

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs
Consent

AGENDA ITEM: 5 – H
DATE: October 6-7, 2021

SUBJECT

Digital Forensics Center Joint Powers Agreement – Dakota State University & Attorney General’s Office

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 5:3](#) – Agreements and Contracts

BACKGROUND / DISCUSSION

The Board approved Dakota State University (DSU) entering into an agreement with the South Dakota Attorney General’s Office (AG’s Office) to put in place the infrastructure necessary to create a Digital Forensics Center at DSU at its [December 2018](#) meeting. The Joint Powers Agreement (JPA) ran through September 30, 2021, providing DSU with \$250,000 a year for three years, to establish and maintain the DSU Digital Forensics Center. The AG’s Office and DSU now desire to renew the JPA, effectively extending the relationship through September 30, 2024, as set forth in Attachment I, and to provide the services and reports contained in Exhibit I of Attachment I.

BOR Policy 5:3 (“Contracts Requiring Board Action...D. Joint powers agreements”) requires Board approval of Joint Powers Agreements (JPA). As such, Board approval of the JPA set forth in Attachment I is necessary.

IMPACT AND RECOMMENDATION

The attached JPA will allow DSU to continue its Digital Forensic Center, in partnership with the AG’s Office, for another three years, as set forth in Attachment I, and to provide the services and support associated therewith.

Staff recommends approval.

ATTACHMENTS

Attachment I – Digital Forensics Center JPA (*will be provided when finalized*)

DRAFT MOTION 20211006_5-H:

I move to approve the Joint Powers Agreement in substantively similar form to that set forth in Attachment I.

JOINT POWERS AGREEMENT
BETWEEN
SOUTH DAKOTA OFFICE OF ATTORNEY GENERAL
AND
DAKOTA STATE UNIVERSITY

THIS AGREEMENT is entered by and among the South Dakota Office of Attorney General 1302 E Hwy 14 Ste 3, Pierre SD, 57501 (hereinafter identified as AGO) and Dakota State University, 820 N Washington Ave. Madison, SD 57042 (hereinafter identified as DSU).

WHEREAS, cyber-enabled crime, data breaches, identity theft and cyber-attacks have become a serious problem for businesses, individuals and government entities in South Dakota and are expected to increase significantly in the years ahead;

WHEREAS, the FBI's IC3 report shows annual financial losses from cybercrime activities in 2016 for South Dakota victims were approximately \$1 million. This is thought to represent only a small portion of actual losses;

WHEREAS, AGO has recognized a need for additional digital forensics education, training and services for law enforcement officers and agencies throughout South Dakota;

WHEREAS, the AGO Division of Consumer Protection has recognized a need for increased access to cybercrime technical services in order to provide information and assistance to consumers in South Dakota;

WHEREAS, DSU and its faculty are recognized for excellence in digital forensics and cyber security education and research by the United States National Security Agency ("NSA") and the United States Department of Homeland Security ("DHS"). In addition, its faculty includes experts in network protection, threat detection and mitigation and reverse engineering. DSU currently holds four Centers of Academic Excellence designations from the NSA and DHS and offers cybersecurity education programs at the Certificate, Associate, Baccalaureate, Master's and PhD levels.

WHEREAS, DSU intends to increase its digital forensics training, education and service capacity through the creation of a Digital Forensics Center on the campus of DSU in Madison, South Dakota;

WHEREAS, AGO and DSU desire to collaborate to put in place, at DSU, the staff and infrastructure necessary to create a digital forensics center in South Dakota to provide information and services to the Division of Consumer Protection and to law enforcement agencies within South Dakota;

NOW THEREFORE, in consideration of the covenants and agreements contained herein, and the joint and mutual benefits and responsibilities flowing to each party as outlined in this Agreement, the parties agree as follows:

1. AUTHORITY: The parties enter into this AGREEMENT pursuant to the following authority:
 - (a) AGO pursuant to the provisions in SDCL ch. 1-11, 1-24 and 37-23; and,
 - (b) DSU pursuant to the provisions in SDCL ch. 1-24 and authorization of the South Dakota Board of Regents.
2. PURPOSE OF AGREEMENT: The purpose of this Agreement is for AGO and DSU to cooperate to establish and maintain a digital forensics center to provide digital forensics and cyber security training and services.
 - (a) In consideration of DSU's observance and performance of the covenants, terms and conditions set forth herein, the AGO Division of Consumer Protection agrees to provide DSU with a \$250,000 grant, each year, for three years to establish and maintain the DSU Digital Forensics Center. This grant will be paid quarterly starting October 1, 2021. In the event this agreement is terminated at a time other than the end of a quarter, DSU will refund a pro-rata amount for any month of service that has not yet started.
 - (b) In consideration of the grant from the AGO Division of Consumer Protection and observance of the covenants, terms and conditions set forth herein, DSU agrees to establish the Digital Forensics Center and to provide the services and reports outlined in Exhibit 1.
 - (c) This Agreement is not meant and shall not be construed to limit any existing or additional cooperative efforts between the parties. Except as expressly provided herein, nothing in this Agreement is intended to affect the respective rights, duties, and responsibilities of AGO or DSU.
 - (d) It is understood by AGO that DSU will seek to enhance and expand its services and capacity by working with other governmental agencies at the local, regional and Federal level.
 - (e) It is understood by both parties to this agreement that the Digital Forensics Lab is a new service in South Dakota and therefore it would be difficult to estimate the demand for services provided under this Agreement. Therefore, the Director of the Center and the Director of the Division of Consumer Protection agree to meet

quarterly to evaluate the volume and type of services needed and the ability of the Center to meet the demand.

3. **PERIOD OF PERFORMANCE:** The term of this Agreement shall be 3 years and will commence on October 1, 2021 and conclude on September 30th, 2024 unless extended by agreement of the parties.
4. **TERMINATION:** This Agreement can be terminated by DSU or AGO for any reason by providing 30 days prior written notice to the other party or upon agreement of the parties. In addition, AGO can terminate this Agreement immediately for violation of the confidentiality provision in paragraph 7. The obligations of DSU under the confidentiality and records retention provisions set forth in paragraphs 7 and 8 below shall survive termination or expiration of the Agreement between the parties.
5. **FUNDING:** Notwithstanding any other provision, the performance by AGO of its obligations under this Agreement depends upon the receipt by AGO of both funds and expenditure authority. This Agreement will be terminated if AGO Division of Consumer Protection funds become unavailable or if the AGO does not have expenditure authority for the funds. AGO will provide DSU with written notice of the unavailability of funds or expenditure authority and the effective date of the termination of the Agreement. Termination under this provision does not constitute a default or give rise to any claim against AGO.
6. **ASSIGNMENT AND SUBCONTRACTING:** This Agreement, or any part thereof, or benefits to be received hereunder, shall not be assigned, transferred, or otherwise disposed of to any person, firm, corporation or other entity. DSU may not use subcontractors to perform the services described herein.
7. **CONFIDENTIALITY PROVISION:** For purposes of this paragraph, "AGO Confidential Information" shall include all information disclosed to DSU by AGO, including any division or program of AGO, to the extent that such disclosure was for purposes of this Agreement. AGO Confidential Information shall not include information that (i) was in the public domain at the time it was disclosed to DSU; (ii) was known to DSU without restriction at the time of disclosure by AGO; (iii) was independently developed by DSU without the benefit or influence of AGO's information; or (iv) becomes known to DSU without restriction from a source not connected to AGO.
 - (a) DSU acknowledges AGO's need to keep confidential information it maintains, that is subject to various confidentiality statutes and legal privileges held by AGO as well as by other agencies, state agency clients, in-state and out-of-state government entities, and third parties.

- (b) Unless specifically authorized under this Agreement, DSU shall not disclose any AGO Confidential Information to any third person or entity for any reason without the express written permission of an AGO officer or employee with authority to authorize the disclosure. DSU shall not make use of AGO Confidential Information except to exercise rights and perform obligations under this Agreement. DSU agrees to immediately notify AGO of any request for, or demands for release of, any AGO Confidential Information, or of any unauthorized release or disclosure of AGO Confidential Information, whether such release or disclosure was intentional or inadvertent.
- (c) DSU acknowledges and agrees that DSU is held to the same standard of care in guarding AGO Confidential Information as AGO applies to AGO's own confidential or proprietary information and materials of a similar nature, and no less than holding AGO Confidential Information in the strictest confidence. DSU shall protect the confidentiality of AGO Confidential Information from the time of receipt to the time that such information is either returned to AGO or destroyed to the extent that it cannot be recalled or reproduced.
- (d) DSU agrees to return all AGO Confidential Information to AGO's custody upon the end of the term of this agreement, unless otherwise agreed in a writing signed by both parties.
- (e) DSU acknowledges and agrees that AGO Confidential Information may include personal and/or identifying information regarding a "person". In addition to any notice or disclosure required pursuant to SDCL 22-40-20, DSU shall notify the Director of Consumer Protection of the AGO of any "breach of system security", as defined in SDCL 22-40-19. Such notice shall be given by email delivered to consumerhelp01.state.sd.us not more than two (2) business days following the discovery by or notification to DSU of the breach. As used herein, "person" is as defined in SDCL 22-1-2.
- (f) DSU will enforce the terms of this Confidentiality Provision to its fullest extent possible. DSU shall not make AGO Confidential Information available to any of its employees, officers, or agents except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. DSU further agrees to remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision.
- (g) Neither this Confidentiality Provision, nor any part thereof, shall establish any privacy rights to, for or on the part of, any employee of DSU or of AGO or waive any remedies against any such person for illegal, improper, or unauthorized use of AGO Confidential Information.

- (h) Upon request by AGO, DSU shall securely dispose of all AGO Confidential Information in all of its forms, such as disk, CD/ DVD, backup tape and paper. Such information shall be permanently deleted and shall not be recoverable, according to National institute of Standards and Technology (NIST) approved methods. Certificates of destruction shall be provided to AGO.
 - (i) DSU will implement, maintain and update security incident and data breach procedures that comply with all State and Federal requirements, including but not limited to, the Information Technology Security Policy established by the State of South Dakota, Bureau of Information and Telecommunications (the "TTSP"). DSU officers, employees, agents, and subcontractors who may have access to any AGO Confidential Information will complete a background check as required by the ITSP, the findings for which will be provided to both DSU and the AGO Division of Consumer Protection. AGO reserves the right to prohibit access to AGO Confidential Information by any person based upon the results of the background check. Additionally, DSU shall immediately notify AGO in the event that any individual is arrested for or charged with a crime during the term of this Agreement which is punishable as a felony, or which involves theft, deceit or dishonesty.
8. **RETENTION OF RECORDS:** DSU agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program. At a minimum, DSU shall retain such records for not less than five (5) years after termination or expiration of this Agreement. If any litigation, claim, or audit is started before the expiration of the five-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The five-year retention period may be extended upon written notice by AGO.
9. **ACCESS TO RECORDS:** DSU acknowledges that records related to the provision of digital forensics and analysis services of case information and data under this Agreement may be subject to discovery in civil or criminal proceedings. DSU agrees to allow AGO, through any authorized representative, access to and the right to examine and copy such records for purposes of responding to requests for discovery.
10. **WORK PRODUCT:** The parties agree that the documents and reports created by DSU in performance of the services in Exhibit I, including, without limitation, the technical briefs, training materials, protocols and related materials, may be used, disclosed and distributed by either party without limitation provided that any such documents will not be copyrighted without written approval of AGO. Nothing in this Paragraph is intended to supersede the prohibition on the disclosure of Confidential Information as set forth in Paragraph 7 herein.

11. **REPORTING:** DSU agrees to report to AGO any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject DSU or AGO to liability. DSU shall report any such event to AGO immediately upon discovery. DSU's obligation under this section shall only be to report the occurrence of any event to AGO and to make any other report provided for by their duties or applicable law. DSU's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications).
12. **AMENDMENTS:** This Agreement may not be modified or amended except in writing, which writing shall be expressly identified as part of this Agreement.
13. **ADMINISTRATION OF AGREEMENT:** The Parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by DSU, through its Vice President of Research and Economic Development, and AGO, through the Division of Consumer Protection, or authorized designees as contemplated in SDCL 1-24-5.
14. **NOTICE:** All notices or other communication required under this Agreement shall be in writing and sent to the addresses set forth above. Notices shall be given by the Vice President of Research and Economic Development on behalf of DSU and to the Director of Consumer Protection on behalf of AGO, or such authorized designees as a party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail or, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
15. **SEVERABILITY:** If any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision herein.
16. **SUPREMACY:** All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.
17. **THIRD PARTY RIGHTS:** This Agreement is intended to only govern the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any third party in any matters, civil or criminal.

- 18. **FILING REQUIREMENTS:** The parties acknowledge that a true and correct copy of this Agreement will be filed with the Office of Attorney General and the Legislative Research Council within 14 days of its final execution pursuant to SDCL 1-24-6.1.
- 19. **AUTHORIZED SIGNATURES:** By the signature of their representative below, DSU and AGO certify that approval of this has been obtained by that governmental body's officer pursuant to SDCL 1-24-3 and 1-24-6 and that each representative is authorized to sign on the party's behalf.

State of South Dakota
Office of the Attorney General

Dakota State University

ATTORNEY GENERAL

BY:

Name:

Title:

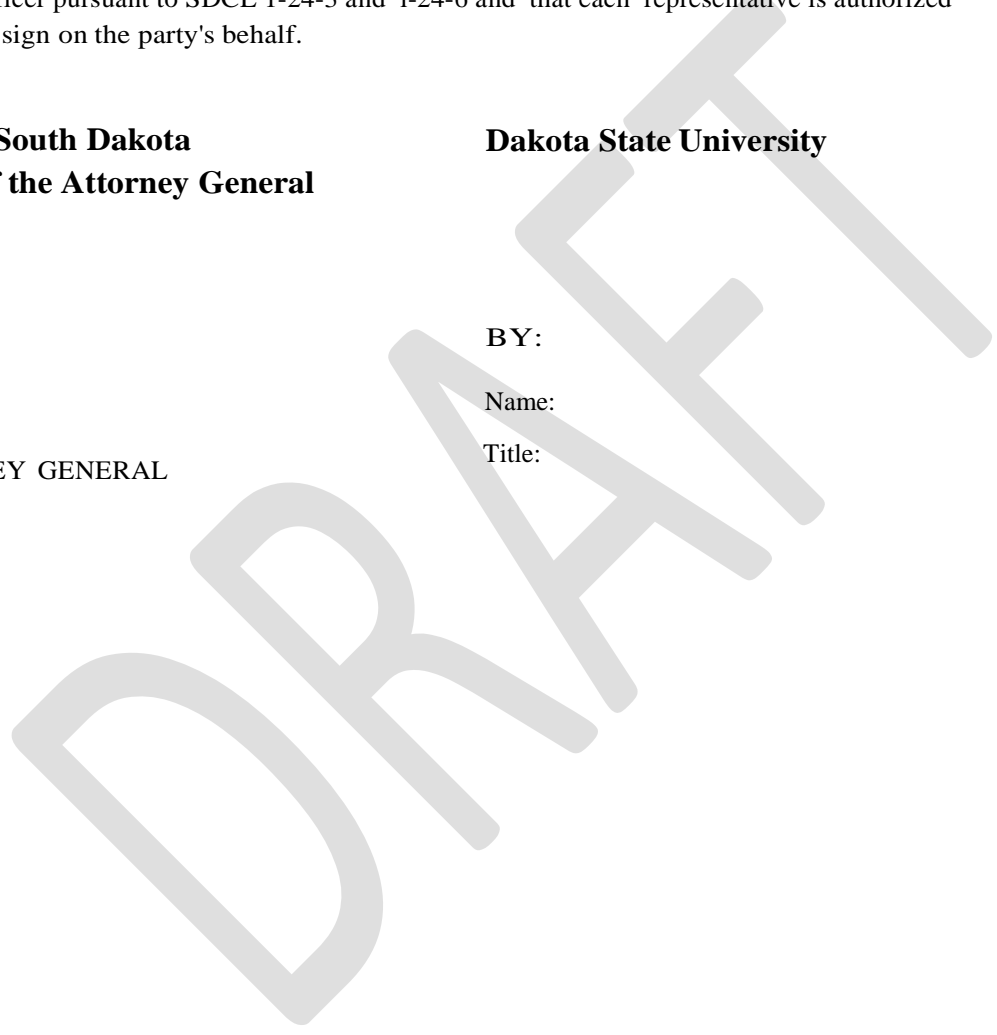


Exhibit I
Digital Forensics Center

SERVICES

- Provide digital forensics lab for law enforcement and the Division of Consumer Protection referrals.
- Provide a Cybercrime Technical Brief for the Division of Consumer Protection and law enforcement statewide. The brief will include higher level data and trends useable for law enforcement and will not be disclosed to the public. The brief will be produced monthly, due by the 7th of each month.
- Provide the Division of Consumer Protection a version of the monthly Cybercrime Technical Brief suitable for media outlets and consumers.
- Provide the Division of Consumer Protection 2 digital forensics onsite training programs annually. The topic, date and location of the training will be mutually agreed upon by the parties.
- Provide digital forensics training sessions for law enforcement organizations at various locations. 2 such training sessions will be provided during the first year of the Agreement, 3 during the second year and 4 during the third year. The date and locations of the training will be mutually agreed upon by the parties. The topics of the trainings shall include, without limitation:
 - Digital Extraction Training for all law enforcement
 - Computing and Technology Essentials
 - Introduction to Cyber Security
- Provide education and awareness presentations in various public and private forums
- Subject to the approval by AGO, develop a protocol for the provision of digital forensics and analysis services of case information and data.
- Using the approved protocol and upon request of the AGO Division of Consumer Protection or the Division of Criminal Investigation, conduct digital forensic and analysis services for South Dakota state and local law enforcement agencies
- Expert witness testimony

PERFORMANCE REPORTS

- DSU shall provide the AGO Division of Consumer Protection with quarterly performance reports which shall include, without limitation:
 - Summary of overall progress in establishing and maintaining the Digital Forensics Center
 - Status of various performance measures that reflect such progress including without limitation:
 - The number of calls received by type of caller
 - The number and type of education and awareness presentations provided
 - Other outreach efforts conducted
 - The number of referrals received for digital forensic and analysis services

- The number of digital forensics/analysis cases completed including quantity of data and type of device

STAFF SKILLS

In providing the foregoing services, the Digital Forensics Center shall be staffed by trained and certified professionals including the following:

- GIAC Certified Forensic Examiner (GCFE)
- Computer Hacking Forensic Investigator (CHFI)
- Access Certified Examiner (ACE)

DRAFT