

This agreement ("Agreement") is made between an agency of the State of Nebraska ("State") and the supplying vendor ("Vendor") for the purchase of the item(s) or service(s) specified in the attached documents.

AUTOMATIC RENEWALS. Notwithstanding any contrary or conflicting language in any document(s) related to this purchase, whether submitted to the State before or after this Agreement is executed, the State does not agree to any automatic or continuing renewal of a subscription, service, or order of goods.

SHIPPING. The delivery charges are included in the quoted price and prepaid by the Vendor, Free On Board Destination specified by the State.

GOVERNING LAW. The Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. Notwithstanding any contrary or conflicting language in any document(s) related to this purchase, whether submitted to the State before or after this Agreement is executed, the State does not agree to submit to arbitration. The Vendor must be in compliance with all Nebraska statutory and regulatory law. Notwithstanding any terms or conditions in any document(s) submitted to the State, whether submitted before or after this Agreement is executed, this Agreement shall take precedence over any and all other document(s) related to this purchase in the event of conflict between such document(s) and this Agreement. This Agreement supersedes any and all other agreements, whether written or oral, between the parties that may exist.

BREACH BY VENDOR. The State may terminate the Agreement, in whole or in part, if the Vendor fails to perform its obligations under the Agreement in a timely and proper manner. The State may, by providing a written notice of default to the Vendor, allow the Vendor to cure a failure or breach of the Agreement within a period of thirty (30) calendar days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing the Vendor time to cure a failure or breach of Agreement does not waive the State's right to immediately terminate the Agreement for the same or different Agreement breach which may occur at a different time. In case of default of the Vendor, the State may contract the goods from other sources and hold the Vendor responsible for any excess cost occasioned thereby.

SEVERABILITY. If any term or condition of the Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

INDEMNIFICATION

1. GENERAL. The Vendor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Vendor, its employees, Subcontractors, consultants, representatives, and agents, except to the extent such Vendor liability is attenuated by any action of the State which directly and proximately contributed to the claims. Notwithstanding any contrary or conflicting language in any document(s) related to this purchase, whether submitted before or after this Agreement is executed, the State does not agree to indemnify Vendor and does not agree to any term, condition, or clause limiting the liability of the Vendor.

2. INTELLECTUAL PROPERTY. The Vendor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Vendor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Vendor prompt notice in writing of the claim. The Vendor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Vendor has indemnified the State, the Vendor shall, at the Vendor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Vendor, and the State may receive the remedies provided under this ITB.

3. PERSONNEL The Vendor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the Vendor.

ASSIGNMENT BY THE STATE. The State shall have the right to assign or transfer the Agreement or any of its interests herein to any agency, board, or commission of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

ASSIGNMENT BY THE VENDOR. The Vendor may not assign, voluntarily or involuntarily, the Agreement or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the Agreement due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the Agreement. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the Agreement if the Vendor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Vendor. To obtain release based on a Force Majeure Event, the Vendor shall file a written request for relief with the State Purchasing Bureau. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the Agreement.

CONFIDENTIALITY. All materials and information provided by the State or acquired by the Vendor on behalf of the State shall be regarded as confidential information and shall be handled in accordance with federal and state law, and ethical standards. The Vendor must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a Vendor, Vendor shall notify the State immediately of said breach and take immediate corrective action. The State does not agree to keep all information received from the Vendor confidential. See the Public Records section below.

It is incumbent upon the Vendor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to Vendors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a Vendor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

EARLY TERMINATION

The Agreement may be terminated as follows:

- The State and the Vendor, by mutual written agreement, may terminate the Agreement at any time.
- The State, in its sole discretion, may terminate the Agreement for any reason upon thirty (30) calendar days written notice to the Vendor. Such termination shall not relieve the Vendor of warranty or other obligations incurred under the terms of the Agreement. In the event of cancellation, the Vendor shall be entitled to payment, for those products received and accepted by the State, or determined on a pro rata basis, for products or services satisfactorily performed or provided.
- The State may terminate the Agreement immediately for the following reasons:
 - if directed to do so by statute;
 - Vendor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - a trustee or receiver of the Vendor or of any substantial part of the Vendor's assets has been appointed by a court;
 - fraud, misappropriation, embezzlement, malfeasance, or illegal conduct pertaining to performance under the Agreements by its Vendor, its employees, officers, directors, or shareholders;
 - an involuntary proceeding has been commenced by any party against the Vendor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Vendor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Vendor has been decreed or adjudged a debtor;
 - a voluntary petition has been filed by the Vendor under any of the chapters of Title 11 of the United States Code;
 - Vendor intentionally discloses confidential information;
 - Vendor has or announces it will discontinue support or provision of the deliverable;
 - In the event funding is no longer available.

FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS. The State may terminate the Agreement, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the Agreement. Should said funds not be appropriated, the State may terminate the Agreement with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the Vendor immediate written notice of the location (address and room number) of any related equipment if applicable. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. The Vendor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Vendor be paid for a loss of anticipated profit.

AMERICANS WITH DISABILITIES ACT. Vendor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131–12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub.L. 110–325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability by public entities.

LONG-TERM CARE OMBUDSMAN. If it is a long-term care facility subject to the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 et seq., Vendor shall comply with the Act. This section shall survive the termination of this Agreement.

OFFICE OF PUBLIC COUNSEL. If it provides, under the terms of this Agreement and on behalf of the State of Nebraska, health and human services to individuals; service delivery; service coordination; or case management, Vendor shall submit to the jurisdiction of the Office of Public Counsel, pursuant to Neb. Rev. Stat. §§ 81-8,240 et seq. This section shall survive the termination of this Agreement and shall not apply if Vendor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 et seq.

VENDOR RESPONSIBILITY. The Vendor is solely responsible for fulfilling the Agreement, with responsibility for all services offered and products to be delivered.

INDEPENDENT VENDOR. It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services under the Agreement. The Vendor's employees and other persons engaged in work or services required by the Vendor under the Agreement shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the Vendor, its officers, or its agents) shall in no way be the responsibility of the State. The Vendor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights, or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION. The Vendor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Vendors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Vendor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement.

PERMITS, REGULATIONS, LAWS. The Vendor shall procure and pay for all permits, licenses, and approvals necessary for the execution of the Agreement. The Vendor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations

ANTITRUST. The Vendor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

STATE PROPERTY. The Vendor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Vendor's use during the performance of the Agreement. The Vendor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

SITE RULES AND REGULATIONS. The Vendor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Vendor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to between the State and the Vendor.

ADVERTISING. The Vendor agrees not to refer to the Agreement award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

NE ACCESS TECHNOLOGY STANDARDS. Vendor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the Agreement are in compliance or will comply with the applicable standards. In the event such standards change during the Vendor's performance, the State may create a change order to the Agreement to request that the Agreement comply with the changed standard at a cost mutually acceptable to the parties.

FOREIGN ADVERSARY CONTRACTING PROHIBITION ACT CERTIFICATION. The Vendor certifies that it is not a scrutinized company as defined under the Foreign Adversary Contracting Prohibition Act, Neb. Rev. Stat. Sec. §73-903(5); that it will not subcontract with any scrutinized company for any aspect of performance of the Agreement; and that any products or services to be provided do not originate with a scrutinized company.

DISASTER RECOVERY/BACK UP PLAN. The Vendor shall have a disaster recovery and back-up plan, of which a copy should be provided to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under these specifications in the event of a disaster.

DRUG POLICY. Vendor certifies that it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Vendor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

PUBLIC RECORDS. Pursuant to the Taxpayer Transparency Act (Neb. Rev. Stat. §§ 84-602.01 to 84-602.04) and in furtherance of public records statutes (Neb. Rev. Stat. § 84-712 et seq.), State contracts must be posted to a public website. This Agreement and any attachments, addendums, or amendments to this Agreement will be posted to a public website(s) managed by the State, found at <https://statecontracts.nebraska.gov/>. The Vendor may request in writing that certain and specific information be redacted from such posting and public disclosure pursuant to Nebraska public records laws. The State may, in its sole discretion, withhold certain information from such posting and public disclosure. The State will not agree to redact total cost or the entire contract from posting or public disclosure on the assertion that such information is proprietary or confidential commercial information.

TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations on the part of the Vendor remaining to be performed.

PAYMENT. State will render payment to Vendor when the terms and conditions of the Agreement and specifications have been satisfactorily completed on the part of the Vendor as solely determined by the State. Payment will be made by the responsible agency within forty-five (45) days after the State has received and finally accepted the deliverable(s). The State may require the Vendor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods provided by the Vendor prior to the Effective Date, and the Vendor hereby waives any claim or cause of action for any such claims. Vendor may charge the State interest for late payments pursuant to the Prompt Payment Act (Neb. Rev. Stat. §§ 81-2401 et seq.). Such interest shall be subject to the maximum rate specified in the Prompt Payment Act.

PROHIBITION AGAINST ADVANCE PAYMENT. Payments shall not be made until Agreement deliverable(s) are received and accepted by the State.

TAXES. The State is not required to pay taxes of any kind and assumes no such liability as a result of this Purchase Order. Any property tax payable on the Vendor's equipment which may be installed in a state-owned facility is the responsibility of the Vendor.

INVOICES. Invoices for payments must be submitted by the Vendor to the agency requesting the goods with sufficient detail to support payment. The terms and conditions included in the Vendor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as a change order to the Agreement.

INSPECTION AND APPROVAL. Final inspection and approval of all work required under the Agreement shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the Vendor or Subcontractor duties under the Agreement are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

ACCEPTANCE AND PAYMENT OF GOODS. In the event that the Vendor fails to provide the goods requested by the State, the State will not pay for such products until the same has been received and accepted by the State.

RIGHT TO AUDIT. The State shall have the right to audit the Vendor's performance of this contract upon a thirty (30) days' written notice. Vendor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The State may audit, and the Vendor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Vendor shall make the Information available to the State at Vendor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Vendor so elects, the Vendor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Vendor be required to create or maintain documents not kept in the ordinary course of Vendor's business operations, nor will Vendor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Vendor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If the audit identifies overpricing or overcharges (of any nature) by the Vendor to the State in excess of one-half of one percent (.5%) of the total Agreement billings, the Vendor shall reimburse the State for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Vendor shall reimburse the State for total costs of audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Vendor agrees to correct any material weaknesses or condition found as a result of the audit.

Agency of the State of Nebraska

Vendor

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Agency: _____

Date: _____

Date: _____