

MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

This Master Agreement (the “**Agreement**”) is entered into as of the ____ of _____, 20____ between _____ (“**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;

WHEREAS, Hart InterCivic, Inc. (“**Service Provider**”) will perform certain support Services (as indicated below or in an exhibit) under this Agreement;

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 quotes signed by both parties (“**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. Neither custom data manipulation nor custom software work is included as a part of software or professional services, unless specified in the applicable Quote provided in **Exhibit B** or a future separate Quote.

- 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, the Service Provider will provide Customer with tier-one phone support. KNOWiNK will provide all other Services, including implementation, any technical support other than tier-one phone 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 dates that are not Election Day events, KNOWiNK will require Service Provider to physically or remotely answer or respond to a service call request within eight (8) hours. On dates that are Election Day events, Service Provider's help desk will be available for calls one hour prior to polls opening to 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 one year, unless earlier terminated in accordance with this Section. Unless otherwise notified to Customer in writing at least 30 days prior to the end of the then-current term, the Term will renew annually upon payment of the annual License & Support Fee ("**Annual Fee**") for one-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, and 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 Service Provider 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. All prices are exclusive of 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**. Service Provider may increase the Annual Fee for a renewal term by including the new Annual Fee amount in the applicable invoice.
- 5.3. Pricing for other Services shall be set forth in the applicable Quote, or if not specified, at KNOWiNK’s then-current hourly rates. 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 Service Provider and 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 Service Provider or KNOWiNK is required to pay any tax at time of sale or thereafter, Customer shall promptly reimburse Service Provider or KNOWiNK therefore.

6. ORDERS:

- 6.1. 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. Service Provider will invoice Customer for all software and services including parts replacements or Customer-requested software modification upon shipment to Customer. Hardware may be billed separately by KNOWiNK or Service Provider. Except as otherwise provided in the applicable Quote, such invoices shall be paid in full within thirty (30) days after delivery.
- 7.2. Customer will be invoiced for payment for any Services upon conclusion of the service call. Except as otherwise provided in the applicable Quote, payments of such invoices will be due within 30 days of the applicable invoice.
- 7.3. The Annual Fee for the initial term is due upon execution of this Agreement and annually thereafter before expiration of the then current term. If Customer fails to timely pay an Annual Fee, Service Provider and/or KNOWiNK may immediately terminate all Software licenses and support and maintenance Services. Service Provider will submit invoices for Annual Fees approximately 90 days prior to the expiration of the then current term.
- 7.4. Amounts for all other Services shall be billed monthly, unless otherwise indicated in the applicable Quote. Payment will be due within 30 days of the applicable invoice.

- 7.5. Service Provider may impose interest at the lower of: (1) one and one-half percent (1½%) per month, or (2) the highest rate of interest then permitted by applicable law for all past due balances, compounded monthly and rounded to the next highest whole month. Customer also agrees to pay or reimburse all fees and expenses reasonably incurred by Service Provider in collecting any amounts due under this Agreement, including, but not limited to, all attorneys' fees associated therewith. Service Provider shall have the right, in addition to any and all other rights and remedies available at law or in equity, to delay or cancel any deliveries, to reduce or cancel any or all quantity discounts extended to Customer, and/or to suspend the provision of Services if Customer is in default of payments or any other material term of this Agreement.
- 7.6. 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 or Service Provider 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 or Service Provider'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, (b) 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, Service Provider 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 (or Service Provider, as applicable) 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 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. THIS CONSTITUTES THE SOLE WARRANTIES MADE BY KNOWiNK OR SERVICE PROVIDER, 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 OR SERVICE PROVIDER 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 AND SERVICE PROVIDER HAVE NO RESPONSIBILITY OR LIABILITY FOR THIRD PARTY HARDWARE, IF ANY, PROVIDED BY DISTRIBUTORS OR OTHER THIRD PARTIES TO CUSTOMER. If KNOWiNK or Service Provider 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 or Service Provider, 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. Neither KNOWiNK nor the Service Provider will 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 or Service Provider 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 OR SERVICE PROVIDER 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. SERVICE PROVIDER SHALL NOT HAVE ANY LIABILITY FOR THE ACTIONS OR OMISSIONS OF CUSTOMER OR KNOWiNK HEREUNDER. EACH OF KNOWiNK'S AND SERVICE PROVIDER'S MAXIMUM AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED FEES RECEIVED BY SERVICE PROVIDER DURING THE 12 MONTHS PRECEDING THE APPLICABLE CLAIM.

11. CONFLICTS:

- 11.1. 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:

- 12.1. Neither KNOWiNK nor Service Provider 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, 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 or the Service Provider.

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 and Service Provider 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 Service Provider employment.
- 13.2. Service Provider is an intended third-party beneficiary of this Agreement with the right to enforce this Agreement.

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 12, 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 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 MISSOURI, 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 (_____):

KNOWiNK LLC:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

General Information

Customer Jurisdiction Name:	
Licensed Location (City/State):	
Customer Contact(s):	
Billing Address:	
City / State / ZIP:	
Shipping Address (if different):	
City / State / ZIP:	
Contact Telephone:	
Alternate Telephone:	
Fax:	
Email:	
Service Provider Name:	Hart InterCivic, Inc.
Service Provider Contact Information:	15500 Wells Port Drive Austin, TX 78728 800-223-4278 (phone) 800-831-1485 (facsimile)
Service Provider Customer Support Contact Information and Hours (for tier-1 support):	Support Center: 1-866-275-4278 (1-866-ASK-HART) Hours of Operation: 7AM-7PM Central Time, M-F After Hours: Leave a voicemail with contact information for return call

Exhibit B (Quote)