extent that Saber's delay or nonperformance is excused by the State, the State will not impose daily late fees. The State may waive any fees imposed pursuant to this provision at its discretion upon written request from Saber.

If Saber fails to completely and successfully implement the System by the December 15, 2007, deadline, or as may subsequently be extended by mutual agreement of the parties, Saber shall forfeit 50% of the retainage withheld from the Implementation Labor Costs as set forth in Section 4(A). The State may waive any penalty imposed pursuant to this provision at its discretion upon written request from Saber.

K. Precedence. The terms and conditions of this Contract shall take precedence over any conflicting terms and conditions in Attachment A.

8. **General Provisions.**

A. Amendments. Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

B. Applicable Law/Venue. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

C. Assignment/Contract Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party.

D. Assumption of Risk. Saber shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to Saber's failure to comply with state or federal requirements referred to in this Contract.

The State shall notify Saber of any state or federal determination of noncompliance.

E. Audit/Access to Records. The State and any of its representatives shall have access to any books, documents, papers, and records of Saber which are pertinent to this Contract.

F. Award of Related Contracts. The State may undertake or award supplemental or successor contracts for work related to this Contract. Saber shall cooperate fully with other contractors and the State in all such cases.

G. Certificate of Good Standing. Saber shall provide a Certificate of Good Standing verifying compliance with the unemployment insurance and workers' compensation programs prior to performing work under this Contract.

H. Compliance with Laws. Saber shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

I. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by Saber in the performance of this Contract shall be kept confidential by Saber until publicly released by the State or until written permission is granted by the State for its release.

J. Entirety of Contract. This Contract, consisting of nineteen (19) pages, Attachment A, [Proposal for Wyoming's Voter Registration Project, including Appendices A and B attached thereto] consisting of two hundred and sixty eight (268) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

K. Ethics. Saber shall keep informed or and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*), and any and all ethical standards governing Saber's profession.

L. Extensions/Renewals. Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the State, and shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any agreement to extend this Contract shall include, but

not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

M. Force Majeure. Neither party shall be liable for failure to perform under this Contract, including any liability or penalty under the provision entitled “penalties,” if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

N. Indemnification.

Saber shall indemnify, defend and hold harmless the State, and its officers, agents, employees, successors and assignees from any and all lawsuits or claims for damages, losses and liability from third parties against the State arising out of Saber’s failure to perform any of its duties and obligations hereunder or in connection with the negligent performance of its duties or obligations. In the event of an action brought against the State by the United States Department of Justice, Saber’s liability shall be limited to the liability limitation in Section 8.CC.

Saber shall, at its sole expense, indemnify, defend and hold harmless the State, and its officers, agents, employees, successors and assignees from any claim or suit brought against the State alleging that the use by the State of the materials that Saber supplies to the State under this Contract constitutes infringement of any patent, copyright, trademark, or other proprietary rights, provided that the State gives Saber written notice within 20 days from receipt by the State of such notice of such claim or suit, and provided that the claim does not arise out of the State’s modification of such materials or its use of those materials inconsistent with Saber’s instructions.

If any materials that Saber delivers to the State become the subject of any claim, suit, or proceeding for infringement of any patent, trademark, or copyright, or if the sub-license or use of the materials, or any part thereof is enjoined, Saber, after consultation with the State shall do one of the following at Saber's expense: (i) produce for the State the right under such patent, trademark, or copyright to use or sub-license as appropriate the materials or such part thereof; (ii) replace the materials, or part thereof with other suitable products or parts conforming to the original license and State specifications; or (iii) suitably modify the materials, or part thereof.

O. Independent Contractor. Saber shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the State of Wyoming for any purpose. Saber shall assume sole responsibility for any debts or liabilities that may be incurred by Saber in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing Saber or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming, or to incur any obligation of any kind on the behalf of the State of Wyoming. Saber agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of Saber or the Saber's agents and/or employees as a result of this Contract.

P. Notices. All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties described below, either by regular mail, facsimile, e-mail, or delivery in person.

For the State:

Dr. Patricia O'Brien Arp, Ph.D.
Deputy Secretary of State
State Capitol Building
200 West 24th Street
Cheyenne, WY 82002
(307) 777-5333
(307) 777- 6217 – Fax

For Saber:

Jay Zollinger
Legal Department
Saber Corporation
1800 SW First Avenue
Suite 350
Portland, OR 97201
(503) 228-0775
(503) 228-0766 (fax)
legal@sabercorp.com

Q. Notice and Approval of Proposed Sale or Transfer of Saber.

Saber shall provide the State with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of Saber. Such notice shall be provided in accordance with the notice provision of this Contract. If the State determines that the proposed merger, consolidation, sale or transfer of assets is not consistent with the continued satisfactory performance of Saber's obligations under this Contract, then the State may, at its option, terminate or renegotiate the Contract.

R. Prior Approval. This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract, until this Contract has been reduced to writing, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming or his designee if required by Wyo. Stat. § 9-2-1016(b)(iv)(D).

S. Proof of Insurance. Saber shall not commence work under this Contract until Saber has obtained the following insurance coverages and provided the corresponding certificates of insurance:

- (i) Workers' Compensation and Employer's Liability Insurance. Saber shall provide to A&I Procurement proof of workers' compensation coverage for all its employees who are to work on the System project described in this Contract. Saber's coverage shall be under the Wyoming Worker's Safety and Compensation program, if statutorily required, or such

workers' compensation insurance, as appropriate. Saber's insurance shall include Employer's Liability "Stop Gap" coverage, in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per employee for each accident and disease. Saber shall also supply to A&I Procurement proof of workers' compensation and employer's liability insurance on each and every subcontractor before allowing that subcontractor on the job site.

- (ii) Commercial General Liability Insurance. Saber shall provide coverage, during the entire term of the Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including underground, collapse and explosion and products and completed operations, in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence and One Million Dollars (\$1,000,000.00) general aggregate.
- (iii) Business Automobile Liability. Saber shall maintain, during the entire term of the Contract, automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence.
- (iv) All policies required under this Contract shall be in effect for the duration of this Contract and System project. All policies shall be primary and not contributory. Saber shall pay the premiums on all insurance policies and all insurance certificates must include a clause stating that the insurance may not be revoked, canceled, amended or allowed to lapse until the expiration of at least forty-five (45) days advance written notice to the State.
- (v) State as Additional Insured. All insurance policies required by this Contract, except workers' compensation, shall name the State as an additional insured, and shall contain a waiver of subrogation against the State, its agents and employees. Saber shall provide, upon request, a copy of an endorsement providing this coverage.

- (vi) State's Right to Reject. The State reserves the right to reject a certificate of insurance if Saber's insurance company is widely regarded in the insurance industry as financially unstable. This would include, but is not limited to insurance companies with an "Omit" rating in the A. M. Best insurance rating guide.
- (vii) Subcontractors. The insurance requirements set forth above apply to all subcontractors. It is Saber's responsibility to ensure that its subcontractors meet these insurance requirements. The State has the right to review the Certificates of any and all subcontractors used by Saber.

T. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

U. Sovereign Immunity. The State of Wyoming, the Secretary of State's Office, including all of its employees and agents do not waive sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

V. Taxes. Saber shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

W. Termination of Contract. This Contract may be terminated, without cause, by the State upon thirty (30) days written notice. If the Contract is terminated without cause, Saber will be entitled to a pro rata payment for all work successfully accomplished and accepted by the State.

If at any time during the performance of this Contract, in the opinion of the State, the work is not progressing satisfactorily or within the terms of this Contract, then at the discretion of the State and after written notice to Saber, the State may immediately terminate this Contract or any part of it. If the Contract is

terminated for cause, Saber will be entitled to a pro rata payment for all work successfully accomplished and accepted by the State; however, Saber shall be liable to the State for the entire cost of replacement services and equipment to successfully implement the System.

X. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

Y. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

Z. Waiver. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

AA. Suspension and Debarment, Voluntary Exclusion. By signing this Contract, Saber certifies that it is not suspended, debarred, or voluntarily excluded from Federal financial or non-financial assistance, nor are any of the participants involved in the execution of this Contract suspended, debarred, or voluntarily excluded. Further, Saber agrees to notify the State by certified mail should Saber or any of its agents or subcontractors working on this project become debarred, suspended or voluntarily excluded during the term of this Contract.

BB. Kickbacks. Saber certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Saber breaches or violates this warranty, the State may, at its discretion, terminate this Contract without liability to the State, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

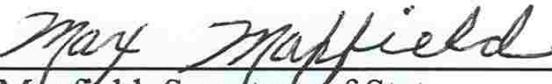
CC. Limitation of Liability. Excluding liability pursuant to the indemnity obligations of this Contract, Saber's total liability to the State, regardless of cause of action or nature of claim, shall not exceed seven million dollars and no cents (\$7,000,000.00).

9. **Signatures.** In witness thereof, the parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

This Contract is not binding on either party until approved by A&I Procurement and the Governor of the State of Wyoming or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

The effective date of this Contract is the date of the signature last affixed to this page.

SECRETARY OF STATE'S OFFICE



Max Maxfield, Secretary of State

3-28-07
Date

SABER SOFTWARE, INC.



Nitin Khanna, Chairman and CEO

3/26/07
Date

**DEPARTMENT OF ADMINISTRATION AND INFORMATION,
GENERAL SERVICES DIVISION, PROCUREMENT**



Mac Landen, Procurement Manager

3/28/07
Date

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM



Ryan Schelhaas, Senior Assistant Attorney General

3/28/07
Date