

NEBRASKA DEPARTMENT OF TRANSPORTATION

PAGES 1 of 20	CONTRACT NUMBER 104694 O4/QH2309 Supp 1
CONTRACTOR #/AB # 9D60 / 1358928	BUYER Brandy Henke
CONTRACTOR NAME AND ADDRESS: THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK OFFICE FOR INNOVATION DEVELOPMENT & COMMERCIALIZATION, ETEC 170 1400 WASHINGTON AVENUE ALBANY NY 12222	
VENDOR CONTACT INFORMATION	DESCRIPTION OF SERVICE
Name: Gerard Miller Phone: 518-442-3270 E-mail: jmiller@itsmr.org	Drug Recognition Expert Data Entry and Management System Software and Services

SERVICE CONTRACT AWARD

Nebraska Department of Transportation
Operations Division
PO Box 94759
Lincoln, NE 68509-4759

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE SERVICES LISTED FOR THE PERIOD:

July 1, 2024 THROUGH June 30, 2025

Renewals

This contract may be renewed for one (1) additional one (1) year period when mutually agreeable to the Contractor and the Nebraska Department of Transportation (NDOT).

Extension Period

The State reserves the right and sole discretion to extend this contract beyond the expiration date.

Non-Exclusivity

This contract is not an exclusive contract to furnish the services shown below and does not preclude the purchase of similar services from other sources.

Description of Services

Contractor shall be responsible for providing DRE Data Entry and Management System Software and Services.

Incorporation

This contract and the following documents constitute the entirety of the contract:

1. The executed contract;
2. Attachments/Exhibits; and,
3. Amendments/Addendums to the contract.

Order of Precedence

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) the executed contract, 3) Attachments/Exhibits. These documents constitute the entirety of the contract. Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of the contract interpretation as established in the State of Nebraska.

Scope of Work

Contractor shall provide the NDOT Drug Recognition Expert (DRE) Data Entry and Management System Software and Services including but not limited to software licenses, configuration for mobile & web applications & the State's DRE database, security, configured query tool and reports, training, documentation, maintenance & support services, read-only access for non-DRE users, transmission of data to national database and as otherwise expressed herein.

CONTRACT LINE ITEMS:

	Description	Annual Cost
1	<p>Year 2 Drug Recognition Expert Data Entry and Management System Software and Services <i>Includes but not limited to software licenses, configuration for mobile & web applications & the State's DRE database, security, configured query tool and reports, training, documentation, maintenance & support services, read-only access for non-DRE users, transmission of data to national database.</i></p>	\$32,500.00
2	<p>Year 3 Drug Recognition Expert Data Entry and Management System Software and Services <i>Includes but not limited to software licenses, configuration for mobile & web applications & the State's DRE database, security, configured query tool and reports, training, documentation, maintenance & support services, read-only access for non-DRE users, transmission of data to national database.</i></p>	\$32,500.00

Estimated contract value: \$65,000.00

The parties have executed this contract as of the date of execution by both parties below:

State of Nebraska Dept. of Transportation

By: DocuSigned by:
William Kovarik
FC20C82801E047C...
 Name: william kovarik
 Title: Nebraska Highway Safety Administrator
 Date: 06-17-2024

Contractor: The Research Foundation for the State University of New York

By: DocuSigned by:
Peter Gonczlik
8BEC08E23EA14F8...
 Name: Peter Gonczlik
 Title: Director, OIDC
 Date: 06-17-2024

NEBRASKA DEPARTMENT OF TRANSPORTATION

PAGES 1 of 18		CONTRACT NUMBER 104694 O4/QH2309	
CONTRACTOR #/AB # 9D60 / 1358928		BUYER Brandy Henke	
CONTRACTOR NAME AND ADDRESS: THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK OFFICE FOR INNOVATION DEVELOPMENT & COMMERCIALIZATION (OIDC), ETEC 170 1400 WASHINGTON AVENUE ALBANY NY 12222			
VENDOR CONTACT INFORMATION		DESCRIPTION OF SERVICE	
Name: Gerard Miller Phone: 518-442-3270 E-mail: jmiller@itsmr.org		Drug Recognition Expert Data Entry and Management System Software and Services	

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Nebraska Department of Transportation
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PO Box 94759
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AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE SERVICES LISTED FOR THE PERIOD:

July 1, 2023 THROUGH June 30, 2024

Renewals

This contract may be renewed for two (2) additional one (1) year periods when mutually agreeable to the Contractor and the Nebraska Department of Transportation (NDOT).

Extension Period

The State reserves the right and sole discretion to extend this contract beyond the expiration date.

Non-Exclusivity

This contract is not an exclusive contract to furnish the services shown below and does not preclude the purchase of similar services from other sources.

Description of Services

Contractor shall be responsible for providing DRE Data Entry and Management System Software and Services.

Incorporation

This contract and the following documents constitute the entirety of the contract:

1. The executed contract and executed, non-exclusive License Agreement, beginning on page 3
2. Attachments/Exhibits; and
3. Amendments/Addendums to the contract.

Order of Precedence

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) the executed contract and License Agreement, 3) Attachments/Exhibits. These documents constitute the entirety of the contract.

Scope of Work

Contractor shall provide the NDOT Drug Recognition Expert (DRE) Data Entry and Management System Software and Services including but not limited to software licenses, configuration for mobile & web applications & the State's DRE database, security, configured query tool and reports, training, documentation, maintenance & support services, read-only access for non-DRE users, transmission of data to national database and as otherwise expressed herein.

CONTRACT LINE ITEMS:

	Description	Annual Cost
1	Year 1 Drug Recognition Expert Data Entry and Management System Software and Services <i>Includes but not limited to software licenses, configuration for mobile & web applications & the State's DRE database, security, configured query tool and reports, training, documentation, maintenance & support services, read-only access for non-DRE users, transmission of data to national database.</i>	\$37,500.00
2	Year 2 Drug Recognition Expert Data Entry and Management System Software and Services <i>Includes but not limited to software licenses, configuration for mobile & web applications & the State's DRE database, security, configured query tool and reports, training, documentation, maintenance & support services, read-only access for non-DRE users, transmission of data to national database.</i>	\$32,500.00
3	Year 3 Drug Recognition Expert Data Entry and Management System Software and Services <i>Includes but not limited to software licenses, configuration for mobile & web applications & the State's DRE database, security, configured query tool and reports, training, documentation, maintenance & support services, read-only access for non-DRE users, transmission of data to national database.</i>	\$32,500.00

Estimated contract value: \$102,500.00

The parties have executed this contract as of the date of execution by both parties below:

State of Nebraska Dept. of Transportation

By: William J. Kovarik

Name: William J. Kovarik

Title: NDOT Highway Safety Administrator

Date: 6/29/23

**Contractor: The Research Foundation for the
State University of New York**

By: Peter C. Gonczlik

Name: Peter C. Gonczlik

Title: Director, OICD

Date: June 28, 2023



Office for Innovation Development and Commercialization
University at Albany
1400 Washington Avenue
ETEC 170
Albany, New York
12222
USA

518/442-3270
Fax: 518/442-3350

www.albany.edu

Non-exclusive License Agreement
between
The Research Foundation For The State University of New York
and
NDOT Highway Safety Office

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This non-exclusive license agreement (hereinafter, "Agreement") is made and is effective as of the date of the last signature (hereinafter, "Effective Date") by and between **THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK**, a non-profit educational corporation, organized and existing under the laws of the State of New York, having an office at University at Albany, Office for Innovation Development and Commercialization, ETEC 170, 1400 Washington Avenue, Albany, New York 12222 (hereinafter, "FOUNDATION"), on behalf of the University at Albany, Institute for Traffic Safety Management and Research; and **NDOT Highway Safety Office**, having a primary address at **5001 S 14th Street, Lincoln, NE 68512** (hereinafter, "LICENSEE"). FOUNDATION and LICENSEE may sometimes be referred to hereinafter as a "Party" or collectively as "Parties."

RECITALS

WHEREAS FOUNDATION owns certain intellectual property rights in and to the Technology, as defined in this Agreement; and

WHEREAS FOUNDATION desires to have the Technology used to the fullest extent for the benefit of the public; and

WHEREAS LICENSEE desires to obtain rights to use the Technology, as provided herein.

NOW, THEREFORE, subject to the term and conditions contained herein, and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

All capitalized terms used in this Agreement will have the meanings stated below or defined elsewhere in the Agreement.

- 1.1. **"Indemnified Parties"** has the meaning assigned and ascribed in Subsection 5.1(a).
- 1.2. **"License Fee"** has the meaning assigned and ascribed in Section 3.1.
- 1.3. **"License Renewal Fee"** has the meaning assigned and ascribed in Section 3.2.
- 1.4. **"Payments Due"** means, individually or collectively, any Upfront Fees, License Fees, License Renewal Fees, Surcharges, late payment fees, or other amounts due to FOUNDATION under this Agreement.
- 1.5. **"Surcharge"** has the meaning assigned and ascribed in Section 3.2.
- 1.6. **"Technology"** means the Drug Recognition Expert Data Entry and Management System for Mobile and Web-Based Applications ("DRE Data System"). DRE Data System is a comprehensive data collection and reporting tool designed to improve the management and monitoring of a state's DRE program, more fully described in Exhibit A. The Technology is referenced internally as FOUNDATION Docket Number R2-15-22.
- 1.7. **"Term"** means the period of time beginning on the Effective Date and extending for one (1) year, plus a thirty (30)-day grace period; provided, however, that the Term will be renewed for up to two (2) additional years upon payment of the annual License Renewal Fee as provided in Section 3.2.

2. GRANT OF RIGHTS AND RETAINED RIGHTS

- 2.1. **Non-Exclusive License.** Subject to the terms of this Agreement, including without limitation Section 2.2, FOUNDATION grants to LICENSEE a non-exclusive license to use the Technology.
- 2.2. **Retained Rights.**
FOUNDATION owns all right, title and interest in and to the Technology and reserves, without limitation, the rights to:
 - (a) Use the Technology for academic, educational, and research purposes, including, without limitation, sponsored research, and collaborations;
 - (b) Publish or otherwise disseminate any information about the Technology at any time; and
 - (c) At FOUNDATION's sole discretion, grant to other entities non-exclusive licenses to use the Technology.

2.3. **Scope of License.**

FOUNDATION shall provide the following services in connection with the licensed Technology during the Term of this Agreement:

(a) Basic Service:

- (i) Full access to the DRE Data System for up to **100** users in the first year, increasing to up to **110** users in the second year, and up **to tbd** users in the third year.
- (ii) The services specified in Exhibit B.

(b) Additional Services: Any additional services may be provided under a separate funded sponsorship agreement to be negotiated between the Parties.

3. CONSIDERATION AND PAYMENT TERMS

The Parties hereto understand that the fees payable by LICENSEE to FOUNDATION under this Agreement are partial consideration for the license granted under this Agreement. LICENSEE shall pay to FOUNDATION:

- 3.1. **License Fee.** Within thirty (30) days of the Effective Date, LICENSEE shall pay to FOUNDATION a License Fee payment of **THIRTY-SEVEN THOUSAND FIVE HUNDRED U.S. DOLLARS (US\$ \$37,500)**, of which a pro-rated amount is Refundable in accordance with the terms of Subsection 3.6.
- 3.2. **License Renewal Fee.** The Term of this Agreement will be extended for up to two (2) additional years if, on or before the respective anniversary of the Effective Date, LICENSEE pays to FOUNDATION a License Renewal Fee as follows: for **year two: THIRTY-TWO THOUSAND FIVE HUNDRED U.S. DOLLARS (US\$ 32,500)**, of which a pro-rated amount is Refundable in accordance with the terms of Subsection 3.6 ; for **year three: THIRTY-TWO THOUSAND FIVE HUNDRED U.S. DOLLARS (US\$ 32,500)**, of which a pro-rated amount is Refundable in accordance with the terms of Subsection 3.6. The LICENSEE is not obligated to continue the agreement in year two and year three. If renewal is not desired, LICENSEE must notify FOUNDATION 30 days prior to the renewal date in accordance with the terms of Subsection 7.3. If the License Renewal Fee is not paid on or before the respective anniversary of the Effective Date, a Surcharge of 0.10% per day will be added to the License Renewal Fee during the thirty (30)-day grace period. If the License Renewal Fee (plus Surcharge and late fee (see Section 3.6)) is not paid within the thirty (30)-day grace period, this Agreement will be terminated immediately, notwithstanding the provisions of Section 6.1.
- 3.3. **Payment Terms.** All dollar amounts for Payments Due referenced herein will refer to U.S. Dollars. Payments with designated payment dates are due and payable on or before those dates.
- 3.4. **Payment Address.** All payments for Payments Due shall be made payable to "The Research Foundation for The State University of New York" and shall be sent to the following address:

Office for Innovation Development and Commercialization
University at Albany, SUNY
ETEC 170
1400 Washington Avenue
Albany, NY 12222
Attn: Peter C. Gonczlik, Director



- 3.5. **Late Payment.** In the event that any Payments Due are not timely received by FOUNDATION when due, LICENSEE shall pay to FOUNDATION, in addition to such Payments Due, interest on such Payments Due computed using the lesser rate of: (i) one percent (1%) per month; or (ii) the maximum rate allowable under the applicable law. Interest will be calculated from the date payment was due until actually received by FOUNDATION, inclusive.
- 3.6. **Refund Policy.** Payments made by LICENSEE are nonrefundable except in the event of FOUNDATION's breach of this Agreement as specifically set forth in this Section 3.6. In the event that FOUNDATION is unable to provide an operable DRE Data System to LICENSEE after diligent efforts, or if access to the DRE Data System is unavailable to LICENSEE for a continuous period of thirty (30) days, FOUNDATION will terminate this Agreement and issue to LICENSEE a pro-rata refund of the unused Refundable portion of the respective License Fee or License Renewal Fee.

4. LICENSEE OBLIGATIONS

LICENSEE agrees to the following terms and conditions:

- 4.1. LICENSEE is responsible for purchasing hardware, as specified in Exhibit C, within forty-five (45) days after the Effective Date.
- 4.2. LICENSEE will provide to FOUNDATION, within thirty (30) days after the Effective Date, the information and data required in order for FOUNDATION to configure the DRE Data System for LICENSEE's jurisdiction, as specified in Exhibit C.
- 4.3. LICENSEE is responsible for maintenance and security of its hardware and for the security of data residing on its hardware, as specified in Exhibit C. To ensure the security of the DRE Data System, FOUNDATION has the authority to deny access to any hardware that is not in compliance with these requirements.
- 4.4. LICENSEE will use the Technology only in its legal jurisdiction to support its drug recognition expert program to identify drug impaired individuals. No other use of the Technology is permitted under this Agreement.
- 4.5. LICENSEE shall not share access to the DRE Data System with any other agency, organization, or entity.
- 4.6. LICENSEE shall not present nor demonstrate the DRE Data System to any third-party. LICENSEE shall refer to FOUNDATION any third-party expressing interest in the DRE Data System.
- 4.7. LICENSEE shall not use the DRE Data System for any commercial or money-making purpose.
- 4.8. LICENSEE shall not modify or create any derivative of the DRE Data System.
- 4.9. If LICENSEE should desire any modification of the DRE Data System, LICENSEE shall contact FOUNDATION. In its sole discretion, FOUNDATION will determine if the desired modification can be made in a manner that is consistent with the existing system. Implementing the desired modification may necessitate a separate funded sponsorship agreement to be negotiated between the Parties.

5. DATA

For the purposes of this Article 5, "Data" means the specific information that is entered into the DRE Data System by LICENSEE's authorized users, which includes information about the LICENSEE's drug recognition experts, information about specific drivers, information about specific vehicles, and other information about specific traffic events recorded in the DRE Data System. As between LICENSEE and FOUNDATION, LICENSEE owns said Data. Any requests for Data received by FOUNDATION will be referred to LICENSEE. LICENSEE grants to FOUNDATION the right to use aggregated Data, without any personal identifiers, for research purposes only, including the right to publish the results of such research.

6. TERMINATION

6.1. Termination for LICENSEE Breach.

- (a) LICENSEE acknowledges and agrees that LICENSEE's obligations under the following provisions are material terms of this Agreement, and LICENSEE's failure to meet its obligations under these provisions

will be treated as a material breach of this Agreement (“Material Obligations”): (i) obligations under Article 3 to make Payments Due to FOUNDATION on the schedule set forth herein; (ii) obligations under Article 4; and (iii) obligations under Article 6.

(b) If LICENSEE should: (i) fail to perform any covenant, condition, or undertaking of the Material Obligations of this Agreement; or (ii) materially breach any other provision of this Agreement; then FOUNDATION may give written notice of such default to LICENSEE. If LICENSEE should fail to cure such default within thirty (30) days of notice of such default, then this Agreement may, at FOUNDATION’s option, be terminated by written notice to LICENSEE.

6.2. **Automatic Termination.** If LICENSEE: (i) ceases to attempt to carry on its business with respect to the rights granted in this Agreement; (ii) has filed a bankruptcy action; (iii) becomes insolvent; or (iv) makes an assignment for the benefit of creditors; then this Agreement will immediately terminate without any further action by FOUNDATION.

6.3. **LICENSEE’s Right to Terminate.** LICENSEE may notify FOUNDATION of its desire to terminate this Agreement at any time by giving FOUNDATION thirty (30) days prior written notice.

6.4. **Accrued Obligations.** Except as provided in Section 3.6, termination of this Agreement will not relieve LICENSEE, including its affiliates, and FOUNDATION of any obligation or liability accrued hereunder prior to such termination, or rescind or give rise to any right to rescind any payments made or other consideration given to FOUNDATION hereunder prior to the time such termination becomes effective. Such termination will not affect in any manner any rights of FOUNDATION arising under this Agreement prior to the date of such termination. LICENSEE shall pay all attorneys’ fees and costs incurred by FOUNDATION in enforcing any obligation of LICENSEE or accrued right of FOUNDATION.

6.5. **Survival.** The provisions of Article 1 (Definitions), Article 5 (Data), Article 6 (Indemnification and Insurance), Section 7.4 (Accrued Obligations), Section 7.5 (Survival), Article 8 (Warranty and Liability), Article 10 (Non-Use of Names), Article 12 (Confidentiality), and Article 13 (Miscellaneous) will survive expiration or termination of this Agreement.

7. WARRANTY AND LIABILITY

7.1. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, FOUNDATION MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND VALIDITY OF INTELLECTUAL PROPERTY RIGHTS. ALL MATERIALS PROVIDED BY FOUNDATION UNDER THIS AGREEMENT ARE PROVIDED “AS-IS”.

7.2. NO WARRANTY OR REPRESENTATION IS MADE THAT THE TECHNOLOGY WILL BE FREE FROM INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

7.3. NOTHING IN THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, OBLIGATES FOUNDATION EITHER TO BRING OR TO PROSECUTE ACTIONS OR SUITS AGAINST THIRD PARTIES FOR INFRINGEMENT OR ENFORCEMENT OR TO FURNISH ANY INTELLECTUAL PROPERTY, INFORMATION OR MATERIALS NOT PROVIDED IN THE LICENSED SUBJECT MATTER.

7.4. THIS AGREEMENT DOES NOT CONFER BY IMPLICATION, ESTOPPEL, OR OTHERWISE ANY LICENSE OR RIGHTS TO ANY OTHER FOUNDATION PROPERTY OTHER THAN THOSE RIGHTS EXPRESSLY STATED HEREIN.

8. ASSIGNMENT

8.1. This Agreement and the license granted hereunder may not be assigned or transferred by LICENSEE except in connection with the sale or other non-bankruptcy transfer of LICENSEE’s business to which the license granted hereunder relates. LICENSEE shall give FOUNDATION at least thirty (30) days prior written notice of any assignment or transfer of LICENSEE’s business to which the license granted hereunder relates and shall provide FOUNDATION with documentation executed by the assignee or transferee that confirms their agreement to be bound by the terms and provisions of this Agreement.

9. NON-USE OF NAMES

- 9.1. LICENSEE agrees that it will not use the name of FOUNDATION or State University of New York, or University at Albany, or any adaptation thereof, including trademarks, logos, and symbols associated with FOUNDATION, "State University of New York", and "University at Albany" (collectively "SUNY"), or the names of employees or students at or with SUNY in any advertising, promotional, or sales literature, without first obtaining FOUNDATION's prior written consent, or in the case of the names of such employees or students, the prior written consent of the individuals, except that LICENSEE may state that it is a licensee of the FOUNDATION.

10. COMPLIANCE WITH LAWS

- 10.1. **General Compliance.** LICENSEE and its affiliates shall comply with all applicable local, county, state, federal or foreign laws, rules, and regulations relevant to its use of the Technology.
- 10.2. **Export Control Laws.** LICENSEE and its affiliates shall comply with all U.S. laws and regulations controlling the export of certain commodities and technical data, including, without limitation, all export control regulations of the U.S. Department of Commerce and the International Traffic in Arms Regulations of the U.S. Department of State, subject to all exemptions and exclusions thereto. Among other things, these laws and regulations prohibit the export, or require a license for the export, of certain types of commodities and technical data to specified countries.
- (a) **LICENSEE Export.** Unless prior, written authorization is obtained from FOUNDATION, and in full compliance with all U.S. laws and regulations, LICENSEE shall not knowingly export, directly or indirectly, to any restricted country, any technical data received from FOUNDATION under this Agreement. LICENSEE is solely responsible for obtaining all licenses, permits, or authorizations as required from time to time by the U.S. and any other government for any such export or re-export. FOUNDATION makes no representation that an export license is or is not required, nor does FOUNDATION make a representation that, if required, a license will be issued by the U.S. Department of Commerce or other appropriate governmental entity.
- (b) **LICENSEE Disclosure to Foundation.** LICENSEE shall not disclose or transfer to FOUNDATION any export-controlled technology or technical data identified on any U.S. export control list, including, but not limited to, the Commerce Control List (CCL) at 15 C.F.R. § 774 and the U.S. Munitions List (USML) at 22 C.F.R. § 121. In the event LICENSEE intends to provide FOUNDATION with export-controlled information, LICENSEE shall inform FOUNDATION, in writing, thirty (30) days prior to the release of export-controlled technology or technical data. LICENSEE agrees not to provide any export-controlled information to FOUNDATION without the written authorization of FOUNDATION.

11. CONFIDENTIALITY

- 11.1. **Confidential Information.** As used in this Agreement, "Confidential Information" means confidential or proprietary information exchanged between the Parties hereunder and relating to the Technology or the performance of the obligations set forth herein, including without limitation: (i) written or other tangible information marked as "confidential" or "proprietary"; (ii) orally disclosed information that is identified as confidential and summarized in a notice delivered within thirty (30) days of the disclosure; and (iii) information that should reasonably be considered confidential under the context in which the disclosure is made.
- 11.2. **Confidentiality Obligations.** Each Party agrees to: (i) maintain the other Party's Confidential Information with the same level of care as it does its own valuable and sensitive information of a similar nature and, in any event, with not less than a reasonable degree of care; and (ii) not disclose the other Party's Confidential Information to any other party, without the prior written consent of the disclosing Party. Each Party agrees to limit its use of the other Party's Confidential Information to the purposes permitted by this Agreement. The obligation of confidentiality under this Section 12.2 shall continue for five (5) years after the expiration or termination of this Agreement.
- 11.3. **Exceptions.** The obligations of either Party under Section 12.2 will not apply to information that the receiving Party can demonstrate: (i) was in its possession at the time of disclosure and without restriction

as to confidentiality; (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by the receiving Party; (iii) has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by the receiving Party unless the receiving Party should reasonably conclude that the information is Confidential Information; (iv) is independently developed by the receiving Party without regard to the Confidential Information of the disclosing Party; or (v) is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority; provided, however, the receiving Party shall: (a) give disclosing Party, to the extent possible, advance notice prior to disclosure so the disclosing Party may contest the disclosure or seek a protective order; and (b) limit the disclosure to the minimum Confidential Information that is legally required to be disclosed.

- 11.4. **Injunctive Relief.** The Parties agree that the breach, or threatened breach, of any of the confidentiality provisions of this Article 11 may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, LICENSEE or FOUNDATION will be entitled to injunctive relief to prevent the other Party from commencing or continuing any action constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this Section will limit any other remedy available to either Party.

12. MISCELLANEOUS

- 12.1. **Entire Agreement.** This Agreement, including any exhibits or attachments hereto, embodies the entire agreement and understanding between the Parties to this Agreement and supersedes all prior agreements and understandings relating to the subject matter of this Agreement. None of the terms or provisions of this Agreement may be altered, modified, or amended except by the execution of a written instrument signed by the Parties hereto.
- 12.2. **Severability.** The provisions of this Agreement are severable, and in the event that any provisions of this Agreement are determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability will not in any way affect the validity or enforceability of the remaining provisions hereof.
- 12.3. **Construction.** Both Parties contributed equally to the drafting of all parts of this Agreement and agree to all of the terms herein. Both Parties reviewed this Agreement thoroughly prior to execution.
- 12.4. **Notices.** All notices, requests, consents, and other communications to be provided under this Agreement must be in writing and will be delivered in person or sent overnight delivery by a nationally recognized courier or by certified or registered mail, return receipt requested, to the addresses provided below, and will be deemed to have been given when hand delivered, one (1) day after mailing when mailed by overnight courier, or five (5) days after mailing by registered or certified mail:

If to LICENSEE, to:

NDOT Highway Safety Office – William J. Kovarik
PO Box 94612
Lincoln, NE 68509

If to FOUNDATION, to:

Office for Innovation Development and Commercialization (OIDC)
University at Albany, SUNY
ETEC 170
1400 Washington Avenue
Albany, NY 12222
Attn: Peter C. Gonczlik, Director

- 12.5. **Waiver.** No waiver by either Party hereto of any breach or default of any of the covenants or agreements herein set forth will be deemed a waiver as to any subsequent or similar breach or default.

- 12.6. **Independent Parties.** This Agreement will not be construed as creating a relationship of employment, agency, partnership, joint venture, or any other form of legal association between LICENSEE and FOUNDATION. The relationship between the Parties will never be construed to be that of employer-employee. Neither Party has any power to bind the other Party or to assume or to create any obligation or responsibility on behalf of the other Party or in the other Party's name.
- 12.7. **Force Majeure.** Neither Party will be liable for failure or delay of fulfillment of all or part of this Agreement, directly or indirectly owing to acts of nature, governmental orders or restriction, war, warlike conditions, revolution, riot, looting, strike, lockout, fire, flood, or any other cause or circumstances beyond the Party's control.
- 12.8. **Headings.** The headings of the articles and sections are inserted for convenience of reference only and are not intended to influence the interpretation of this Agreement.
- 12.9. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Further, either Party's signature to a copy of this Agreement will be deemed a signature to, and may be attached to, any other identical copy of the Agreement. Facsimile or electronic signatures will be as binding and effective as original signatures.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

***Nebraska Department
of Transportation Highway Safety Office***

***The Research Foundation for
The State University of New York***

BY: _____

BY: _____

Name: William J. Kovarik
Title: NE Highway Safety Administrator

Name: Peter C. Gonczlik
Title: Director, OIDC

Date: _____

Date: _____

EXHIBIT A

DESCRIPTION OF DRE DATA ENTRY AND MANAGEMENT SYSTEM FOR MOBILE AND WEB-BASED APPLICATIONS

INTRODUCTION

Because of the increasing use of drugs, both prescription drugs and illegal drugs, the issue of drugs and driving is of great interest to the nation's traffic safety community. Currently, primarily under the leadership of a state's highway safety office, states offer two important training programs, the Advanced Roadside Impaired Driving Enforcement (A.R.I.D.E.) and Drug Recognition Expert (DRE) programs, to the enforcement community to help them better identify drug impaired drivers and remove them from the state's roadways. Each of these programs has been in existence for several years, with the DRE program providing more extensive education and training to police officers than A.R.I.D.E. in the detection and identification of drivers who are operating a motor vehicle under the influence of drugs.

Established more than three decades ago, the DRE Program, officially known as the Drug Evaluation and Classification (DEC) Program, was designed to enhance the arrest and conviction of drivers impaired by drugs. Currently, all fifty states participate in the DEC Program and there are more than 9,600 DREs across the country. Over the years, the training and data collection processes associated with the program have been standardized to include a uniform, paper data collection form as well as a mechanism for states to send their data to a national database via the Internet.

To improve the data collection process and obtain more comprehensive data for analysis purposes, the University at Albany's Institute for Traffic Safety Management and Research (ITSMR) has developed a tablet application and database for the collection and maintenance of DRE data. ITSMR has designed and implemented both a tablet and a web-based application for police officers to use in the field to capture and report data from the drug influence evaluations they conduct.

OVERVIEW OF DRE DATA ENTRY AND MANAGEMENT SYSTEM

The DRE Data Entry and Management System (DRE Data System) developed by ITSMR is a comprehensive data collection and reporting tool designed to improve the management and monitoring of a state's DRE program. It serves as a statewide data tracking system for the DRE program, providing in-depth information and data analyses in the area of drugged driving. The DRE Data System has five primary components: 1) mobile and web applications for data collection; 2) a database to capture both the evaluation and toxicology data; 3) a reporting and query tool; 4) an editor tool for the DRE to use to complete the narrative report; and 5) a review feature that allows a paperless review of evaluations and narratives by an instructor, coordinator, or supervisor.

DRE Mobile and Web Applications

The mobile application is the primary tool for data collection. It allows the DREs to capture data in the field as they conduct their evaluation of the subject. The application has been designed to capture all of the data that has been traditionally collected on the Drug Influence Evaluation (DIE) paper form. It also captures additional information in a number of areas, including: specific data related to crash involvement, if appropriate; the subject's driver license; whether the subject has a medical marijuana card; and how the DRE's time to conduct the evaluation is being funded. The application is also designed to collect information from the toxicology reports that are returned by the state's forensic labs. All of the evaluation and toxicology information goes into a database that is maintained by ITSMR.

Up until the DRE sends data to the database, any of the evaluation data fields can be changed by the DRE. The data collected on the tablet remains on the tablet even after the data has been sent to the database. Based on the information entered into the system by the DRE, the system can generate both a preview and final pdf of the DIE facesheet.

The mobile application is platform independent, making it compatible on tablet devices with iOS, Windows, and Android platforms. To complement the mobile application, a web-based application is also available. Although the web application can be used to capture data in the field as DREs conduct their evaluation of the subject, its primary use is to provide an access point by which the DREs can print their PDFs of the preview and final evaluations.

DRE Database

The DRE database captures all of the data fields contained in the mobile and web applications, including the data from the toxicology reports as well as the data from the evaluation. As a result, any of the data fields captured on the applications can be queried through the database. In addition to being used to conduct analyses and prepare reports

for the DRE program management staff, the database is used to meet federal reporting requirements. Data can be extracted on a regular basis and uploaded to the national DRE database maintained by the vendor under contract to the National Highway Traffic Safety Administration.

It is important to note that at the point in the process when the DRE sends the evaluation data to the database, the evaluation data can then no longer be edited or changed by the DRE. Permission for any changes to the database must then go through the State DRE Coordinator.

Reporting and Query Tool

Using the data captured in the database, various analyses can be conducted, and reports can be generated. The system is designed to generate standardized reports to meet the needs of the state's DRE program management staff. In addition to the standard reports, a query capability is available that allows authorized users to query the database and generate tables or graphs of the resultant data as needed.

The above three components of the DRE Data Entry and Management System are designed such that the system can easily be configured for use by any state.

EXHIBIT B

SERVICES INCLUDED IN LICENSE FEE

CONFIGURED MOBILE AND WEB APPLICATIONS

ITSMR will configure the mobile and web applications for use by the state's DRE program. The LICENSEE will be responsible for providing the state-specific information required for the configuration as described in Exhibit C.

In addition, ITSMR will provide the necessary security for the DRE application through the use of Mobile Data Management software.

CONFIGURED DRE DATABASE

ITSMR will configure the DRE database for the state's DRE program. The state's DRE database will be built and housed on ITSMR's dedicated DRE server. No other state will have access to the state's data. The database will be populated by the data the state's DREs transfer from their mobile devices. A data quality protocol will be applied to the data transferred by the DREs before the tables in the database are populated.

CONFIGURED QUERY TOOL AND STANDARD REPORTS

ITSMR will configure the reporting and query tool for use with the data captured in the state's DRE database. ITSMR will provide a list of standard reports that are available for each state. At the request of the LICENSEE, state-specific reports will be created and generated. In addition, the LICENSEE will be able to designate a small number of DRE program staff who will have direct access to the database to generate their own state-specific reports.

Note – ITSMR will complete the configuration of the Mobile and Web Applications, DRE Database, Query Tool and Standard Reports within sixty (60) days after LICENSEE has provided all the required state-specific information.

TRAINING

ITSMR will provide to the LICENSEE a Train-the-Trainer session, which will consist of a full day on-site training to be conducted by ITSMR staff at a central location within the LICENSEE's state, to be agreed upon. The training will include instructions on loading all required software, including the mobile application, configuring the mobile devices, and the features and use of both the mobile and web applications.

The Train-the-Trainer session will be conducted following ITSMR's completion of all state-specific configurations. *The application and security software will be released at the time of the Train-the-Trainer session.*

DOCUMENTATION

A PowerPoint presentation, to be utilized for future trainings within the state, and quick reference sheets will be provided to the LICENSEE.

MAINTENANCE AND SUPPORT SERVICES

ITSMR will provide maintenance and support services related to updating the application, maintaining the database, and assisting in troubleshooting any technical problems that occur in using either the tablet or the application. Any routine upgrades and/or changes to the tablet and web applications made during the Term of this Agreement will be shared with the LICENSEE. Technical assistance will be available by telephone (518-453-0291 x113) Monday-Friday, 9am-5pm Eastern Time and other hours by email to Techsupport@itsmr.org.

NON-DRE ADMINISTRATOR USERS

ITSMR recognizes that LICENSEE administrators who are not necessarily Drug Recognition Experts themselves may need to have access to data and reports contained within the DRE Data Entry & Management System. ITSMR will provide such administrator users read-only access to the Reports & Queries features within the DRE system. This read-only access will be granted to up to three (3) non-DRE users, who will not be counted against the total number of users permitted under this Agreement. Any additional read-only users will be counted against the maximum number of users allotted in this Agreement.

TRANSMISSION OF DATA TO NATIONAL DATABASE

On a routine basis, ITSMR will electronically transmit, in batch form, the required data elements from the state's DRE database to the national database housed and maintained by the vendor under contract to the National Highway Traffic Safety Administration.

Individuals with questions related to services provided by ITSMR described in this Exhibit B should contact:

Jerry Miller
Director
518-453-0291
jmiller@itsmr.org

EXHIBIT C

OBLIGATIONS OF LICENSEE

STATE-SPECIFIC DATA

The LICENSEE will be responsible for providing the state-specific information required for the configuration, within thirty (30) days after the Effective Date of the License Agreement.

Using standard data formats specified by ITSMR, the LICENSEE will provide the following:

- 1) List of DREs including full name, work e-mail address and phone number, badge number, rank, IACP number, certification date, police agency name and NCIC code;
- 2) List of all municipalities in the state with the counties they are located in and DRE Region (if applicable);
- 3) List of traffic offenses for which information should be collected and the categories they fall under (e.g., moving violation, equipment violation);
- 4) Name and address of the toxicology labs used to test subject specimens collected by the DREs

In addition, the LICENSEE will review a list of data fields provided by ITSMR and revise them, as warranted, to fit the needs of its DRE program.

HARDWARE AND SOFTWARE REQUIREMENTS

The LICENSEE is responsible for purchasing the mobile devices for use by their DREs, within forty-five (45) days after the Effective Date of the License Agreement. The DRE application is platform independent and is compatible with iOS, Windows, and Android operating systems. If requested, ITSMR will provide a list of recommended mobile devices for consideration by the LICENSEE.

TRAINING REQUIREMENTS

Prior to the roll out of the application to the DREs, ITSMR requires the LICENSEE's participation in a Train-the-Trainer session. ITSMR recommends that one trainer for every 15 to 20 DREs should complete the Train-the-Trainer session. These individuals will then be responsible for training the remainder of the state's DREs at the time the tablets are distributed. In addition, ITSMR recommends that the trainers be geographically located to assist with end user mentoring and for future program growth.

MAINTENANCE OF LICENSEE-OWNED EQUIPMENT

The LICENSEE is responsible for the maintenance and support of its hardware. The LICENSEE shall ensure that its hardware and software is kept current, including the prompt downloading of Operating System updates, Mobile Data Management software updates, and DRE Data Entry and Management System software updates.

SECURING LICENSEE-OWNED EQUIPMENT

The security of the LICENSEE's hardware is the responsibility of the LICENSEE. ITSMR assumes no liability for any breach of security that was the result of improper security on LICENSEE's hardware. To ensure the security of the DRE Data System, ITSMR has the authority to deny access to any hardware that is not in compliance with security requirements.

In accordance with Federal and State guidelines, ITSMR has implemented strict security measures for its hardware that is utilized to store a LICENSEE's data, as well as strict security measures for the protection of data during transmission to and from the end user. Just as ITSMR has taken these steps to ensure the security of the data, the LICENSEE must also take steps to ensure that the data is properly secured on its hardware. Lax security on the part of the LICENSEE and its end users will likely result in a compromised system. It is for this reason, that ITSMR strongly encourages the LICENSEE to implement specific security protocols. The LICENSEE is responsible for ensuring the implementation of the following security protocols:

- DREs should connect the tablet to a Wi-Fi signal a minimum of once every 30 days and check for DRE Data Entry & Management System software updates.
- DREs should check for updates to the Mobile Data Management software a minimum of once every 60 days.

- Lock screen passwords should be implemented on every device. Lock screens should be set to time out when the device is left idle for 10 minutes or less, with password protection to log back into the device. Password length and complexity must adhere to industry standards and DREs must not share their passwords with anyone.
- DREs are strongly encouraged to encrypt their tablets and require a password prior to the initial startup. The encryption feature prevents any unauthorized attempt to extract or remove data from the tablet via USB drives or connectivity to another device.
- Develop Acceptable Use policies and require each end user to sign a written acknowledgement of the policies. Acceptable Use policies may cover a wide range of topics including the appropriate use of email, internet, and downloading of software. A sample Policy and Procedure document for the LICENSEE's use is attached as Exhibit E. It is highly recommended that the LICENSEE modifies this document to meet its specific needs.

Individuals with questions related to Obligations of Licensee described in this Exhibit C should contact:

Jerry Miller
Director
518-453-0291
jmiller@itsmr.org

EXHIBIT D

**LICENSEE IMPLEMENTATION CHECKLIST
DRE Data Entry and Management System**

Note – The LICENSEE must complete items 1 through 3 below before ITSMR will commence services identified in Exhibit B.

- 1.** Review, Sign, and Date the License Agreement and return to the address specified on page #4 of the License Agreement.
- 2.** Pay to the FOUNDATION the License Fee payment of **\$37,500.00 within thirty (30) days after the Effective Date of the License Agreement.**
- 3.** Provide to ITSMR the information and data required, as specified in Exhibit C of the License Agreement, **within thirty (30) days of the Effective Date**, in order for ITSMR to configure the DRE Data Entry & Management System for LICENSEE's jurisdiction.

Note – The LICENSEE must complete items 4 & 5 below prior to any software releases. The security software and DRE application will be released on the day of the Train-the-Trainer session.

- 4.** Purchase all necessary hardware, as specified in Exhibit C of the License Agreement, **within forty-five (45) days after the Effective Date of the License Agreement.**
- 5.** Complete a Train-the-Trainer session, which will be held following ITSMR's completion of all state specific configurations. It is recommended that one trainer for every 15 – 20 DREs complete the Train-the-Trainer session. ITSMR will work with the LICENSEE to identify a mutually convenient date and location for the training.

Direct questions to:

Jerry Miller
Director
518-453-0291
jmiller@itsmr.org

EXHIBIT E

**SAMPLE
POLICY AND PROCEDURE DOCUMENT
FOR TABLET COMPUTERS
DRE Data Entry and Management System**

- The mobile device used by the Drug Recognition Expert (DRE), and any associated equipment, has been purchased by XXXX. The device remains the property of XXX and the DRE will adhere to policies and procedures as instructed by the State DRE Coordinator.
- All Drug Recognition Experts will utilize the DRE Data Entry & Management System tablet application for all Drug Influence Evaluations, effective XX/XX/XXXX.
- All Drug Influence Evaluations and Narrative reports will be finalized and submitted to the Institute for Traffic Safety Management & Research (ITSMR) server within seven (7) days following the evaluation date.
- All Toxicology reports will be entered into the System and submitted to the ITSMR server within fourteen (14) days after receipt of the official toxicology report from the laboratory.
- DREs are required to connect the mobile device to a Wi-Fi signal a minimum of every thirty (30) days and check for DRE Data Entry & Management System software updates. The State DRE Coordinator will audit this activity. DREs who fail to adhere to this policy may be removed from the DRE program.
- DREs are required to check for updates to the Mobile Data Management software a minimum of once every 60 days.
- DREs are required to implement a lock screen on their device and the time-out feature shall be set to no more than ten (10) minutes of inactivity. Password length and complexity will adhere to industry standards and DREs will not share their passwords with anyone.
- DREs will be required to encrypt their device to prevent unauthorized extraction of sensitive data from the device. Failure to adhere to this policy may result in disciplinary action.
- The mobile device permits access to internet websites. Drug Recognition Experts shall utilize the tablet for work-related internet activities only and shall not visit inappropriate websites. DREs found in violation of this policy may face disciplinary action and removal from the DRE program.
- The mobile device allows the end user to download third-party applications. DREs are personally responsible for any costs associated with the purchase of third-party applications.
- DREs shall not download any inappropriate applications or applications that may cause interference with the DRE Data Entry & Management System.
- DREs shall contact ITSMR prior to downloading any third-party software. DREs are responsible for any expenses incurred for repairs to software/hardware needed due to negligence or malicious third-party application downloads.
- DREs are permitted to configure the email application within the mobile device to utilize personal or work-related email addresses. DREs are expected to adhere to accepted and professional standards while using the email functionality within the tablet. Inappropriate activity may result in removal from the DRE program.
- DREs are expected to familiarize themselves with the functionality of the mobile device and the DRE Data Entry & Management System. If a DRE requires assistance with the programmatic functionality of the System he/she will:
 - Contact fellow DREs or DRE Instructors and try to resolve the issue.
 - If the issue cannot be resolved at that level, the DRE will contact the State DRE Coordinator.
 - If the State Coordinator cannot resolve the issue, the State DRE Coordinator will contact ITSMR.
- If the DRE encounters a technical error rather than a question regarding programmatic functions, the DRE should contact ITSMR at 518-453-0291 x113 during ITSMR business hours (Monday – Friday, 8:30 a.m. – 5:00 p.m. Eastern time). ITSMR can also be contacted via email at techsupport@itsmr.org. The email is monitored by ITSMR staff after business hours. The DRE should also notify the State DRE Coordinator.
- If the mobile device is lost, stolen, or damaged, the DRE shall notify the State DRE Coordinator immediately. The DRE shall also notify ITSMR so that the data on the device can be wiped from it.
- DREs will be required to perform a minimum of five (5) Drug Influence Evaluations per calendar year in order to be issued a mobile device. DREs who do not meet this minimum standard shall return their device to the State DRE Coordinator and will be required to enter completed evaluations via the web application of the DRE Data Entry & Management System.
- DREs and their command staff may have a need for data from the DRE Data Entry & Management System. All requests for data must be made to the State DRE Coordinator. If the State Coordinator does not have the ability to provide the requested information, the State Coordinator will contact ITSMR for assistance.

I have read the policy and procedures and I understand my obligations under the policy and associated procedures.

Signature

Date

Printed Name