

**STATE OF NEBRASKA CONTRACT AMENDMENT**

State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508

Telephone: (402) 471-6500  
Fax: (402) 471-2089

**CONTRACT NUMBER**  
**15402 OC**

PAGE 1 of 2	ORDER DATE 11/14/22
BUSINESS UNIT 78552160	BUYER JOY FISCHER (AS)
VENDOR NUMBER: 2660994	
VENDOR ADDRESS:  SMARTSAFETY SOFTWARE INC 77 E IDAHO AVE STE 200 MERIDIAN ID 83642-2671	

THE CONTRACT PERIOD IS:

**DECEMBER 01, 2020 THROUGH NOVEMBER 30, 2022**

THIS CONTRACT HAS BEEN AMENDED PER THE FOLLOWING INFORMATION:

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Original/Bid Document 6400 OF

Contract to supply and deliver EZ Street Draw License to the State of Nebraska as per the attached specifications for the contract period December 1, 2020 through November 30, 2022. The contract may be renewed for one (1) additional two (2) year period when mutually agreeable to the vendor and the State of Nebraska.

Vendor Contact: Joe Cucchiari  
Phone: 208-870-7327  
Fax: 208-322-6031  
E-Mail: [jcucchiari@trancite.com](mailto:jcucchiari@trancite.com)

(12/1/20 ml)  
Amendment one as attached. (11/14/22 djg)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	EZ STREET DRAW SOFTWARE LICENSE Initial Contract Period Year One	1.0000	YR	25,000.0000
2	EZ STREET DRAW SOFTWARE LICENSE Initial Contract Period Year Two	1.0000	YR	25,000.0000
3	EZ STREET DRAW SOFTWARE LICENSE	1.0000	YR	25,000.0000

DocuSigned by:

*Joy Fischer*

11/17/2022

0D62163E69CA462...

BUYER

DocuSigned by:

*Michelle Potts*

11/21/2022

B306917D68EF486...

MATERIEL ADMINISTRATOR

# STATE OF NEBRASKA CONTRACT AMENDMENT

State Purchasing Bureau  
 1526 K Street, Suite 130  
 Lincoln, Nebraska 68508

Telephone: (402) 471-6500  
 Fax: (402) 471-2089

PAGE 2 of 2		ORDER DATE 11/14/22	
BUSINESS UNIT 78552160		BUYER JOY FISCHER (AS)	
VENDOR NUMBER: 2660994			

**CONTRACT NUMBER**  
**15402 OC**

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
	First Optional Renewal Period Year One			
4	EZ STREET DRAW SOFTWARE LICENSE First Optional Renewal Period Year Two	1.0000	YR	25,000.0000



DS  
*JF*

BUYER INITIALS

AMENDMENT ONE  
Contract 15402 OC  
EZ Street Draw License for the State of Nebraska  
Between  
The State of Nebraska and SmartSafety Software, Inc.

This Amendment (the "Amendment") is made by the State of Nebraska, Pathfinder Development Group, Inc. DBA Trancite Logic Systems and SmartSafety Software, Inc., parties to Contract 15402 OC, (the "Contract"), and upon mutual agreement and other valuable consideration, the parties agree to and hereby amend the contract effective upon execution as follows:

The purpose of this amendment is to reflect the Assignment of State of Nebraska Contract 15402 OC dated April 5<sup>th</sup>, 2019 from Pathfinder Development Group, Inc. DBA Trancite Logic Systems to SmartSafety Software, Inc.

WHEREAS, the State of Nebraska and Pathfinder Development Group, Inc. DBA Trancite Logic Systems are parties to the State of Nebraska Contract 15402 OC.

WHEREAS, the contract requires written consent of the State before any assignment of the Contract and/or any rights and/or obligations under the contract may be made;

WHEREAS, Pathfinder Development Group, Inc. DBA Trancite Logic Systems has been sold to SmartSafety Software, Inc.;

WHEREAS, Pathfinder Development Group, Inc. DBA Trancite Logic Systems wishes to assign its contract, Nebraska Contract 15402 OC and all of its rights and obligations under the State of Nebraska Contract 15402 OC to SmartSafety Software, Inc.; and

WHEREAS, SmartSafety Software, Inc. assumes all the rights and obligations under the State of Nebraska Contract 15402 OC from Pathfinder Development Group, Inc. DBA Trancite Logic Systems and hereby agrees to fulfill all duties, responsibilities and obligations under said contract;

NOW, THEREFORE, on the basis of the representations made in the preamble above, which are hereby averred by Pathfinder Development Group, Inc. DBA Trancite Logic Systems and SmartSafety Software, Inc. each and together agrees to perform fully and faithfully all of the duties and obligations of which they have individually and together assumed herein pursuant to the State of Nebraska Contract 15402 OC as amended, which is wholly made a part of this Assignment by this reference.

Furthermore, the Contract is amended as follows:

1. To facilitate SmartSafety Software, Inc. contractual obligations under Contract 15402 OC, Address Book Number, Contractor Name, Address and Contact Information in the original contract are hereby superseded and replaced with:

Vendor Number: 2660994

Vendor Name and Address:

SmartSafety Software, Inc.

77 E Idaho Ave, STE 200  
Meridian ID 83642-2671

Vendor Contact: Joe Cucchiari  
Phone: 208-870-7327  
Email: jccucchiari@trancite.com

This Amendment and any attachments hereto will become part of the Contract. Except as set forth in this Amendment, the Contract is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Contract or any earlier amendment, the terms of this Amendment will prevail.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date of execution by both parties below.

State of Nebraska

Contractor: SmartSafety Software, Inc.

By: DocuSigned by:  
Michelle Potts  
B306917D66EE486...

By: DocuSigned by:  
Joe Cucchiari  
F55A23D5E3D7451...

Name: Michelle Potts

Name: Joe Cucchiari

Title: Interim Materiel Administrator

Title: VP of Operations

Date: 11/21/2022

Date: 11/17/2022

Assignor: Pathfinder Development Group, Inc. DBA Trancite Logic Systems

By: DocuSigned by:  
Brett Murrell  
56551E848537412...

Name: Brett Murrell

Title: Member

Date: 11/17/2022

**STATE OF NEBRASKA CONTRACT AWARD**State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508Telephone: (402) 471-6500  
Fax: (402) 471-2089**CONTRACT NUMBER**  
**15402 OC**

PAGE 1 of 1	ORDER DATE 12/01/20
BUSINESS UNIT 78552160	BUYER NANCY STORANT (AS)
VENDOR NUMBER: 541300	
VENDOR ADDRESS:  PATHFINDER DEVELOPMENT GROUP, INC DBA TRANCITE LOGIC SYSTEMS 8645 W FRANKLIN RD BOISE ID 83709-0632	

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE FURNISHING OF MATERIALS AND/OR SERVICES AS LISTED BELOW FOR THE PERIOD:

**DECEMBER 01, 2020 THROUGH NOVEMBER 30, 2022**

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Original/Bid Document 6400 OF

Contract to supply and deliver EZ Street Draw License to the State of Nebraska as per the attached specifications for the contract period December 2, 2020 through November 30, 2022. The contract may be renewed for one (1) additional two (2) year period when mutually agreeable to the vendor and the State of Nebraska.

Vendor Contact: Joe Cucchiari  
Phone: 208-870-7327  
Fax: 208-322-6031  
E-Mail: jccucchiari@trancite.com

(12/1/20 ml)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	EZ STREET DRAW SOFTWARE LICENSE Initial Contract Period Year One	1.0000	YR	25,000.0000
2	EZ STREET DRAW SOFTWARE LICENSE Initial Contract Period Year Two	1.0000	YR	25,000.0000
3	EZ STREET DRAW SOFTWARE LICENSE First Optional Renewal Period Year One	1.0000	YR	25,000.0000
4	EZ STREET DRAW SOFTWARE LICENSE First Optional Renewal Period Year Two	1.0000	YR	25,000.0000

DS  
PK

DocuSigned by:  
*Nancy Storant*  
3C4D19855BGD40F... BUYER  
6FTA26D8C1024BC  
MATERIEL ADMINISTRATOR

# State of Nebraska - INVITATION TO BID CONTRACT

Return to:  
State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508

Telephone: 402-471-6500  
Fax: 402-471-2089

Date	11/2/20	Page	1 of 2
Solicitation Number	6400 OF		
Opening Date and Time	<b>RETURN MAIL</b>		
Buyer	NANCY STORANT (AS)		

## DESTINATION OF GOODS

NEBRASKA COMMISSION ON LAW ENFORCEMENT  
301 CENTENNIAL MALL S FL 5  
LINCOLN NE 68509

Per Nebraska's Transparency in Government Procurement Act, DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

\_\_\_\_ NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this ITB.

\_\_\_\_ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. §73-107 and wish to have preference, if applicable, considered in the award of this contract.

Contract to supply and deliver Easy Street Draw Software License to the State of Nebraska as per the attached specifications for a two (2) year period from date of award. The contract may be renewed for one (1) additional two (2) year period when mutually agreeable to the vendor and the State of Nebraska.

(11/2/20 ml)

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	EZ STREET DRAW SOFTWARE LICENSE Initial Contract Period Year One	1.0000	YR	\$25,000.00	\$25,000.00
2	EZ STREET DRAW SOFTWARE LICENSE Initial Contract Period Year Two	1.0000	YR	\$25,000.00	\$25,000.00
3	EZ STREET DRAW SOFTWARE LICENSE First Optional Renewal Period Year One	1.0000	YR	\$25,000.00	\$25,000.00

## BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: N/A % N/A DAYS

By signing this Invitation to Bid form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid, agrees to the terms and conditions unless otherwise agreed to (see Section III) and certifies that bidder maintains a drug free work place environment. Vendor will furnish the items requested within 2 days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

Sign

Here (Authorized Signature MANDATORY - MUST BE SIGNED IN INK)

Enter Contact Information Below

VENDOR#

VENDOR: SmartSafety Software (hereafter called as Trancite Logic Systems)

Address: 8645 W. Franklin Rd.

Suite 202

Boise, Idaho 83709

Contact

Joe Cucchiari

Telephone

208-870-7327

Facsimile

208-322-6031

Email

jucchiari@trancite.com

# State of Nebraska - INVITATION TO BID CONTRACT

Return to:  
State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508

Telephone: 402-471-6500  
Fax: 402-471-2089

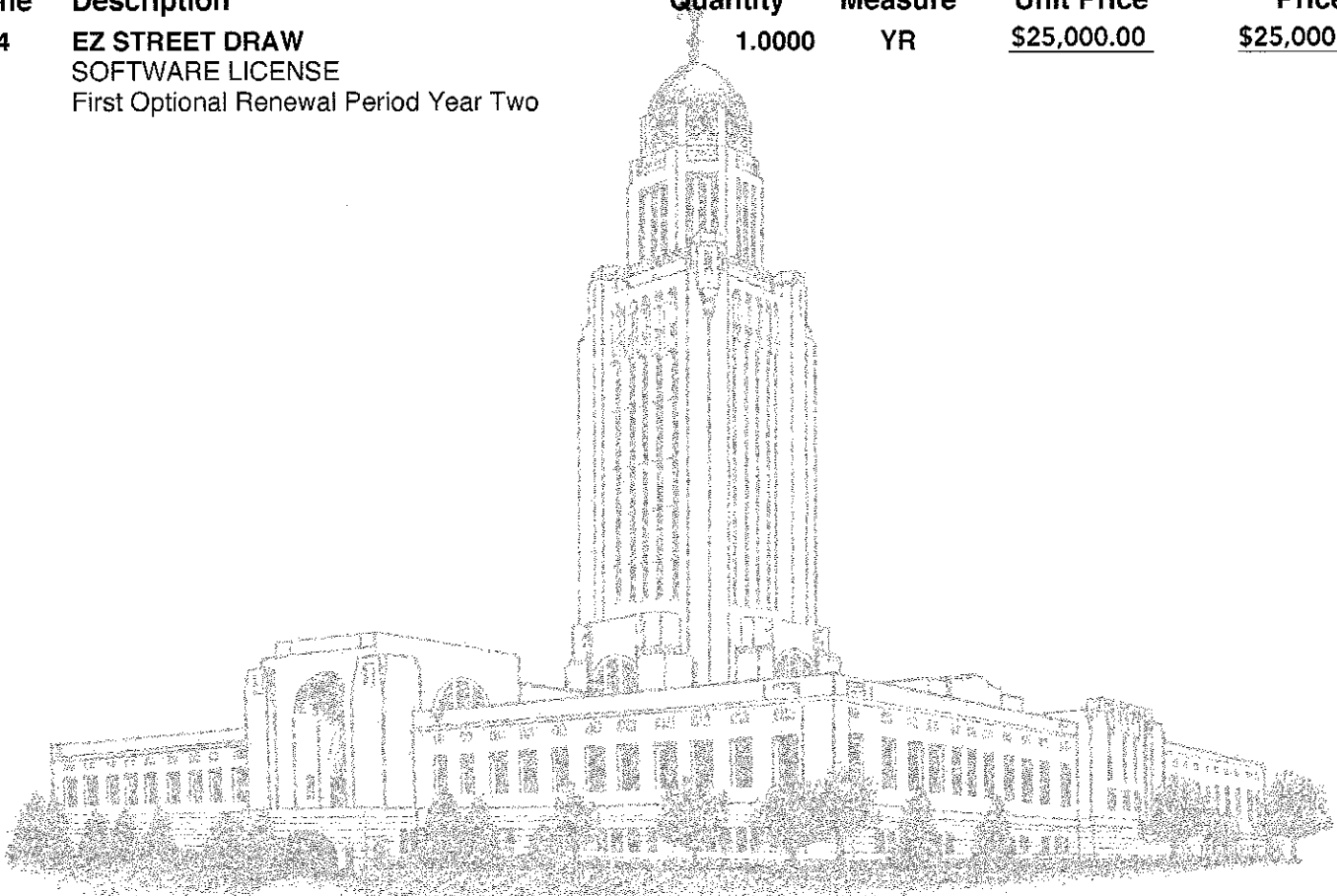
Date	11/2/20	Page	2 of 2
Solicitation Number	6400 OF		
Opening Date and Time	<b>RETURN MAIL</b>		
Buyer	NANCY STORANT (AS)		

## DESTINATION OF GOODS

NEBRASKA COMMISSION ON LAW ENFORCEMENT  
301 CENTENNIAL MALL S FL 5  
LINCOLN NE 68509

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
4	EZ STREET DRAW SOFTWARE LICENSE First Optional Renewal Period Year Two	1.0000	YR	<u>\$25,000.00</u>	<u>\$25,000.00</u>



# INVITATION TO BID

## Number 6400 OF

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for Easy Street Draw Software contract, ITB Number 6400 OF for the purpose of selecting a qualified Bidder to provide licenses for Easy Street Draw. A more detailed description can be found in Section VI. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

The term of the contract will be 2 (two) years commencing upon execution of the contract by the State and the Contractor (Parties)/notice to proceed. The Contract includes the option to renew for One (1) additional two (2) year period upon mutual agreement of the Parties. State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

### INFORMATION PERTINENT TO THIS SOLICITATION CAN BE FOUND ON THE INTERNET AT:

<http://das.nebraska.gov/materiel/purchasing.htm>

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.02, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the solicitation, and the successful Contractor's proposal or response will be posted to a public website managed by DAS, which can be found at:

<https://statecontracts.nebraska.gov>

In addition and in furtherance of the State's public records statute (Neb. Rev. Stat. § 84-712 et seq.) all proposals or responses received regarding this solicitation will be posted to the SPB website.

These postings will include the entire proposal or response. Bidder must request that proprietary information be excluded from the posting. The Bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION". The Bidder must submit a **detailed written document showing** that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) **THE BIDDER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL OR RESPONSE IS PROPRIETARY. COST WILL NOT BE CONSIDERED PROPRIETARY AND IS A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Bidder will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release proprietary information, the Bidder will be informed. It will be the Bidder's responsibility to defend the Bidder's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, proposal, or response to this solicitation for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a proposal or response to this solicitation, specifically waives any copyright or other protection the contract, proposal, or response to the solicitation may have; and, acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a proposal or response to this solicitation, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the solicitation being found non-responsive and rejected.

**Any entity awarded a contract or submitting a proposal or response to the solicitation agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials 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, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the solicitation, awards, and other documents.**



# TABLE OF CONTENTS

INVITATION TO BID.....	i
TABLE OF CONTENTS.....	ii
GLOSSARY OF TERMS.....	iv
ACRONYM LIST.....	viii
<b>I. PROCUREMENT PROCEDURE.....</b>	<b>1</b>
A. GENERAL INFORMATION.....	1
B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS.....	1
C. SCHEDULE OF EVENTS.....	2
D. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory).....	3
E. ETHICS IN PUBLIC CONTRACTING.....	3
F. DEVIATIONS FROM THE INVITATION TO BID.....	3
G. SUBMISSION OF PROPOSALS.....	3
H. PROPOSAL PREPARATION COSTS.....	4
I. FAILURE TO COMPLY WITH INVITATION TO BID.....	4
J. PROPOSAL CORRECTIONS.....	4
K. LATE PROPOSALS.....	4
L. INVITATION TO BID/PROPOSAL REQUIREMENTS.....	4
M. EVALUATION OF PROPOSALS.....	4
N. BEST AND FINAL OFFER.....	5
O. REFERENCE AND CREDIT CHECKS.....	5
P. AWARD.....	5
Q. REJECTION OF PROPOSALS.....	6
R. RESIDENT BIDDER.....	6
<b>II. TERMS AND CONDITIONS.....</b>	<b>7</b>
B. GENERAL.....	7
C. NOTIFICATION.....	8
D. NOTICE (POC).....	8
E. GOVERNING LAW (Statutory).....	8
F. BEGINNING OF WORK.....	8
G. AMENDMENT.....	8
H. CHANGE ORDERS OR SUBSTITUTIONS.....	9
I. VENDOR PERFORMANCE REPORT(S).....	9
J. NOTICE OF POTENTIAL CONTRACTOR BREACH.....	9
K. BREACH.....	10
L. NON-WAIVER OF BREACH.....	10
M. SEVERABILITY.....	10
N. INDEMNIFICATION.....	11
O. ATTORNEY'S FEES.....	11
P. ASSIGNMENT, SALE, OR MERGER.....	12
Q. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE.....	12
R. FORCE MAJEURE.....	12
S. CONFIDENTIALITY.....	13
T. EARLY TERMINATION.....	13
<b>III. CONTRACTOR DUTIES.....</b>	<b>14</b>
A. INDEPENDENT CONTRACTOR / OBLIGATIONS.....	14
B. EMPLOYEE WORK ELIGIBILITY STATUS.....	14
C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory).....	15
D. COOPERATION WITH OTHER CONTRACTORS.....	15
E. DISCOUNTS.....	15
F. PRICES.....	15
G. COST CLARIFICATION.....	16
H. PERMITS, REGULATIONS, LAWS.....	16
I. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES.....	16
J. NOTICE OF POTENTIAL CONTRACTOR BREACH.....	16
K. ANTITRUST.....	17

L.	CONFLICT OF INTEREST .....	17
M.	ADVERTISING .....	17
N.	NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory) .....	17
O.	DISASTER RECOVERY/BACK UP PLAN .....	18
P.	DRUG POLICY .....	18
Q.	WARRANTY .....	18
<b>IV.</b>	<b>PAYMENT .....</b>	<b>19</b>
A.	PROHIBITION AGAINST ADVANCE PAYMENT (Statutory).....	19
B.	TAXES (Statutory) .....	19
C.	INVOICES.....	19
D.	PAYMENT (Statutory).....	19
E.	LATE PAYMENT (Statutory).....	19
F.	SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory).....	19
G.	RIGHT TO AUDIT (First Paragraph is Statutory) .....	19
<b>V.</b>	<b>SCOPE OF WORK .....</b>	<b>21</b>
A.	SCOPE .....	21
<b>VI.</b>	<b>TECHNICAL SPECIFICATIONS .....</b>	<b>22</b>
A.	BIDDER INSTRUCTIONS .....	22
B.	NON-COMPLIANCE STATEMENT .....	22
C.	TECHNICAL SPECIFICATIONS:.....	22
D.	ACCEPTABLE BRANDS .....	23
E.	ANNUAL USAGE, ESTIMATED .....	23
F.	USAGE REPORT .....	23
G.	DELIVERY ARO .....	23
H.	DELIVERY LOCATIONS / INSTRUCTIONS (CONTRACTOR AGREES THAT THEY CAN MEET THE DELIVERY ORDERS .....	24
I.	GRAY MARKET PRODUCTS PROHIBITION .....	24
J.	AUTHORIZED DEALER & WARRANTY .....	24
K.	WARRANTY .....	24
<b>Form A</b>	<b>Bidder Contact Sheet .....</b>	<b>26</b>

## GLOSSARY OF TERMS

**Acceptance Test Procedure:** Benchmarks and other performance criteria, developed by the State or other sources of testing standards, for measuring the effectiveness of products or goods and the means used for testing such performance

**Addendum:** Something to be added or deleted to an existing document; a supplement

**After Receipt of Order (ARO):** After Receipt of Order

**Agency:** Using agencies shall mean and include all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations

**Agent/Representative:** A person authorized to act on behalf of another

**Amend:** To alter or change by adding, subtracting, or substituting

**Amendment:** A written correction or alteration to a document

**Appropriation:** Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use

**Automated Clearing House (ACH):** Electronic network for financial transactions in the United States

**Award:** All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the solicitation

**Best and Final Offer (BAFO):** In a competitive proposal, the final offer submitted which contains bidders most favorable terms for price

**Bidder:** A vendor who submits an offer proposal in response to a written solicitation

**Breach:** Violation of a contractual obligation by failing to perform or repudiation of one's own promise.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity

**Business Day:** Any weekday, except State-recognized holidays

**Calendar Day:** Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays

**Cancellation:** To call off or revoke a proposal, purchase order or contract without expectation of conducting or performing at a later time

**Catalog/Non-Core:** A printed or electronic list of products a bidder may provide at a discounted rate or discount off list price to the State. Initial contract award(s) is not based on Catalog/Non-Core items

**Central Processing Unit (CPU):** Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software

**Change Order:** Document that provides amendments to an executed purchase order

**Collusion:** An agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose

**Commodities:** Any equipment, material, supply or goods; anything movable or tangible that is provided or sold

**Commodities Description:** Detailed descriptions of the items to be purchased; may include information necessary to obtain the desired quality, type, color, size, shape, or special characteristics necessary to perform the work intended to produce the desired results

**Competition:** The effort or action of two or more commercial interests to obtain the same business from third parties

**Confidential Information:** Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive

**Contract:** An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law; the writing that sets forth such an agreement

**Contract Administration:** The management of the contract which includes and is not limited to contract signing, contract amendments and any necessary legal actions

**Contract Management:** The management of day to day activities at the agency which includes and is not limited to ensuring deliverables are received, specifications are met, handling meetings and making payments to the Contractor

**Contract Period:** The duration of the contract

**Contractor:** An individual or entity lawfully conducting business in the State, who seeks or agrees to provide goods or services under the terms of a written contract.

**Cooperative Purchasing:** The combining of requirements of two or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits

**Copyright:** A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work

**Core List:** Items specifically listed on the solicitation upon which a proposal is evaluated for award

**Critical Program Error:** Any Program Error, whether or not known to the State, which prohibits or significantly impairs use of the Licensed Software as set forth in the documentation and intended in the contract

**Customer Service:** The process of ensuring customer satisfaction by providing assistance and advice on those products or goods provided by a Contractor

**Default:** The omission or failure to perform a contractual duty

**Deviation:** Any proposed change(s) or alteration(s) to either the terms and conditions or deliverables within the scope of the written solicitation or contract

**Evaluation:** The process of examining an offer after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award

**Evaluation Committee:** Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of proposal/s (offers made in response to written solicitations)

**Extension:** Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period"

**Free on Board (F.O.B.) Destination:** The delivery charges are included in the quoted price and prepaid by the contractor. Contractor is responsible for all claims associated with damages during delivery of product

**Free on Board (F.O.B.) Point of Origin:** The delivery charges are not included in the quoted price and are the responsibility of the agency. Agency is responsible for all claims associated with damages during delivery of product

**Foreign Corporation:** A foreign corporation that was organized and chartered under the laws of another state, government, or country.

**Installation Date:** The date when the procedures described in "Installation by Contractor", and "Installation by State", as found in the solicitation, or contract are completed.

**Interested Party:** A person, acting in their personal capacity, or an entity entering into a contract or other agreement creating a legal interest therein

**Invalid Proposal:** A proposal that does not meet the requirements of the solicitation or cannot be evaluated against the other proposals.

**Invitation to Bid (ITB):** A written solicitation utilized for obtaining competitive offers for Services or Goods

**Late Proposal:** An offer received after the Opening Date and Time

**Licensed Software Documentation:** The user manuals and any other materials in any form or medium customarily provided by the Bidder to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently

**Mandatory/Must:** Required, compulsory, or obligatory

**May:** Discretionary, permitted; used to express possibility

**Module (see System):** A collection of routines and data structures that perform a specific function of software

**Must:** See Mandatory/Must and Shall/Will/Must

**National Institute for Governmental Purchasing (NIGP):** National Institute of Governmental Purchasing – Source used for assignment of universal commodity codes to goods and services

**Non-core:** See Catalog.

**Open Market Purchase:** Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, State Purchasing Bureau

**Opening Date and Time:** Specified date and time for the public opening of received, labeled, and sealed formal proposals

**Operating System:** The control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources

**Outsourcing:** The contracting out of a business process which an organization may have previously performed internally or has a new need for, to an independent organization from which the process is purchased back

**Payroll & Financial Center (PFC):** Electronic procurement system of record

**Platform:** A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination

**Point of Contact (POC):** The person designated to receive communications and to communicate

**Product:** Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption

**Program Error:** Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any Critical Program Error

**Program Set:** The group of programs and products, including the Licensed Software specified in the solicitation, plus any additional programs and products licensed by the State under the contract for use by the State

**Project:** The total scheme, program, or method worked out for the accomplishment of an objective, including all documentation, commodities, and goods to be provided under the contract

**Proposal:** An offer, bid, or quote submitted by a bidder/vendor in a response to a written solicitation

**Proprietary Information:** Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and service no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific named competitor(s) advantaged by release of the information and the demonstrated advantage the named competitor(s) would gain by the release of information

**Protest/Grievance:** A complaint about a governmental action or decision related to the solicitation or resultant contract, brought by a bidder who has timely submitted a proposal response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result

**Public Proposal Opening:** The process of opening correctly submitted offers at the time and place specified in the written solicitation and in the presence of anyone who wished to attend

**Quote:** See Proposal

**Release Date:** The date of public release of the written solicitation to seek offers

**Renewal Period:** Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension

**Responsible Bidder:** A Bidder who has the capability in all respects to perform fully and lawfully all requirements with integrity and reliability to assure good faith performance

**Responsive Bidder:** A Bidder who has submitted a proposal which conforms to all requirements of the solicitation document

**Shall:** See Must

**Should:** Expected; suggested, but not necessarily mandatory

**Software License:** Legal instrument with or without printed material that governs the use or redistribution of licensed software

**Sole Source – Commodity:** When an item is available from only one source due to the unique nature of the requirement, its contractor, or market conditions

**Sole Source – Service:** A service of such a unique nature that the bidder selected is clearly and justifiably the only practical source to provide the service. Determination that the bidder selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required

**Specifications:** The detailed statement, especially of the measurements, quality, materials, and functional characteristics, or other items to be provided under a contract

**Statutory:** These clauses are controlled by state law and are not subject to negotiation

**Subcontractor:** Individual or entity with whom the contractor enters a contract to perform a portion of the work awarded to the contractor

**System (see Module):** Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Bidder as functioning or being capable of functioning, as an entity

**Termination:** Occurs when the contract expires or either party, pursuant to a power created by agreement or law puts an end to the contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives

**Third-Party:** Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and sub-contractors or agents, and their employees. It shall not include any entity or person who is an interested Party to the contract or agreement

**Trade Secret:** Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. § 87-502(4))

**Trademark:** A word, phrase, logo, or other graphic symbol used by a manufacturer or bidder to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office

**Upgrade:** Any change that improves or alters the basic function of a product of service

**Vendor Performance Report:** A report completed by the using agency and submitted to State Purchasing Bureau documenting products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications.

**Vendor:** Inclusive term for any Bidder or Contractor.

**Will:** See Mandatory/Must/Shall

**Work Day:** See Business Day

## ACRONYM LIST

**ARO** – After Receipt of Order

**ACH** – Automated Clearing House

**BAFO** – Best and Final Offer

**COI** – Certificate of Insurance

**CPU** – Central Processing Unit

**DAS** – Department of Administrative Services

**F.O.B.** – Free on Board

**ITB** – Invitation to Bid

**NIGP** – National Institute for Governmental Purchasing

**PA** – Participating Addendum

**RFI** – Request for Information

**RFP** – Request for Proposal

**SPB** – State Purchasing Bureau

**I. PROCUREMENT PROCEDURE**

**A. GENERAL INFORMATION**

The solicitation is designed to solicit proposals from qualified Bidders who will be responsible for providing access to accident diagram software at competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Proposal instructions, and Cost Proposal Requirements may be found in Sections II through VI.

Proposals shall conform to all instructions, conditions, and requirements included in the solicitation. Prospective Bidders are expected to carefully examine all documents, schedules, and requirements in this solicitation, and respond to each requirement in the format prescribed. Proposals may be found non-responsive if they do not conform to the solicitation.

**B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS**

Procurement responsibilities related to this solicitation reside with SPB. The point of contact (POC) for the procurement is as follows:

Solicitation Number: 6400 OF  
Name: Nancy Storant  
Agency: State Purchasing Bureau  
Address: 1526 K Street, Suite 130  
Lincoln, NE 68508  
  
Telephone: 402-471-6500  
  
E-Mail: [as.materieipurchasing@nebraska.gov](mailto:as.materieipurchasing@nebraska.gov)

From the date the solicitation is issued until the Intent to Award is issued, communication from the Bidder is limited to the POC listed above. After the Intent to Award is issued, the awarded contractor may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this solicitation. The POC will issue any answers, clarifications or amendments regarding this solicitation in writing. Only the SPB or awarding agency can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this solicitation.

The following exceptions to these restrictions are permitted:

1. Contact made pursuant to pre-existing contracts or obligations;
2. Contact required by the schedule of events or an event scheduled later by POC; and
3. Contact required for negotiation and execution of the final contract.

*The State reserves the right to reject a bidder's proposal, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.*



C. **SCHEDULE OF EVENTS**

The State expects to adhere to the procurement schedule shown below, but all dates are approximate and subject to change.

<b>ACTIVITY</b>		<b>DATE/TIME</b>
1	Release solicitation	November 2, 2020
2	Proposal Opening	November 9, 2020
	Electronic Opening: <a href="https://nebraska.sharefile.com/r-rf66abe30a0e42309">https://nebraska.sharefile.com/r-rf66abe30a0e42309</a>	2:00 PM Central Time
3	Review for conformance with proposal requirements	November 9, 2020
4	Evaluation period	November 9, 2020 Through November 10, 2020
5	Contract finalization period	November 11, 2020 Through November 20, 2020
6	Contract award	November 20, 2020
7	Contract Issuance	November 20, 2020

**D. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)**

All Bidders must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Bidder who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and correct copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and the United States Citizenship Attestation Form, available on the DAS website at: <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the contract.

**E. ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject proposals, withdraw an intent to award or award, or terminate a contract if a Contractor commits or has committed ethical violations, which include, but are not limited to:

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity;
4. Submitting a proposal on behalf of another party or entity;
5. Collude with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the proposal, or prejudice the State.

The Contractor shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Bidder shall have an affirmative duty to report any violations of this clause by the Bidder throughout the bidding process, and throughout the term of this contract for the successful Contractor and their subcontractors.

**F. DEVIATIONS FROM THE INVITATION TO BID**

The requirements contained in the solicitation (Sections II through VI) become a part of the terms and conditions of the contract resulting from this solicitation. Any deviations from the solicitation in Sections II through VI must be clearly defined by the Bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the solicitation, solicitation requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this solicitation, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this solicitation. The State discourages deviations and reserves the right to reject proposed deviations.

**G. SUBMISSION OF PROPOSALS**

The State is accepting only electronically submitted responses. The State will not accept proposals by email, voice, or telephone.

It is the bidder's responsibility to ensure the ITB is received electronically by the date and time indicated in the Schedule of Events. No late proposals will be accepted.

1. **Bidders when submitting electronic responses must submit responses via ShareFile using the proposal submission link.**

**Note to bidders:** Not all browsers are compatible with ShareFile. Currently Chrome, Internet Explorer and Firefox are compatible. After the bidder clicks the proposal submission link, the bidder will be prompted to enter contact information including an e-mail address. By entering an e-mail address, the bidder should receive a confirmation email confirming the successful upload directly from ShareFile.

Proposal submission link <https://nebraska.sharefile.com/r-rf66abe30a0e42309>

1. It is the bidder's responsibility to allow time for electronic uploading. All file uploads must be completed by the Opening date and time per the Schedule of Events. No late proposals will be accepted.
2. **ELECTRONIC PROPOSAL FILE NAMES**  
The bidder should clearly identify the uploaded ITB proposal files. To assist in identification the bidder should use the following naming convention:
  - i. ITB 6400 OF, Company Name, Description of Service

- ii. If multiple files are submitted for one ITB proposal, add number of files to file names: 6400 OF, Company Name, File 1 of 2.

**H. PROPOSAL PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by Bidders in replying to this solicitation, including any activity related to bidding on this solicitation.

**I. FAILURE TO COMPLY WITH INVITATION TO BID**

Violation of the terms and conditions contained in this solicitation or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a Bidders proposal;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Negative Vendor Performance Report(s)
5. Termination of the resulting contract;
6. Legal action; or,
7. Suspension of the Bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**J. PROPOSAL CORRECTIONS**

A bidder may correct a mistake in a proposal prior to the time of opening by giving written notice to the State of intent to withdraw the proposal for modification or to withdraw the proposal completely. Changing a proposal after opening may be permitted if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

**K. LATE PROPOSALS**

Proposals received after the time and date of the proposal opening will be considered late proposals. Late proposals will be returned unopened, if requested by the Bidder and at Bidder's expense. The State is not responsible for proposals that are late or lost regardless of cause or fault.

**L. INVITATION TO BID/PROPOSAL REQUIREMENTS**

The proposals will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Proposals not meeting the requirements may be rejected as non-responsive. The requirements are:

1. Original Commodity ITB form signed using DocuSign.
2. Clarity and responsiveness of the proposal;
3. Completed Sections II through VI;
4. Completed ITB Form or State's Cost Sheet.

**M. EVALUATION OF PROPOSALS**

All proposals that are responsive to the solicitation will be evaluated based on the following:

1. Cost Proposal

**Neb. Rev. Stat. §81-161 allows the quality of performance of previous contracts to be considered when evaluating responses to competitively bid solicitations in determining the lowest responsible bidder.** Information obtained from any Vendor Performance Report (See Terms & Conditions, Section H) may be used in evaluating responses to solicitations for goods and services to determine the best value for the State.

**Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone.** When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder, if all other factors are equal.

**Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this**

**subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision(a) of this subsection. Any contract entered into without compliance with this section shall be null and void.**

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a proposal in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the ITB cover page under "Bidder must complete the following" requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the Bidder within ten (10) business days of request:

1. Documentation from the United States Armed Forces confirming service;
2. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
3. Disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense; and
4. Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the bidder from consideration of the preference.

**N. BEST AND FINAL OFFER**

If best and final offers (BAFO) are requested by the State and submitted by the bidder they will be evaluated (using the stated BAFO criteria) and ranked by the Evaluation Committee. The State reserves the right to conduct more than one BAFO. The award will then be granted to the lowest responsible Bidder. However, a bidder should provide its best offer in its original proposal. Bidders should not expect that the State will request a BAFO.

**O. REFERENCE AND CREDIT CHECKS**

The State reserves the right to conduct and consider reference and credit checks. The State reserves the right to use third parties to conduct reference and credit checks. By submitting a proposal in response to this solicitation, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients. Reference and credit checks may be grounds to reject a proposal, withdraw an intent to award, or rescind the award of a contract.

**P. AWARD**

The State reserves the right to evaluate proposals and award contracts in a manner utilizing criteria selected at the State's discretion and in the State's best interest. After evaluation of the proposals, or at any point in the solicitation process, the State of Nebraska may take one or more of the following actions:

1. Amend the solicitation;
2. Extend the time of or establish a new proposal opening time;
3. Waive deviations or errors in the State's solicitation process and in bidder proposals that are not material, do not compromise the solicitation process or a bidder's proposal, and do not improve a bidder's competitive position;
4. Accept or reject a portion of or all of a proposal;
5. Accept or reject all proposals;
6. Withdraw the solicitation;
7. Elect to rebid the solicitation;
8. Award single lines or multiple lines to one or more bidders; or,
9. Award one or more all-inclusive contracts.

The State of Nebraska may consider, but is not limited to considering, one or more of the following award criteria:

1. Price;
2. Location;
3. Quality;
4. Delivery time;
5. Bidder qualifications and capabilities;
6. State contract management requirements and/or costs

The solicitation does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the Internet at:

<http://das.nebraska.gov/materiel/purchasing.html>

Any protests must be filed by a Bidder within ten (10) business days after the intent to award decision is posted to the Internet. Grievance and protest procedure is available on the Internet at:

<http://das.nebraska.gov/materiel/purchasing.html>

**Q. REJECTION OF PROPOSALS**

The State reserves the right to reject any or all proposals, wholly or in part, in the best interest of the State.

**R. RESIDENT BIDDER**

Pursuant to Neb. Rev. Stat. §§ 73-101.01 through 73-101.02, a Resident Bidder shall be allowed a preference against a Non-resident Bidder from a state which gives or requires a preference to Bidders from that state. The preference shall be equal to the preference given or required by the state of the Nonresident Bidders. Where the lowest responsible bid from a resident Bidder is equal in all respects to one from a nonresident Bidder from a state which has no preference law, the resident Bidder shall be awarded the contract. The provision of this preference shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of this preference.

**II. TERMS AND CONDITIONS**

Bidders should complete Section II through VI as part of their proposal. Bidder is expected to read the Terms and Conditions and must initial either accept, reject, or reject and provide alternative language for each clause. The Bidder should also provide an explanation of why the Bidder rejected the clause or rejected the clause and provided alternate language using "Track Changes". Upon request an electronic copy of the proposal with "Track Changes" must be submitted in an editable Word format. By signing the solicitation, Bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language. If the State and Bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State is soliciting proposals in response to the solicitation. The State reserves the right to reject proposals that attempt to substitute the Bidder's commercial contracts and/or documents for this solicitation.

The Bidder should submit with their proposal any license, user agreement, service level agreement, or similar documents that the Bidder wants incorporated in the Contract. Upon notice of Intent to Award, the Bidder must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted with the Bidder's proposal. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the addendums have been negotiated and agreed to, the addendums shall be interpreted as follows:

1. If only one (1) Party's document has a particular clause then that clause shall control;
2. If both Party's documents have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Party's documents have a similar clause, but the clauses conflict, the State's clause shall control.

**A. GENERAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The contract resulting from this solicitation shall incorporate the following documents:

1. Invitation to Bid and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Bidder's proposal response;
5. The executed Contract and any Addenda, if applicable, and properly submitted documents; and,
6. Amendments to the Contract

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda, and 5) the Bidder's submitted Proposal.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State.

**B. NOTIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

Bidder and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

**C. NOTICE (POC)**

The State reserves the right to appoint a Buyer's Representative to manage [or assist the Buyer in managing] the contract on behalf of the State. The Buyer's Representative will be appointed in writing, and the appointment document will specify the extent of the Buyer's Representative authority and responsibilities. If a Buyer's Representative is appointed, the Bidder will be provided a copy of the appointment document, and is expected to cooperate accordingly with the Buyer's Representative. The Buyer's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

**D. GOVERNING LAW (Statutory)**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this contract must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

**E. BEGINNING OF WORK**

The Contractor shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

**F. AMENDMENT**

This Contract may be amended in writing, within scope, upon the agreement of both parties.

**G. CHANGE ORDERS OR SUBSTITUTIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the solicitation. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

In the event any product is discontinued or replaced upon mutual consent during the contract period or prior to delivery, the State reserves the right to amend the contract or purchase order to include the alternate product at the same price.

**\*\*\*Contractor will not substitute any item that has been awarded without prior written approval of SPB\*\*\***

**H. VENDOR PERFORMANCE REPORT(S)**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The State may document any instance(s) of products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications. The State Purchasing Bureau may contact the Vendor regarding any such report. Vendor performance report(s) will become a part of the permanent record of the Vendor.

**I. NOTICE OF POTENTIAL CONTRACTOR BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.



**J. BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach. OR In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies. (See Indemnity - Self-Insurance and Payment)

**K. NON-WAIVER OF BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**L. SEVERABILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

If any term or condition of the contract 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 contract did not contain the provision held to be invalid or illegal.

**M. INDEMNIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

**1. GENERAL**

The Contractor agrees to defend, indemnify, and hold 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 for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. INTELLECTUAL PROPERTY**

The Contractor 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 Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor 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 Contractor has indemnified the State, the Contractor shall, at the Contractor'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 Contractor, and the State may receive the remedies provided under this solicitation.

**3. SELF-INSURANCE (Statutory)**

The State is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this contract, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this contract to the extent provided by law.

**N. ATTORNEY'S FEES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if ordered by the court, including attorney's fees and costs, if the other party prevails.

**O. ASSIGNMENT, SALE, OR MERGER**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

Either party may assign the contract upon mutual written agreement of the other party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**P. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause.

The Contractor may, but shall not be required to, allow other states, agencies or divisions of other states, or political subdivisions of other states to use this contract. The terms and conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

**Q. FORCE MAJEURE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

Neither party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or man-made event outside the control and not the fault of the affected party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other party, and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event.

**R. CONFIDENTIALITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their 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 (l)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, 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.

**S. EARLY TERMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor 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;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any party against the Contractor 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 Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support of the deliverable; and,
  - i. In the event funding is no longer available.

**III. CONTRACTOR DUTIES**

**A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or a Subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees).

If the Contractor intends to utilize any subcontractor, the Subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's proposal. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or Subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a sub-contractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any Subcontractor engaged to perform work on this contract.

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing work within the State. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and

Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the solicitation response.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)**

The Contractor 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 Contractors of the State, 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 through 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for goods or services to be covered by any contract resulting from this solicitation.

**D. COOPERATION WITH OTHER CONTRACTORS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on the same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

**E. DISCOUNTS**

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than thirty (30) days will not be considered as part of the proposal. Cash discount periods will be computed from the date of receipt of a properly executed claim voucher or the date of completion of delivery of all items in a satisfactory condition, whichever is later.

**F. PRICES**

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern. The term of the contract will be 2 (two) years commencing upon execution of the contract by the State and the Contractor (Parties)/notice to proceed. The Contract includes the option to renew for 1 period of an additional two years upon mutual agreement of the Parties.

**The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.**

**The State will be given full proportionate benefit of any decreases for the term of the contract.**

**G. COST CLARIFICATION**

The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

**H. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the performance of the contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

**I. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this contract.

The State shall own and hold exclusive title to any deliverable developed as a result of this contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

**J. NOTICE OF POTENTIAL CONTRACTOR BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

If Contractor breaches the contract or anticipates breaching the contract the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, and may include a request for a waiver of the breach if so desired. The State may, at its discretion, temporarily or permanently waive the breach. By granting a temporary waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**K. ANTITRUST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

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

**L. CONFLICT OF INTEREST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

By submitting a proposal, bidder certifies that no relationship exists between the bidder and any person or entity which either is, or gives the appearance of, a conflict of interest related to this Request for Proposal or project.

Bidder further certifies that bidder will not employ any individual known by bidder to have a conflict of interest nor shall bidder take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its contractual obligations hereunder or which creates an actual or appearance of conflict of interest.

If there is an actual or perceived conflict of interest, bidder shall provide with its proposal a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall bid evaluation.

**M. ADVERTISING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods and services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**N. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)**

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or goods provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.



**O. DISASTER RECOVERY/BACK UP PLAN**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods and services as specified under the specifications in the contract in the event of a disaster.

**P. DRUG POLICY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

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

**Q. WARRANTY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Contract. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

#### IV. PAYMENT

**A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)**

Neb. Rev. Stat. §§81-2403 states, “[n]o goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency.”

**B. TAXES (Statutory)**

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

**C. INVOICES**

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor'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 an amendment to the contract.

**D. PAYMENT (Statutory)**

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the Contractor 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 and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**E. LATE PAYMENT (Statutory)**

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).

**F. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)**

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor 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 Contractor be paid for a loss of anticipated profit.

**G. RIGHT TO AUDIT (First Paragraph is Statutory)**

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) day written notice. Contractor 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 Contractor 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 Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor 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. In no circumstances will contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
JC			

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

## **V. SCOPE OF WORK**

### **A. SCOPE**

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for Easy Street Draw software contract, ITB Number 6400 OF for the purpose of selecting a qualified Contractor to provide license for Easy Street Draw. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

The term of the contract will be 2 (two) years commencing upon execution of the contract by the State and the Contractor (Parties)/notice to proceed . The Contract includes the option to renew for one (1) period of an additional two (2) year period upon mutual agreement of the Parties. State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

The State requests the renewal of licenses for the desktop application to be installed on any Law Enforcement Agency in the state for diagramming accident/crash information. These diagrams are then upload into their respective record management systems or directly to the Department of Transportation. License administration will be provided by the bidder to ensure agencies are using the current version, and to better track usage of the product.

**VI. TECHNICAL SPECIFICATIONS**

**A. BIDDER INSTRUCTIONS**

Bidder must respond to each of the following statements. Specifications listed are minimum conditions that must be met in order for a Bidder to qualify for the award.

“YES” response means the Bidder guarantees they can meet this condition.

“NO” response means the Bidder cannot meet this condition and will not be considered.

“NO & PROVIDE ALTERNATIVE” responses should be used only with a narrative response in the NOTES/COMMENTS section explaining in detail any deviation from the Bidder’s ability to meet the condition, and an explanation of how this would be determined to be an acceptable alternative to meeting the condition. Alternatives must be detailed in such a way that allows such deviations to be fully evaluated. The State shall determine at its sole discretion whether or not the Bidder’s alternative is an acceptable alternative.

**B. NON-COMPLIANCE STATEMENT**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your proposal. Non-compliance to any single specification can void your proposal.
Yes			2. It is the responsibility of Bidders to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this solicitation by any Bidder.
Yes			3. No interpretation related to the meaning of solicitation specifications or other pre-proposal documents will be made orally to any Bidder by the State. Any solicitation interpretation must be put in writing by the Bidder to: the Buyer as noted in Section I.B,
NOTES/COMMENTS:			

**C. TECHNICAL SPECIFICATIONS:**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. Annual Maintenance renewal for Easy Street Draw which includes user/agency to upgrade to new versions when they are released. Currently Nebraska Crime Commission is using Easy Street Draw v.7.4. Contractor will supply the Nebraska Crime Commission with a copy of the most recent version of the software.
NOTES/COMMENTS:			

**D. ACCEPTABLE BRANDS**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. Products proposed must be the brand AND model numbers as specified on each line of the Solicitation Document. The State will not be accepting alternatives to the brands specified
NOTES/COMMENTS:			

**E. ANNUAL USAGE, ESTIMATED**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity. The orders shall be for the actual quantities of each item ordered by or for any agency during the life of the contract. Contractor shall not impose minimum order requirements.
Yes			2. Insert annual estimated usage here (may use Table Tools/Draw Table function to add more lines or may enlarge the size of the table to accommodate specifications)
NOTES/COMMENTS:			

**F. USAGE REPORT**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. The contractor shall, upon request, provide a quarterly usage report of this contract by state agencies and political subdivisions. Information will include agency name, item, and dollar amount. Information may be requested at any time by the SPB, as determined by the State.
NOTES/COMMENTS:			

**G. DELIVERY ARO**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. Delivery desired within ten (10) days after receipt of order(s).
NOTES/COMMENTS:			

**H. DELIVERY LOCATIONS / INSTRUCTIONS (CONTRACTOR AGREES THAT THEY CAN MEET THE DELIVERY ORDERS)**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. Orders will be placed either by, phone, e-mail or Internet (if available and not to the exclusion of the other methods).
NOTES/COMMENTS:			

**I. GRAY MARKET PRODUCTS PROHIBITION**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. The State will not accept Gray Market Products for this solicitation. Gray Market is defined as the trade of a commodity through distribution channels which, while legal, are unofficial, unauthorized, or unintended by the original manufacturer. Gray Market items are not designed to be sold in a particular market and cannot be supported by the authorized importer because of various reasons.
NOTES/COMMENTS:			

**J. AUTHORIZED DEALER & WARRANTY**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. To the extent required by the manufacturer, the Contractor shall be an authorized dealer. Contractor may be required to substantiate that he/she is an authorized dealer. Proof, if required, must be submitted to SPB within three (3) business days of the request and prior to the award of any contract.
NOTES/COMMENTS:			

**K. WARRANTY**

YES	NO	NO & PROVIDE ALTERNATIVE	
Yes			1. The Contractor warrants for a period of one (1) year from the date of Acceptance that: (a) the Products perform according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the State has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the State) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the

			Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
<b>NOTES/COMMENTS:</b>			



**Form A**  
**Bidder Contact Sheet**  
**Invitation To Bid Number 6400 OF**

Form A should be completed and submitted with each response to this solicitation. This is intended to provide the State with information on the Bidder's name and address, and the specific person(s) who are responsible for preparation of the Bidder's response.

<b>Preparation of Solicitation Contact Information</b>	
<b>Bidder Name:</b>	SmartSafety Software (hereafter called Trancite Logic Systems)
<b>Bidder Address:</b>	8645 W. Franklin Rd., Suite 202 Boise, Idaho 83709
<b>Contact Person &amp; Title:</b>	Joe Cucchiari, Vice President of Operations
<b>E-mail Address:</b>	jcucchiari@trancite.com
<b>Telephone Number (Office):</b>	877-908-4777
<b>Telephone Number (Cellular):</b>	208-870-7327
<b>Fax Number:</b>	208-322-6031

Each Bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the Bidder's response should become necessary.

<b>Communication with the State Contact Information</b>	
<b>Bidder Name:</b>	SmartSafety Software (hereafter called Trancite Logic Systems)
<b>Bidder Address:</b>	8645 W. Franklin Rd., Suite 202 Boise, Idaho 83709
<b>Contact Person &amp; Title:</b>	Joe Cucchiari, Vice President of Operations
<b>E-mail Address:</b>	jcucchiari@trancite.com
<b>Telephone Number (Office):</b>	877-908-4777
<b>Telephone Number (Cellular):</b>	208-870-7327
<b>Fax Number:</b>	208-322-6031

## Software License and Services Agreement

Last updated July 2019:

**ATTENTION:** Please read this Software License and Services Agreement (the “**Agreement**”) carefully which sets forth the legally binding terms of use of the Trancite software Easy Street Draw specified on a Trancite quote, an order confirmation, receipt or other written document provided to Customer by Trancite (the “**Software**”) and maintenance and support services by SmartSafety Software, Inc. (hereinafter referred to as “**Trancite Logic Systems**” or “**Trancite**”) including limitations on representations, warranties, remedies and liabilities.

THIS IS A LEGAL AGREEMENT BETWEEN YOU, THE END USER, OR ON BEHALF OF THE ENTITY YOU REPRESENT AND ALL END USERS IN YOUR ORGANIZATION (COLLECTIVELY THE “CUSTOMER”, “YOU” OR “YOUR”) AND SMARTSAFETY SOFTWARE, INC. (“**TRANCITE**”). YOUR ACCEPTANCE IS ON BEHALF OF ANY CORPORATE ENTITY THAT EMPLOYS YOU OR WHICH YOU REPRESENT. IF YOU ARE AN EMPLOYEE, CONTRACTOR, OR OTHERWISE USING THE SOFTWARE AND/OR SERVICES ON BEHALF OF AN ORGANIZATION OR ANY OTHER THIRD PARTY, YOU REPRESENT AND WARRANT TO TRANCITE THAT:

- A. YOU ARE THE AGE OF MAJORITY IN YOUR JURISDICTION;
- B. YOU HAVE ALL REQUISITE CAPACITY, RIGHT, POWER AND AUTHORITY TO ACCEPT THIS AGREEMENT ON BEHALF OF SUCH ENTITY; AND
- C. SUCH ENTITY SHALL BE IRREVOCABLY BOUND BY AND SHALL COMPLY WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, PLEASE DO NOT IN ANY WAY USE THE SOFTWARE AND UNINSTALL OR PERMANENTLY REMOVE ALL COPIES OF THE SOFTWARE. IF YOU OR ANY USERS ON YOUR BEHALF, USE THE SOFTWARE IN ANY WAY, YOU WILL BE CONSIDERED TO HAVE ACCEPTED AND AGREED TO THESE TERMS AND CONDITIONS.

### 1. Interpretation.

(a) Definitions. In this Agreement the following expressions shall have the meanings indicated below:

“**Confidential Information**” shall mean the Software, and any information which is confidential in nature or that is treated by Trancite as being confidential which is disclosed by Trancite or obtained by Customer in connection with this Agreement, whether such information is in oral, written, graphic or electronic form, which: is (i) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (ii) known by the Customer to be considered confidential or proprietary, such as the Software, or (iii) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party's employees or independent contractors who have not had access to or use of the other party's Confidential Information which such independent development can be established by evidence that would be acceptable to a court of competent jurisdiction;

**“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Software regardless of the media on which it is provided that have been provided by Trancite to Customer, as may be amended or supplemented from time to time and delivered to Customer by Trancite;

**“Effective Date”** shall mean the date that Customer executes this Agreement or places an order to license the Software on Trancite’s online ordering system on the [www.trancite.com](http://www.trancite.com) website subject to the terms and conditions of this Agreement;

**“Enterprise License”** shall have the meaning set out in Section 4(a)(ii);

**“Fees”** means the License Fees, Maintenance and Support Fees, Professional Services Fees and any other applicable fees set out in this Agreement;

**“Intellectual Property Rights”** shall mean any proprietary right, including but not limited to those provided under: (i) patent law; (ii) copyright law; (iii) trade-mark law; (iv) design patent or industrial design law; or (vi) any other statutory provision or common law principle that may provide a right in either (a) ideas, formulae, algorithms, concepts, inventions or know-how; or (b) the expression of such ideas, formulae, algorithms, concepts, inventions or know-how;

**“License Fees”** means the license fees to be paid by Customer in respect of the rights to use the Software, as set out on the [www.trancite.com](http://www.trancite.com) <<http://www.trancite.com>> website at time of purchase, on a quote issued by Trancite, or as otherwise agreed to by Trancite in writing;

**“Maintenance and Support Fees”** means the fees to be paid by Customer for Maintenance and Support Services as set out on the [www.trancite.com](http://www.trancite.com) <<http://www.trancite.com>> website at time of purchase, on a quote issued by Trancite, or as otherwise agreed to by Trancite in writing;

**“Maintenance and Support Services”** means maintenance and support services to be provided by Trancite pursuant to the terms and conditions of Schedule “A”;

**“Maximum Devices”** means the maximum number of devices on which the Customer is authorized to install and store a copy of the Software, each for use by a single User at a time, that is equal to the number of licensed devices paid for by Customer as specified on a Trancite quote, order confirmation, receipt, or other written document provided by Trancite to Customer;

**“Maximum Users”** means the maximum number of Users that are licensed to use the Software as specified on a Trancite quote, order confirmation, receipt, or other written document provided by Trancite to Customer;

**“Open Source License”** means terms that, as a condition of use, copying, modification or redistribution of software, require that such software and/or derivative works thereof to be disclosed or distributed in source code form, to be licensed for the purpose of making derivative works, or to be redistributed free of charge, including without limitation software distributed under the GNU General Public License or GNU Lesser/Library GPL;

**“Professional Services”** means the installation, implementation, training, and other professional services to be provided by Trancite to Customer as described in a Statement of Work;

**“Professional Services Fees”** means the fees set out in a SOW for the Professional Services;

**“Required Hardware”** shall have the meaning set out in Section 6(b);

**“Required Programs”** shall have the meaning set out in Section 6(a);

**“Per Device License(s)”** shall have the meaning set out in Section 4(a)(i);

**“Software”** means the Trancite software products specified on a Trancite quote, an order confirmation, receipt or other written document issued by Trancite and includes any Updates or Upgrades that have been provided to Customer as part of the Maintenance and Support Services. Third Party Software is not included in the definition of Software except where this Agreement explicitly states otherwise;

**“Statement of Work”** or **“SOW”** means a written statement of work that references this Agreement and sets out a description of Professional Services to be provided by Trancite to Customer, the applicable Professional Services Fees and is signed by authorized representatives of each of the parties;

**“Third Party Software”** means third party software products licensed to Customer by the applicable third party licensors. Future Releases of the Software may require alternate third-party software to be upgraded or licensed by Customer, which will be subject to a third party license agreement between Customer and the relevant third-party software licensor;

**“Updates”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality that Trancite or its reseller makes generally available to its customers as part of its Maintenance and Support Services;

**“Upgrades”** means a major overhaul of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software, that Trancite or its reseller makes generally available to its customers subject to the payment of additional fees; and

**“User”** means any employee of Customer or any of Customer's agents and independent contractors that have been authorized by Customer in accordance with the terms of Section 4(a) of this Agreement to have access to the Software by way of any type of interface (for example, graphical user interface or browser user interface) and are bound by obligations of confidentiality at least as protective of Trancite's Confidential Information as the terms of Section 9.

## b) Schedules

The Schedules described below and attached to this Agreement shall be deemed to be integral parts of this Agreement.

### Schedule “A” - Maintenance and Support Services

In the event of any conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in any Schedule, the terms and conditions of the main body of this Agreement shall control unless otherwise expressly stated in the provision giving rise to the conflict or inconsistency.

2. Term. This Agreement will commence on the Effective Date and shall continue until terminated by either party in accordance with Section 13 (the **“Term”**).

### 3. Fees

In consideration of receiving the license rights granted in this Agreement, the Maintenance and Support Services, and the Professional Services, Customer agrees to pay to Licensor the License Fees and Maintenance and Support Fees in advance, and shall pay any Professional Services Fees in accordance

with the payment terms set out in the applicable SOW. All Fees are non-refundable. Maintenance and Support Fees may increase on an annual basis at Trancite's discretion. The Fees and any other fees set out in this Agreement are exclusive of taxes. Customer agrees to pay all foreign, federal, state, provincial, county or local income taxes, value added taxes, use, personal, property sales and any other taxes, tariff, duty or similar charges that may be levied by a taxing authority (excluding taxes on Trancite's net income). Customer shall reimburse Trancite for all travel and out of pocket expenses incurred in connection with any Customer request for onsite services.

If any Fees are not paid when due, then at Trancite's discretion, (a) such Fees may accrue late interest at the rate of 1.5% (18% per annum) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such fee was due until the date paid.

#### 4. License Grant.

(a) Subject to the terms and conditions of this Agreement including without limitation the payment of the Fees, Trancite hereby grants to Customer a personal, non-exclusive, non-transferable, perpetual (subject to Section 13) and limited license (without any right to sublicense):

(i) To install the Software solely on the Maximum Devices and to allow up to the Maximum Users to use the Software on such Maximum Devices solely for Customer's internal business purposes ( "**Per Device License**"); or

(ii) If paid for by the Customer and specified as an Enterprise License on the invoice issued by Trancite, to install the Software on a server or service such that the Software is capable of being executed by more than one client simultaneously from the single install, and authorize use by up to the Maximum Users solely for Customer's internal business purposes (an "**Enterprise License**"); and

(iii) to make one (1) archival backup copy of the Software and to copy the Documentation; provided that Customer must reproduce any copyright or other notice marked on any part of the Software and Documentation on all authorized copies and must not alter or remove any such copyright or other notice.

Access to and use of the Software by independent contractors of Customer shall be considered authorized use under this Section so long as: (A) any such independent contractors are not a competitor of Trancite, are bound by terms and conditions at least as protective of Trancite's rights in and to the Software, as the terms and conditions of this Agreement; and (B) such independent contractors have been approved by Trancite in advance of the independent contractors' access to the Software. Customer shall be responsible for (i) all of the actions of and (ii) any misuse of the Software by any independent contractor.

(b) Use of the Software on any system that (i) does not meet the Required Programs and Required Hardware requirements set out in Section 6 and/or (ii) exceeds the Maximum Devices in the case of a Per Device Use License voids all warranties with respect to the Software and relieves Trancite of any obligation to provide Maintenance and Support Services.

(c) The license rights granted in this Section 4 do not include the right to use any Third Party Software.

(d) Restrictions. Without limiting the generality of Section 4, and in addition to the other restrictions listed therein, Customer shall not, and will not allow, direct or authorize (directly or indirectly) any third party to: (i) disassemble, de-compile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to derive, reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (ii) modify, translate, or create derivative works of the Software or Documentation or merge all or any part of the Software with another program; (iii) give away, rent, lease, lend, sell, sublicense, distribute, transfer, assign, or use the Software for timesharing or bureau use or to publish or host the Software for use by any third party

(except as expressly permitted by Section 4(a)(ii) of this Agreement provided that, in no event shall the Software be placed on a server or service that provides unrestricted public access to the Software via a public network such as the Internet); (iv) take any actions that would cause the Software to become subject to any Open Source License or quasi-open source license agreement; and (v) use the Software in any manner for purposes of (A) developing, using or providing a competing software product or service; (B) copying any ideas, features, functionality or graphics of the Software; or (C) knowingly allow access to any competitor of Trancite.

## 5. Ownership

(a) The Software, Documentation and related materials are and shall remain the sole and exclusive property of Trancite, its licensors and/or its affiliates and Customer acknowledges and agrees that all Intellectual Property Rights therein are and shall remain with Trancite, its affiliates and/or its licensors. Any rights not expressly granted herein are reserved by Trancite. Customer may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software, the Documentation, Third Party Software and related material supplied by Trancite. Customer shall report to Trancite any infringement or misappropriation of Trancite Intellectual Property Rights or other rights in the Software, the Mobile Apps or the Documentation of which Customer becomes aware.

(b) In order to assist Trancite with the protection of its proprietary information and Confidential Information and to enable Trancite to ensure that the Customer is complying with its obligations, during the Term and for a period of two (2) years thereafter, Customer shall permit Harris, upon reasonable notice, to visit during normal business hours any premises at which the Software is used or installed and shall provide Trancite with access to its Software. Such audit shall be at Trancite's expense, however, in the event that the audit reveals that Customer is in violation of the usage terms of this Agreement, Customer shall reimburse Trancite for such expenses and promptly pay any additional License Fees and Maintenance and Support Fees not properly licensed or paid, such fees will be invoiced at Trancite's then current rate.

## 6. Required Programs and Hardware

(a) Customer acknowledges that the use of the Software shall require that Customer obtain and install additional required minimum third-party software programs as set out in the Documentation and modified from time to time by Trancite (the "**Required Programs**"). Customer agrees that the purchase of the Required Programs shall be at Customer's sole cost and that the cost thereof is not included in the fees herein, including for any future updates about which Customer is provided with commercially reasonable advance notice.

(b) Customer acknowledges that the use of the Software requires that Customer have, at a minimum, hardware necessary to run Trancite programs as set out in the Documentation and modified from time to time by Trancite (the "**Required Hardware**").

## 7. Third Party Software

(a) In the event that Trancite shall distribute to Customer any Third Party Software, Customer shall pay to Trancite in full in advance the license fees for the Third Party Software set out on the [www.trancite.com](http://www.trancite.com) <<http://www.trancite.com>> website at time of purchase, on a Trancite quote, order confirmation, receipt or other written document provided by Trancite. Such license fees are exclusive of taxes. Customer agrees to pay all foreign, federal, state, provincial, county or local income taxes, value added taxes, use, personal, property sales and any other taxes, tariff, duty or similar charges that may be levied by a taxing authority (excluding taxes on Trancite's net income). It is acknowledged by the parties that in the event that any Third Party Software is provided by Trancite to Customer pursuant to this Agreement, such Third Party Software shall be distributed to Customer by Trancite subject to the terms

and conditions of the applicable license agreement for such Third Party Software to be entered into directly between Customer and the owner/licensor of such Third Party Software. Trancite makes no warranties, express or implied, with respect to the Third Party Software, including, without limitation, their merchantability or fitness for a particular purpose and Trancite accepts no liability of any kind whatsoever with respect to the Third Party Software. Any warranty Customer has with respect to the Third Party Software shall be solely provided by the Third Party Software licensor except where this Agreement may expressly state otherwise. Customer shall be responsible for the installation of any Third Party Software unless otherwise agreed by Trancite in writing.

8. Professional Services; Maintenance and Support Services

(a) Professional Services will be provided to Customer as set forth in a SOW. Customer agrees to provide the resources and perform the responsibilities assigned to it, in a timely manner, pursuant to the SOW and any applicable milestone dates, any failure by Customer to do so shall not relieve Customer of any payment obligation.

(b) In consideration of the payment of the Maintenance and Support Fees, Maintenance and Support Services will be provided by Trancite.

9. Confidential Information.

Customer agrees:

(i) to keep confidential any and all Confidential Information with respect to Trancite which it has received or may in the future receive in connection with this Agreement and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of Trancite from unauthorized use, disclosure, copying or publication;

(ii) not to use the Confidential Information of Trancite other than in the course of exercising its rights or performing its obligations under this Agreement;

(iii) not to disclose or release such Confidential Information except to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that Customer shall first give reasonable notice to Trancite prior to such disclosure so that it may obtain a protective order or equivalent and provided that the Customer shall comply with any such protective order or equivalent;

(iv) not to disclose or release such Confidential Information to any third person without the prior written consent of Trancite, except for authorized employees or agents of Customer who have a need to know such information for the purpose of performance under this Agreement and exercising its rights under this Agreement, and who are bound by confidentiality obligations at least as protective of Trancite's Confidential Information as this Agreement; and

(v) to take such actions as may be reasonably necessary to enforce its agreements with its employees and agents, including commencing legal proceedings.

10. Warranty

(a) Limited Warranty. Trancite warrants to Customer that for a period of ninety (90) days from the Effective Date, the Software will perform substantially in accordance with the Documentation when properly used and in the manner specifically contemplated by the Documentation, the terms of this Agreement and where Customer has installed the Required Programs and on the Required Hardware. In the event the Software does not substantially conform to the Documentation, Customer promptly notifies Trancite of the nature of the failure and such additional information regarding the failure as Trancite may reasonably request and the error can be reproduced by Trancite, Trancite shall make commercially reasonable efforts

to provide a suitable workaround, repair or replace the non-conforming Software. If Trancite determines that Trancite is unable to repair the Software as required by this Section 10(a), Trancite may refund to Customer the Fees paid in respect of such Software and the license granted to Customer for such Software shall terminate. The foregoing shall be Customer's sole and exclusive remedy for breach of the exclusive warranty in this Section 10(a).

(b) Exclusions to Trancite Warranty. Trancite shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of Trancite, including but not limited to:

- (i) Where the installation, integration, modification or enhancement of the Software has not been carried out by Trancite or its authorized agent, or where Customer has taken any action which is expressly prohibited by the Documentation or this Agreement;
- (ii) Any combination of the Software with any software, equipment or services not supplied, recommended or authorized by or on behalf of Trancite other than the Required Programs and Required Hardware;
- (iii) Use of the Software on any system that (i) does not meet any of the Required Programs and Required Hardware requirements set out in Section 6 or (ii) exceeds the Maximum Devices in the case of a Per Device License.
- (iv) User error, or other use of the Software in a manner for which it was not intended or other than as permitted in this Agreement;
- (v) Customer's failure to install a new Update which has been released to remedy an error or bug, and which Trancite has stated to Customer is a required Update necessary for security purposes or for legislative compliance purposes or other reasons as Trancite may determine is important in its sole discretion;
- (vi) Trancite personnel are not given full, free and safe access to the facility where the Software is installed during attempts to remedy an error;
- (vii) Customer's failure to upgrade hardware to meet the demands of any upgraded Software or improvements in Software functionality; which Trancite has stated to Customer is required;
- (viii) Customer's computer(s), network or other hardware malfunctioned and the malfunction caused the defect, or any other event of force majeure as set out in Section 15(h); or
- (ix) any failure of the Software due to external causes such as, but not limited to, power failures or electrical surges.

(c) Customer Warranty. Customer represents and warrants to Trancite that it shall comply with all applicable laws in connection with its use of the Software and in its performance under this Agreement including but not limited to those laws regarding restrictions on exports and economic sanctions including end-user, end use and destination restrictions by Canadian, U.S. and other governments related to Trancite and its service providers products, services and technologies, and the U.S. Export Administration Regulations, and the International Traffic in Arms Regulations).

(d) Disclaimer.

TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET OUT IN SECTION 8(A) THE SOFTWARE IS LICENSED, AND ALL DOCUMENTATION AND OTHER MATERIALS AND SERVICES ARE PROVIDED TO CUSTOMER, "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR



ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HEREWITH.

TRANCITE, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE, THE DOCUMENTATION, THE PROFESSIONAL SERVICES, THE MAINTENANCE AND SUPPORT SERVICES, AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HEREWITH, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

#### 11. Intellectual Property Indemnity

(a) In the event that there is a third party claim against Customer alleging that Customer's use of the Software in accordance with this Agreement constitutes an infringement of a valid United States patent, copyright, trade-mark or trade secret, Trancite shall, at its expense, defend Customer and pay any amounts finally awarded against Customer by a court of competent jurisdiction or agreed to in a settlement approved by Trancite in advance, provided that: (i) Customer gives Trancite prompt written notice of any such claim and full opportunity to defend the same; (ii) Customer has not made any admissions or entered into settlement negotiations either prior to or after providing notice to Trancite of the applicable claim except with Trancite's prior written consent, (iii) Trancite has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement; and (iv) Customer assists and provides information to Trancite throughout the action or proceeding.

(b) Trancite's liability for any claims under this Section 11 shall be reduced to the extent such claim arises from: (i) alterations or modifications to the Software by Customer or a third party in any manner whatsoever except with the prior written consent of Trancite; (ii) combination, integration or use of the Software with software, hardware or other materials other than the Required Hardware and Required Software where such claim would not have arisen but for such combination, integration or use; (iii) use of the Software other than in compliance with this Agreement; (v) compliance with the Customer's written instructions or specifications; or (vi) use of the Software after notice from Trancite that it should cease due to possible infringement.

(c) In the event that Customer's use of the Software is finally held to be infringing or Trancite deems that it may be held to be infringing, Customer agrees that Trancite shall have the right, in Trancite's sole discretion to: (1) procure for Customer the right to continue use of the Software; or (2) modify or replace the Software so that it becomes non-infringing.

(d) The foregoing states Trancite's entire liability, and Customer's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trade-mark, trade secret or other intellectual property and property interest rights relating to the Software, or any part thereof or use thereof. The indemnity provisions of this Section 11 shall not apply to any Third Party Software.

#### 12. Limitation of Liability.

TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TRANCITE, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, FOR LOST REVENUE OR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR COST OF SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE) OR UNDER

ANY OTHER LEGAL THEORY, EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGE OR SUCH LOSS OR DAMAGE IS FORSEEABLE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

TRANCITE, ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS' ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE SOFTWARE, AND ANY OTHER PRODUCTS, MATERIALS OR SERVICES SUPPLIED BY TRANCITE IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED IN THE AGGREGATE AN AMOUNT THAT IS EQUAL TO THE LICENSE FEES PAID TO TRANCITE BY CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

13. Termination. This Agreement may be terminated as follows:

(a) By either party upon material breach of this Agreement by the other party that has not been cured within thirty (30) days' of written notice, or such longer period as may be specified in the notice.

(b) If Customer has failed to pay any of the Fees when due, then Trancite shall have the right to terminate this Agreement effective immediately upon written notice to that effect.

(c) Notwithstanding any other provision of this Agreement, if the Customer breaches (i) any term of Section 4, Section 7, or any other Intellectual Property Right of Trancite; or (ii) its confidentiality obligations under Section 9, then Trancite shall have the right to terminate this Agreement effective immediately upon written notice to Customer to that effect.

(d) Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party: (i) becomes insolvent; (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favourably to the subject party within ninety (90) days of commencement thereof; or (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.

14. Effects of Termination.

Upon termination of this Agreement for any reason, all license rights granted to Customer under Section 4 shall cease and Customer must destroy all copies of the Software not otherwise removed by Trancite and shall return or destroy all copies of any Confidential Information of Trancite and certify same to Trancite. All warranties related to the Software shall automatically terminate upon termination of this Agreement. All outstanding Fees owed by Customer to Trancite associated with such termination, including but not limited to License Fees yet to be invoiced for the balance of the then-current Term, shall be immediately due and payable.

15. General

a. Entire Agreement. This Agreement supersedes all prior representations, arrangements, negotiations, understandings and agreements between the parties, both written and oral, relating to the subject matter hereof and shall constitute the entire agreement between the parties hereto with respect to the matters covered herein. The terms of this Agreement may not be changed except by an amendment signed by the authorized representative of each party.

b. Equitable Relief. Customer acknowledges and agrees that it would be difficult to compute the monetary loss to Trancite arising from a breach or threatened breach of this Agreement and that, accordingly, Trancite will be entitled to specific performance, injunctive or other equitable relief in addition to, or

instead of monetary damages in the event of a breach or threatened breach of this Agreement by Customer.

- c. Governing Law. This Agreement shall be governed by the laws of the State of New York and the federal laws of the United States applicable therein. This Agreement excludes that body of law applicable to choice of law, the Uniform Commercial Code and the United Nations Convention on Contracts for the International Sale of Goods (UNCCISG), and any legislation implementing such Convention, if otherwise applicable. Trancite and Customer hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or any acts or omissions of Trancite in connection with this Agreement.
- d. Waiver. No waiver, modification, extension, addendum or any other change of any provision of this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought. The waiver by either party of a breach or a default of any provision of this Agreement shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to enforce any provision of this Agreement be construed as a waiver of any right, power or privilege by such party.
- e. Allocation of Risk. Customer acknowledges that the limited warranties, disclaimers and limitations of liability contained in this Agreement are fundamental elements of the basis of bargain between Customer and Trancite and set forth an allocation of risk reflected in the fees and payments due hereunder.
- f. Survival. The following sections and articles shall survive the termination or expiration of this Agreement: Sections 1, 3, 4(b), 4(c), 4(d), 5, 6, 7, 9, 10(b), 10(c), 10 (d), 12, 14, 15, and any other provisions which are required to ensure that the parties fully exercise their rights and obligations hereunder; unless and until waived expressly in writing by the party to whom they are the benefit.
- g. Mediation. Except where this Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. Such mediator shall be knowledgeable in software system agreements. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.
- h. Force Majeure. No default, delay or failure to perform on the part of Trancite shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events.
- i. Notice. Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered personally, mailed by prepaid registered post or sent by facsimile to the appropriate address or facsimile number set out below. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or transmitted (or on the next succeeding business day if delivered or received by facsimile after 5:00 p.m. local time on the date of

delivery or receipt, or if delivered or received by facsimile on a day other than a business day), if personally delivered or sent by facsimile or, if mailed, on the third business day following the date of mailing, and addressed,

in the case of Trancite, to:

Trancite Logic Systems  
8645 W. Franklin Rd., Suite 202  
Boise, ID. 83709

Fax No.: +1 (208) 322-6031

Attention: Customer Support

With a copy to:

N. HARRIS COMPUTER CORP.  
1 Antares Drive, Suite 400  
Ottawa, Ontario K2E 8C4  
Attention: General Counsel  
Telephone: 613-226-5511, Ext. 2149

And in the case of Customer, to the address provided to Trancite.

- j. Assignment. Customer may not assign any of its rights or duties under this Agreement without the prior written consent of Trancite.

The Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.

- k. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

- l. U.S. Government Restricted Rights. The Software (i) was developed exclusively at private expense; (ii) is a trade secret of Licensor or its licensors for the purposes of the Freedom of Information Act; (iii) is "commercial computer software" subject to limited utilization (Restricted Rights); and (iv) including all copies of the Software, in all respects is and shall remain proprietary to Trancite or its licensors. Use, duplication or disclosure by the U.S. Government or any person or entity acting on its behalf is subject to restrictions for software developed exclusively at private expense as set forth in: (i) for the DoD, the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and/or 252.227.7014 or any successor clause, and (ii) for all government agencies, the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19 or any successor clause. The U.S. Government shall refrain from changing or removing any insignia or lettering from the Software or from producing copies of the Software, and manuals (except one copy of the Software for backup purposes). Use of the Software shall be limited to the facility for which it was acquired. All other U.S. Government personnel using the Software are hereby on notice that use of the Software is subject to restrictions that are the same as, or similar to, those specified above. The manufacturer/owner is SmartSafety Software Inc.

**IMPORTANT NOTICE: THIS IS A LICENSE NOT A SALE. THIS SOFTWARE LICENSE AND SERVICE AGREEMENT IS A LEGAL CONTRACT BETWEEN SMARTSAFETY SOFTWARE, INC., YOU AND THE ORGANIZATION YOU REPRESENT. BY CLICKING THE “I ACCEPT” BUTTON CUSTOMER SHALL BE DEEMED BY TRANCITE TO HAVE IRREVOCABLY AGREED TO BE BOUND BY AND COMPLY WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, CUSTOMER AND ITS USERS WILL NOT BE ABLE TO INSTALL OR USE THE SOFTWARE. INSTALLATION OR USE OF THE SOFTWARE BY CUSTOMER OR ANY OF ITS USERS SHALL BE DEEMED BY TRANCITE TO BE CUSTOMER’S IRREVOCABLE CONSENT TO BE BOUND BY AND COMPLY WITH ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

**IF YOU ARE AN EMPLOYEE, CONTRACTOR, OR OTHERWISE INSTALLING OR USING THE SOFTWARE ON BEHALF OF AN ORGANIZATION OR ANY OTHER THIRD PARTY, YOU REPRESENT AND WARRANT TO TRANCITE THAT:**

- A. YOU ARE THE AGE OF MAJORITY IN YOUR JURISDICTION;**
- B. YOU HAVE ALL REQUISITE CAPACITY, RIGHT, POWER AND AUTHORITY TO ACCEPT THIS SOFTWARE SERVICE AGREEMENT TO ACCESS THE SERVICE ON BEHALF OF SUCH ENTITY; AND**
- C. SUCH ENTITY SHALL BE IRREVOCABLY BOUND BY AND SHALL COMPLY WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

## SCHEDULE "A" - MAINTENANCE AND SUPPORT SERVICES

### 1. SCOPE OF MAINTENANCE AND SUPPORT SERVICES

1.1 This Schedule "A" - Maintenance and Support Services describes the policies and procedures under which Trancite provides support and maintenance services for its Software. Maintenance and Support Services may be withheld by Trancite in the event Customer fails to make payment of Fees within thirty (30) days of the due date.

1.2 MAINTENANCE TERM. Maintenance and Support Services shall be provided for one full year commencing on the Effective Date at no additional charge. Thereafter, Trancite will continue to provide Maintenance and Support Services to Customer in accordance with the terms of this Schedule "A" for each year that Customer pays to Trancite in advance its then current Maintenance and Support Fees.

### 1.3 MAINTENANCE AND SUPPORT SERVICES.

1.3.1 SOFTWARE MAINTENANCE. Trancite will use commercially reasonable efforts to correct any reproducible Errors that Customer reports to Trancite in the most current Version and the Version immediately preceding the most current Version of the Software. In this Agreement, "Version" shall mean the most current commercially available form of the Software. "Error" is defined as a material failure of the Software to conform to the Specifications as then in effect for the Software. Trancite shall not be obligated to perform Maintenance and Support Services for any defects resulting from (i) Customer's modification of the Software or use thereof in combination with software not provided by Trancite; (ii) improper or unauthorized use of the Software; (iii) use of the Software with a hardware or software configuration that does not comply with Trancite's configuration standards for that Version of the Software; or, (iv) external causes including, but not limited to, power failures or electric surges; provided however that, if Trancite chooses to perform Maintenance and Support Services for defects resulting from the items listed above, such Maintenance and Support Services shall be billed to Customer at Trancite's then-current time and materials rate.

1.3.2 VERSIONS. Trancite may from time to time issue new Versions and documentation if any, of the Software as part of this maintenance agreement. Such Version to include bug fixes, service packs, improvements and/or modifications to the Software, which are marketed as standard features or functionality of the Software and not marketed as new products, options or additional modules. Customer shall promptly install such Versions as they become available to Customer. Trancite shall support the current Version and the immediately prior Version of the Software. Trancite shall provide Customer with a minimum of six (6) months prior notification of the retirement of any versions which are older than the current or immediately prior Versions of the Software. Trancite shall make available telephone and remote assistance to Customer during the installation of a new Version during Trancite's normal business hours. After hours remote assistance shall be charged at Trancite's then current published after hour support rates. Customer's request for on-site assistance for the installation of a new Version shall be chargeable at Trancite's then current time and materials rate.

1.3.3 ENVIRONMENTS. Trancite shall support the Software in the production environment and test environment only.

1.3.4 TELEPHONE AND WEB-BASED SUPPORT. Trancite will provide telephone and electronic technical support for the Software, during Trancite's regular business hours Monday to Friday from 7:00 a.m. to 4:00 p.m. Mountain Time excluding holidays, to Customer's designated and trained personnel. In addition, Trancite will provide emergency support to any authorized user of the Software for the purpose of error recovery and to assist in determining the cause of any malfunction. Notwithstanding the foregoing, Customer shall ensure that all authorized users seek assistance from Customer's designated

support representatives prior to contacting Trancite. Customer shall internally resolve all routine questions about the Software (e.g., questions regarding user passwords; logging on; network problems) prior to contacting Trancite. If Trancite reasonably determines that Customer's users are repeatedly failing to observe this protocol, Trancite reserves the right, after providing Customer with written Notice of such determination and providing Customer with a reasonable opportunity to rectify Customer's failure to follow protocol, to charge Customer for such calls at Trancite's then-current rates. Where applicable, Customer's shall be given access to the Trancite user website at [www.trancite.com](http://www.trancite.com) <<http://www.trancite.com>> (or as otherwise updated) for help desk access, technical information, frequently asked questions, and application requests.

1.3.5 **SYSTEM MONITORING.** Trancite may periodically perform remote diagnostic and audit services to monitor the performance of the Software, to maintain diagnostic files, to monitor use of the Software and to control levels of automatic diagnostic reporting.

1.4 **RESPONSE AND RESOLUTION TIME FRAMES.** Customer shall report all incidences of Errors (in this Agreement referred to as "Incident Reports") to Trancite in a timely manner using the electronic or telephone support procedures described in Section 1.3.4 above. Customer acknowledges that Trancite ability to resolve is dependent upon the availability of Customers staff to support the resolution process as well as in providing remote access to Customer's systems. Trancite will endeavor to respond to all requests within 1 hour during Trancite regular business hours (defined as Monday to Friday excluding statutory holidays from 7:00 am to 4:00 p.m. Mountain Time). Trancite's goal is to resolve Errors or provide a suggested workaround within 24-96 hours. If Trancite's Support staff are unable to do so, the issue will be escalated to Trancite's development team and Trancite will notify Customer as soon as a fix is available in an Update or a workaround is available. Please note that any suggestions for enhancements to the Software or other Trancite products and services that you submit will become the property of Trancite. Trancite may use this information for any Trancite business purposes, without restriction, including for product support and development.

**2. EXCLUDED SERVICES.** Maintenance and Support Services shall not include the following:

2.1 **HARDWARE MAINTENANCE.** Trancite shall not be responsible for maintaining and purchasing any hardware used in conjunction with the Software.

2.2 **THIRD-PARTY SOFTWARE SUPPORT.** Trancite shall not be required to provide support for any software, including without limitation any Customer written applications, pre-release programs, non-current versions of the Software, third party software or software provided by hardware manufacturers.

2.3 **TRAINING.** Trancite shall not be required to provide any training as a part of Maintenance and Support Services.

2.4 **ROUTINE PROCEDURES.** Trancite shall not be required to perform any routine operational procedures such as database backups of Customer's network server, the generation of reports, the servicing of printers or the resetting of hardware.

2.5 **NETWORK MANAGEMENT SERVICES.** Trancite shall not be required to perform network operating system installation, maintenance, management, or any related troubleshooting.

**3. ON-SITE SERVICES.** On-site services are not included as part of Maintenance and Support Services unless it is determined by Trancite, in its sole discretion, that on-site services are required to resolve an Error.

If Customer requests on-site services, Trancite will evaluate and respond to Customers request within ten (10) business days. If Trancite agrees to perform the requested on-site services, Customer shall pay for such services at Trancite's then-current time and material rates plus out of pocket expenses.

**4. ACCESS**

- 4.1 **REMOTE ACCESS.** Maintenance and Support Services are contingent upon Trancite's ability to obtain remote access to the Software. Trancite utilizes Go-To-Assist® to obtain remote access. Trancite will provide Go-To-Assist® and Customer agrees to use Go-To-Assist® to provide remote access for Trancite to the Software. Customer's failure to provide remote access shall immediately relieve Trancite of any responsibility to provide Maintenance and Support Services, other than telephone support, until access is available. Customer shall continuously provide access.
- 4.2 **PHYSICAL ACCESS.** Customer shall provide access rights to Trancite including full rights to all Software, resources and adequate rights to access the server running the Software. Subject to Customer's standard and reasonable security procedures, Customer shall provide Trancite and its agents physical access to all equipment and software associated with the Software throughout each purchased term of Maintenance and Support Services.
5. **TEST ENVIRONMENT.** Customer acknowledges and agrees that if Customer requests to migrate the version of the Software running in its test environment to Customer's production environment, such migration may result in the temporary unavailability of the Software in Customer's production environment.



