

Deviation from Contractual Services Contract Process Form

Agency: DAS - Materiel Date: 7/1/2016

Contract Number: DSI - Scanners (please attach **COPY or DRAFT** contract)

☐ In excess of \$15,000,000.00 (Fifteen Million), Proof of Need Attached

Service To Be Provided:

Handheld scanners used for fixed assets and inventory.

Are Commodities Involved? Yes ☒ No ☐

The current contract with DSI expires July 2016. We were looking into entering into an emergency contract for one (1) year, plus one (1) additional one (1) year renewal periods. The justification for the emergency contract are:

Reason for Request of Waiver:

- 1. E1 upgrade took longer than had been anticipated. We couldn't move forward until we knew what changes and how the changes would affect the scanners*
- 2. Needed to go through the RFI process due research market to see what's technology is now available including possibility of mobile applications*
- 3. Gathering information from agencies to see what their needs are and what functionality would be beneficial to the agencies*
- 4. Oracle Insight was conducted to learn more about our processes, what improvements may be available, etc.*
- 5. RFP will then need to be developed based on input from agencies and information provided through the RFI process*
- 6. Need time for transitioning from one system to another. This includes integrations and testing. Also will need to develop all new training manuals. Need to develop the training and then train the agencies*

The State currently utilizes Intermec Scanners for Fixed Assets and Inventory. The State needs the service in place until the RFP is bid out and the awarded contractor is in place. Which may include implementation, training, and the procurement of new scanners.

- ☐ 1. Sole Source – Sole availability at location
- ☐ 2. Sole Source – Uniqueness of service
- ☒ 3. Emergency (A signed copy of the final contract must be submitted with the deviation request.)
- ☐ 4. Contract established by GSA
- ☐ 5. Contract competitively bid by another state or group of states, a group of states and any political

subdivision of any other state, or a cooperative purchasing organization on behalf of a group of states

☐ 6. Other Circumstances

Justification (Clearly and fully indicate why the service cannot be competitively bid):

Funding: (Indicate Percentage)

Federal _____ %

State _____ %

Estimated Dollar Amount of
Contract:

\$ 140,000

Signature of Requesting
Agency Director:

A handwritten signature in blue ink, appearing to read "Ryan L. Dammann", is written over a horizontal line.



Software License, Services, and Maintenance Agreement

This Agreement is between Data Systems International, Inc. ("DSI"), having its principal place of business at 1201 Walnut, Suite 1100, Kansas City, Missouri 64106, and State of Nebraska ("Customer" or "the State"), having a place of business at 1526 K Street, Suite 130, Lincoln, Nebraska 68508. The purpose of this Agreement is to supply and deliver automated data collection (ADC) application (bar code application) to the State of Nebraska. In consideration of the mutual promises in this document, DSI and Customer agree as follows (the "Agreement").

ARTICLE I. DEFINITIONS

Accessory Products

Third party software or hardware delivered with the Licensed Products as a convenience to Customer, but not licensed under this Agreement.

Affiliate

The State of Nebraska (The State). Any new Affiliate(s) shall be required to execute an Affiliate Addendum to this Agreement. This Addendum shall not include any new or additional terms and conditions, but shall make Affiliate subject to the terms and conditions contained in this Agreement. For purposes of this Agreement, DSI's affiliates shall be any entity in which DSI has a ninety percent (90%) ownership interest, either directly or through a wholly owned subsidiary.

Customer System

Any server(s) and clients or other computer access devices on which the Licensed Products are installed or deployed, or which otherwise access the Licensed Products.

Delivery

The shipment (FOB Destination) of the media containing the Licensed Products.

Developed Software

Any software developed for Customer by DSI under Article IV of this Agreement.

Documentation

The user, technical, and training documentation produced by DSI and related to a Licensed Product as effective on the date of Delivery of the particular Licensed Product.

Licensed Products

The software programs, including any updates provided and Developed Software, licensed by Customer under this Agreement. Licensed Products does not include Accessory Products.

Software

The Licensed Products, including any software updates provided as a part of Maintenance, and Developed Software.

User

An individual authorized to access the Software under this Agreement.

Unless otherwise specified, all days referred to are calendar days.

All references to Customer shall mean Customer and its Affiliates.

ARTICLE II. LICENSE

License Grant

Subject to the terms and conditions of this Agreement:

1. Upon DSI's receipt of all license fees from Customer subject to payment terms granted in Article X herein, DSI grants to Customer a non-exclusive, non-transferable, subject to Article XII, Paragraph 13 hereof, limited perpetual license to use the Software and Documentation on the Customer System(s) for Customer's internal business operations. Internal business operations, for the purposes of this Agreement, shall include all operations within the normal course and scope of business for Customer.

2. DSI grants to Customer the right to modify the Licensed Products or use any development tools contained in the Licensed Products to create software ("Derived Software"). Such Derived Software is for internal use only and is subject to the terms and conditions of this Agreement. Unless otherwise agreed by the parties, DSI shall retain sole ownership of portions of any Software contained in the Derived Software.

License Restrictions

1. Access to the Software is limited to those categories below who have been licensed as a User (collectively "Customer Representatives"):

- (i) employees of Customer; and
- (ii) independent contractors engaged by Customer who require

access to the Software to perform their tasks.

2. Customer shall be responsible for the acts and omissions of Customer's employees arising from the Software access provided by Customer. Customer agrees that prior to giving access to Software to any independent contractor of Customer that such independent contractor will be required to execute a Third Party Access and Confidentiality Agreement with DSI. Customer's failure to comply with this section shall constitute a material breach of this Agreement.

3. For any access to the Software to any party other than by an employee of Customer, Customer shall not provide access prior to such party's execution of the Third Party Access and Confidentiality Agreement between that party and DSI. Customer's failure to comply with this section shall constitute a material breach of this Agreement.

4. Access to the Software may not be provided to any individual or entity where such access is the primary purpose or value of the relationship. By way of example, and not limitation, the Software may not be provided or used by Customer for a timeshare, service bureau, third party training, or similar arrangement.

5. RESERVED

6. Customer shall not utilize any device or program to enable access to the Software in a manner such that the individual accessing the Software is not counted as a user as that term is used in any user-based licensing restrictions in this Agreement.

7. DSI may restrict the Software's distribution by Customer to a particular geographic destination outside of the United States, if DSI reasonably believes it necessary to protect its intellectual property rights.

Unless directed or specifically allowed in writing by DSI, Customer shall not, or cause anyone else to:

- (i) reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code of any part of the Software, provided however, that if the Licensed Products are located in a jurisdiction whose laws explicitly permit some form of reverse engineering, Customer may do so solely to the extent so permitted by such law to achieve interoperability with other software, and Customer agrees to notify DSI prior to doing so;
- (ii) rent, lease, sublicense, or otherwise transfer any of the Software;
- (iii) copy the Documentation or Software except to the extent necessary for Customer's archival needs and to support the Users. All such copies shall be subject to this Agreement and contain all proprietary legends that appeared on or in the original; or
- (iv) remove or deface any proprietary legends on or in the Software.

8. The Licensed Products contain license protection procedures that limit access to the Software to that use permitted under this Agreement ("Software Protection Procedures"). The Software Protection Procedures will not destroy any of Customer's data or software. Unless directed, or specifically allowed by DSI, Customer shall not circumvent or render inoperative the Software Protection Procedures.

9. Customer may only use the Licensed Products that Customer has licensed from DSI under this Agreement, even though, upon receipt, the media may contain additional applications or modules. If Customer has access and uses such additional applications or modules, upon notification or discovery, DSI will offer the following options:

1. Customer shall discontinue use of the additional applications or modules in a reasonable timeframe without penalty; or
2. DSI and Customer will create a reasonable, jointly agreeable addendum to the License Agreement to allow continued usage of the additional applications or modules, which will be in compliance with Customer's budgeting and funding restrictions.

10. On DSI's request, not more frequently than annually, Customer shall furnish DSI with a signed certification verifying that the use of the Software

is consistent with this Agreement and listing the locations and types of any servers on which the Software is installed or utilized as well as the Users. DSI, not more frequently than annually and at its own expense, may audit Customer's use of the Software to verify compliance with this Agreement. Any audit will be conducted in a manner that avoids unreasonable interference with Customer's business operations and Customer will be provided with reasonable advance notice. If a certificate or an audit reveals that Customer has underpaid license fees to DSI and Customer is current on Maintenance, Customer shall be invoiced for such underpaid license fees at Customer's current contract prices or Customer may elect to de-activate the licenses associated with non-compliance. All DSI books, records and documents relating to work performed or monies received under this Agreement shall be subject to audit at any reasonable time upon provision of reasonable notice by the Customer. These records shall be maintained for a period of five (5) years from the date of final payment, or until all issues related to an audit, litigation or other action are resolved, whichever is longer. All records shall be maintained in accordance with generally accepted accounting principles. DSI agrees to refund the Customer any mutually determined overpayment of fees resulting from said audit. DSI agrees to correct within thirty (30) days any material weakness or condition reported to DSI in the course of an audit.

11. DSI retains all ownership rights to the Documentation and Software. All rights not explicitly granted in this Agreement are reserved by DSI.

ARTICLE III. MAINTENANCE

1. Customer may elect to receive maintenance offered by DSI for the Licensed Products ("Maintenance"). Any such Maintenance will be provided under the terms of this Agreement provided Maintenance fees are current. If Customer elects to receive Maintenance, the first Period of Coverage shall begin upon execution of this Agreement. Customer may not exclude any of the Licensed Products or Users from Maintenance. After the original one (1) year Agreement term, Customer may extend the Period of coverage for Maintenance for one (1) additional, one (1) year period upon thirty (30) days notice to DSI at DSI's current prices but which shall under no circumstances increase by more than three percent (3%) per year. The parties may agree to waive the thirty (30) day notice requirement.

2. Customer shall establish and maintain an internal competency center or help desk to provide a central point of contact with DSI for any Maintenance services. Customer shall be responsible for installing any updates to the Licensed Products provided to Customer by DSI. Customer shall cooperate with DSI in providing reasonable access to Customer Systems to the extent required to diagnose and/or resolve issues identified by Customer concerning the Licensed Products.

3. If Customer provides DSI with reports of defects in the Licensed Products or any changes or modifications proposed or suggested by Customer (collectively "Customer Feedback"), DSI shall have the right to use such Customer Feedback including, without limitation, the incorporation of such Customer Feedback into DSI's software products without any obligation to Customer.

ARTICLE IV. SERVICES

1. Customer may elect to receive Consulting Services related to the Software offered by DSI ("Services"). Any such Services will be provided under the terms of this Agreement incorporating by reference any further terms contained as mutually agreed-upon in writing by the parties hereto.

2. DSI shall own all right, title and interest in and to Developed Software and any documentation delivered with the Developed Software that Customer expects DSI to cover and support with Maintenance. The Developed Software and associated documentation shall not be a "work made for hire" or a "specially commissioned work" as these terms are used in United States copyright law. Notwithstanding anything contained herein to the contrary, if Customer does not wish to receive Maintenance with respect to Developed Software, then any component of Developed Software or Derived Software, other than Licensed Products and pre-existing software, shall be the sole property of Customer.

3. The Services supplied by DSI under this Article shall be performed in a professional and workmanlike manner. However, DSI shall have no responsibility for problems caused by alterations or modifications made by Customer to the Software, unless Customer was directed or otherwise authorized in writing by DSI, or arising out of the malfunction of Customer's equipment, network or other software products not licensed by DSI.

4. DSI may subcontract the performance of any Services. DSI shall be responsible for Services performed by its subcontractors. DSI is solely responsible for fulfilling the Agreement, with responsibility for all services offered and products to be delivered as stated in this Agreement. DSI shall be the sole point of contact regarding all contractual matters.

5. Customer acknowledges that consulting services may be obtained from third parties, and that Customer's decision to purchase Services from DSI is made independently of Customer's decision to license DSI's Licensed Products.

6. DSI will require all DSI personnel and subcontractors to comply with Customer's instructions pertaining to conduct, appropriate dress code requirements and facility security regulations. DSI personnel and subcontractors will be subject to a background check at Customer's sole expense. DSI is responsible for all acts of DSI personnel and subcontractors. DSI shall make personnel and subcontractors aware of the provisions Neb. Rev. Stat. §28-322-01 which states that it shall be a Class III felony for individuals working for or under contract for the Nebraska Department of Correctional Services ("NDCS") to engage in sexual contact or relations with an inmate or parolee within the State correctional system, and that no inmate nor parolee is legally capable of giving consent to any such relationship.

DSI personnel and subcontractors shall be subject to departmental security checks prior to their arrival on site, and will carry proper identification with them at all times while on facility grounds. NDCS staff will escort DSI's personnel and subcontractors in all secure areas.

DSI shall inform personnel and subcontractors of the NDCS Tobacco Policy, which states that tobacco and tobacco-related products are contraband and must not be carried into an NDCS-owned or controlled property. Such products must remain in DSI's locked vehicles while on NDCS-owned or controlled property.

7. In respect to its employees, DSI agrees to be responsible for the following:

- (a) Any and all employment taxes and/or other payroll withholding;
- (b) Any and all vehicles used by the DSI's employees, including all insurance required by state law;
- (c) Damages incurred by DSI's employees within the scope of their duties under this Agreement which shall to the extent permitted by law, be subject to insurance limits as stated in Article IX;
- (d) Maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing state law; and
- (e) Determining the hours to be worked and the duties to be performed by the DSI's employees.

ARTICLE V. RESERVED.

ARTICLE VI. NON-DISCLOSURE

1. All materials and information provided by Customer or acquired by DSI on behalf of the Customer shall be regarded as confidential information "Confidential Information". All materials and information provided by Customer or acquired by DSI on behalf of the Customer shall be handled in accordance with Federal and State Law, and ethical standards. DSI must ensure the confidentiality of such materials or information.

2. The Customer shall have the unlimited right to publish, duplicate, use and disclose all information and data developed or derived by DSI pursuant to this Agreement.

3. If DSI wishes to have any information withheld from the public, such information must fall within the definition of 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 serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, if DSI submits information as proprietary, DSI may be required to prove specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State of Nebraska's definition of proprietary information, the Customer is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such information.

4. To the extent permitted by Nebraska law, if either party is required by legal proceeding discovery request, "open records" or equivalent request, investigative demand, subpoena, court or government order to disclose Confidential or Proprietary Information, such party may disclose such Information provided that:

- (i) the disclosure is limited to the extent and purpose legally required.

5. To the extent permitted by Nebraska law, Customer shall hold the Proprietary Information in confidence and only disclose the Proprietary Information to its officers, employees, consultants, counsel, independent contractors, or agents (collectively "Representatives") who:

- (i) need the Proprietary Information to assist the Customer with performing its obligations or exercising its rights under this Agreement;
- (ii) have been instructed not to disclose the Proprietary Information; and
- (iii) for other than Customer's employees, have executed a nondisclosure or confidentiality agreement with Customer, a copy of which shall be supplied to DSI upon request, at least as

protective as this Agreement of the Proprietary Information of DSI.

Nothing in this section shall be interpreted to increase Customer's responsibility or duty under Article VI, Number 3, which states: Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State of Nebraska's definition of proprietary information, the Customer is under no obligation to maintain the confidentiality of Proprietary Information and accepts no liability for the release of such information.

6. All Confidential or Proprietary Information and other materials embodying such information shall, upon termination of this Agreement and either party's written request, be promptly returned, and the party shall provide written certification to the other party of such destruction.

7. Either party may at any time independently develop information similar to, or products and services that compete with products or services identified in, the Proprietary or Confidential Information.

ARTICLE VII. WARRANTY, CLAIMS, REMEDY AND EXCLUSIONS

1. DSI warrants that the Licensed Products will perform substantially in accordance with the Documentation for the particular Licensed Product (hereinafter referred to as the "Licensed Products Warranty"). The term of this warranty is a period of nine (9) months following the first date of Delivery of Licensed Products to Customer's first designated site ("Initial Warranty"). If Customer purchases Maintenance from DSI, this warranty will also be in force during any Period of Coverage (each a "Licensed Products Warranty Period").

2. Customer shall notify DSI of any claim under the Licensed Products Warranty during the Licensed Products Warranty Period (when given, a "Warranty Notice"). Such notice shall be given with sufficient information and time to allow DSI to duplicate the error.

3. For any claim under the warranty in this Article VII, DSI's sole obligation shall be, without additional charge, to correct the substantial non-conformance identified in the Warranty Notice or provide a mutually acceptable plan for correction no later than sixty (60) days following the receipt of Warranty Notice (the "Resolution Deadline"). Should DSI fail to provide such correction or mutually acceptable plan by the Resolution Deadline, Customer:

- (i) if during the initial warranty term, may elect to terminate this Agreement and receive a refund of all fees paid to DSI; and
- (ii) if during a Period of Coverage, DSI shall provide Customer, upon Customer's written request, a refund of all fees paid including maintenance for the particular Licensed Product for the Period of Coverage in which the claim arose.

4. The warranty in this Article is not applicable to claims arising out of:

- (i) releases of the Licensed Products other than the most current release, however, if new releases come out during the nine (9) month warranty period, the warranty will not be terminated;
- (ii) alterations or modifications to the Licensed Products made by anyone other than DSI, unless at DSI's direction;
- (iii) Accessory Products;
- (iv) malfunctions of Customer Systems; or
- (v) combination, operation, or use of the Licensed Products with other equipment, devices, or software not supplied by DSI or approved by DSI in its Documentation.

5. DSI shall identify in writing all third-party warranties that DSI receives in connection with any product provided to the Customer. DSI hereby passes through the benefits of all such warranties, provided that nothing in this Article VII shall reduce or limit DSI's obligations under this Agreement.

DSI warrants that no consent, approval, or withholding of objection is required from any governmental authority with respect to the entering into or the performance of this Agreement.

DSI warrants that there are no actions, suits, proceedings, pending or threatened, that will have a material adverse effect on DSI's ability to fulfill its obligations under this Agreement. DSI further warrants that it will notify Customer immediately if DSI becomes aware of any action, suit or proceeding, pending or threatened, that will have a material adverse effect of DSI's ability to fulfill the obligations under this Agreement.

DSI warrants that it has and will continue to have free and clear title (including all proprietary rights) to any products delivered to Customer and the right to license, transfer, or assign any and all products that are licensed, transferred, or otherwise provided to the Customer by DSI pursuant to this Agreement. DSI shall not create or permit the creation of any lien, encumbrance, or security interest in any product sold, rented, leased, or licensed to the Customer.

DSI warrants that the Software provided in connection with this Agreement

will not infringe any patent, trademark, copyright, or other proprietary right of any third party. DSI further warrants that any information disclosed to the Customer will not contain the trade secrets of any third party, unless disclosure is permitted by such third party.

6. DSI makes no warranty as to the adequacy or capacity of any hardware or third party software to attain all or some of the performance objectives of Customer. Notwithstanding the foregoing, DSI warrants that hardware and third party software will perform substantially in compliance with any specifications enumerated in this Agreement. **EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS ARTICLE VII, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.**

ARTICLE VIII. LIMITATION OF LIABILITY

1. To the extent permitted by law, DSI's liability for damages under this Agreement shall be limited to two (2) times all fees paid by Customer under this Agreement giving rise to the liability. **TO THE EXTENT PERMITTED BY LAW, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, (OR USE THEREOF), OR BUSINESS INTERRUPTION ARISING OUT OF EITHER PARTY'S ACT OR FAILURE TO ACT, WHETHER SUCH DAMAGES ARE LABELED IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ANY EXCLUSIVE REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.** It is understood by the parties that in the Customer's opinion, this paragraph is unconstitutional under the State's Constitution, Article 13, Section 3, and the State may assert such unconstitutionality as a theory in litigation, despite assent to the remainder of this Agreement. **The limitation of liability stated herein is exclusive of insurance, indemnity for negligence or willful misconduct and expressly accepted liabilities.**

ARTICLE IX. INFRINGEMENT CLAIMS

1. DSI shall indemnify, defend, and hold Customer harmless against any loss, liability, cost, or expense related to any third party claim alleging intellectual property infringement or misappropriation related to the Licensed Products. DSI's obligation under the preceding sentence is conditioned on Customer promptly notifying DSI of any claim, demand, or action for which indemnity is sought, granting to DSI the sole authority to defend or settle the claim, subject to the approval of the Nebraska Attorney General's Office, and reasonably cooperating, at DSI's expense, in the defense or settlement of any such claim.

2. If Customer is prevented from using the Licensed Products due to a claim of intellectual property infringement or misappropriation by a third party, DSI shall, at its expense:

- (i) procure for Customer the right to continue to use the Licensed Products; or
- (ii) replace or modify the Licensed Products so they are no longer covered by the claim while retaining substantially similar functionality. Provided, however that Customer reasonably approves such replacement or modified products.

In the event neither (i) nor (ii) (above) are commercially feasible, DSI may, by written notice to the Customer, immediately terminate this Agreement as it relates to the Licensed Product forming the basis of the claim and return the license and maintenance fees paid by Customer for those Licensed Products. To the extent permitted by law, Sections 1 and 2 of this Article IX constitute DSI's entire obligation to Customer with respect to any third party claim of infringement and is given to Customer solely for its benefit.

3. To the extent permitted by law, DSI shall have no liability for any claims of intellectual property infringement or misappropriation that arise out of:

- (i) alterations or modifications to the Licensed Products made by anyone other than DSI, unless directed by DSI in writing;
- (ii) the use of a release of the Licensed Products prior to the current release if the claim for which indemnity is sought could have been avoided by the use of a current release provided Customer was notified by DSI of current release and its ability to remedy such infringement.
- (iii) the combination, operation, or use of the Licensed Products with equipment, devices, or software not supplied by DSI or approved by DSI in its Documentation; or
- (iv) a use of the Licensed Products in a manner not contemplated within the Documentation.

ARTICLE X. PRICES AND PAYMENT

1. All prices for Licensed Products, costs, terms and conditions outlined in this Agreement and any attached exhibits or addenda shall remain fixed and valid for the life of this Agreement unless allowed to be so modified by the terms of this Agreement. DSI represents and warrants that all prices, now or subsequently specified, are as low as and no higher than prices which DSI has charged or intends to charge consumers other than the Customer for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of this Agreement, DSI shall reduce any and all/or all prices charged to any consumers other than the Customer for the same or similar products or services specified herein, DSI shall make an equal or equivalent reduction in the corresponding prices for said specified products or services. DSI also represents and warrants that all prices set forth in this Agreement and all prices in addition which DSI may charge under the terms of this Agreement, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. DSI agrees to hold the Customer harmless from any such violation. Price quotes shall not be subject to increase throughout the Agreement term unless specifically allowed under this Agreement. Maintenance fee percentage, when permitted to be increased, may not be increased for any reason by more than three (3%) percent.

2. Customer hereby agrees, in consideration of the covenants and agreements specified to be kept and performed by DSI, to pay DSI when the terms and conditions of this Agreement and specifications have been fully completed and fulfilled on the part of DSI to the satisfaction of the Customer. Payment will be made in compliance with the State of Nebraska Prompt Payment Act (see Neb. Rev. State. Sections 81-2401 to 81-2408).

3. RESERVED.

4. Subject to paragraph 3 above, Customer shall pay license fees due under this Agreement in accordance with Nebraska's Prompt Payment Act, Neb. Rev. Stat. §81-2401 through 81-2408.

5. Maintenance fees shall be due in accordance with paragraph 2 above. If Customer fails to remit Maintenance fees, DSI will have no duty to provide Maintenance under Article III until Customer remits such fees, provided that DSI first invoices Customer.

6. Payment for Services shall be due as mutually agreed and stated in an Engagement Document and payable in accordance with paragraph 2 above. DSI accepts the Customer's \$38.00 per diem for food. DSI will utilize government selected lodging, at rates available to the government. DSI will rebill the State for air travel and/or mileage for resources traveling to work on the project. DSI will coordinate travel with Customer in an effort to obtain reasonable travel rates.

7. RESERVED.

8. Customer is not required to pay taxes of any kind and assumes no such liability as a result of this Agreement. Any tax applicable on DSI's products which may be installed in a Customer-owned facility is the responsibility of DSI. DSI shall be solely responsible for all taxes based on its personal property and net income.

9. All payments made under this Agreement shall be in United States Dollars and payable in ready funds to DSI's designated United States bank account, unless otherwise agreed by the parties hereto. Unless otherwise agreed to by the parties, all invoices to Customer will be sent to Customer's address appearing below:

Administrative Services
State Materiel Logistical and Operations Manager
1526 K Street, Suite 130
Lincoln, NE 68508

ARTICLE XI. INSURANCE REQUIREMENTS

DSI shall not commence work under this Agreement until all the insurance required hereunder has been obtained and such insurance has been approved by the Customer. DSI shall not allow any subcontractor to commence work on his or her subcontract until all similar insurance required of the subcontractor has been obtained and approved by the Customer (or DSI). Approval of the insurance by the Customer shall not limit, relieve or decrease the liability of the DSI hereunder.

If by the terms of any insurance a mandatory deductible is required, or if DSI elects to increase the mandatory deductible amount, DSI shall be responsible for payment of the amount of the deductible in the event of a paid claim.

1. WORKERS' COMPENSATION INSURANCE

DSI shall take out and maintain during the life of this Agreement the statutory Workers' Compensation and Employer's Liability Insurance for all of DSI's employees to be engaged in work on the project under this Contract and, in case any such work is sublet, DSI shall require any

subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. Where applicable, this policy shall provide USL&H coverage. This policy shall include a waiver of subrogation in favor of the Customer. The amounts of such insurance shall not be less than the limits stated hereinafter.

2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

DSI shall take out and maintain during the life of this Agreement such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect DSI and any subcontractor performing work covered by this Agreement from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this Agreement, whether such operation be by DSI or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. The policy shall include the Customer, and others as required by the Contract Documents, as an Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by the Customer shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

3. INSURANCE COVERAGE AMOUNTS REQUIRED

a. Workers' Compensation and Employer's Liability	
Coverage A	Statutory
Coverage B	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee
b. Commercial General Liability	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 any one person
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$10,000 any one Person
c. Commercial Automobile Liability	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
d. Umbrella/Excess Liability	
Over primary insurance	\$5,000,000 per occurrence

4. EVIDENCE OF COVERAGE

DSI shall furnish the Customer with a certificate of insurance coverage, which shall be submitted to the Administrative Services, State Purchasing Bureau at 1526 K Street, Suite 130, Lincoln, NE 68508 or by facsimile 402-471-2089. These certificates or the cover sheet shall reference the contract number, and the certificates shall include the name of the company, policy numbers, effective date, dates of expiration and amounts and types of coverage afforded. If the Customer is damaged by the failure of the DSI to maintain such insurance, then DSI shall be responsible for all reasonable costs properly attributable thereto.

Notice of cancellation of any required insurance policy must be submitted to the Customer when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

ARTICLE XII. GENERAL

1. This Agreement is a licensing and services agreement and not a sale of goods. This Agreement shall not be subject to the United Nations Convention on Contracts for the Sale of Goods. Actions arising out of this Agreement shall be subject to the State of Nebraska's statutes of limitations.

2. All disputes arising out of or related to this Agreement shall be determined under the law of the State of Nebraska without regard to its conflict of laws provisions. DSI shall procure and pay for all permits, licenses and approvals necessary for the execution of this Agreement. DSI shall comply with all applicable local, state, and federal laws, ordinances,

rules, orders and regulations, including securing a certificate of authority to transact business in the State of Nebraska as required under Neb. Rev. Stat. § 21-20,168.

3. This Agreement shall commence on the date of execution or second signature "Effective Date" and shall continue for a period of one (1) year. This Agreement may be renewed for one (1) additional one (1) year period as mutually agreed upon by the parties. The licenses provided under this Agreement shall be perpetual. This Agreement may be terminated as follows:

(a) DSI and Customer may by mutual written agreement, terminate this Agreement at any time.

(b) Customer may terminate this Agreement, for any reason or no reason at all, by providing DSI with thirty (30) days notice.

(c) Customer may terminate this Agreement, in whole or in part, in the event funding is no longer available. The Customer's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of the funds for this Agreement. Should said funds not be appropriated, the Customer may terminate this Agreement with respect to those payments for the fiscal years for which such funds are not appropriated. The Customer will give DSI written notice thirty (30) days prior to the effective date of any termination by loss of appropriation. All obligations of the Customer to make payments after the termination date will cease and all interest of the Customer in related equipment will terminate. DSI shall be entitled to receive just and equitable compensation for any authorized work which had been satisfactorily completed as of the termination date. In no event shall DSI be paid for a loss of anticipated profit.

(d) Customer may terminate the Agreement, in whole or in part, if DSI fails to perform its obligations under this Agreement in a timely and proper manner. Customer may, by providing a written notice of default to DSI, allow DSI to cure a failure or breach of contract within a period of thirty (30) days (or longer at Customer's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with proof of delivery. Allowing DSI time to cure a failure or breach of contract does not waive the Customer's right to immediately terminate this Agreement for the same or different contract breach which may occur at a different time.

(e) If Customer violates this Agreement, DSI, in addition to any other rights available to it in law or equity, may give written notice of its desire to terminate and the specific grounds for termination to Customer. Following the giving of such notice, this Agreement will then terminate if the Customer fails to cure the breach within thirty (30) days of the notice.

(f) Customer may terminate this Agreement effective immediately by giving written notice to DSI if DSI becomes insolvent, admits a general inability to pay its debts as they come due, or makes an assignment for the benefit of creditors or a petition under any bankruptcy act is filed by DSI or such a petition is filed by any third party or an application for a receiver of DSI is made by anyone and such petition or application is not dismissed within sixty (60) days.

4. Upon any termination of this Agreement, Customer shall provide DSI with all outstanding payments due for work performed to the satisfaction of Customer and, within ten (10) days of the termination, uninstall the Documentation and Software and return same to DSI or destroy the Documentation and Software and provide written certification of such destruction to DSI. Articles VI, VII, sections 3, 4, and 5, IX and XI, sections 1, 2, 6, and 7 of this Agreement shall survive any termination.

5. Customer shall not export, re-export, or otherwise transmit, directly or indirectly, any software, information, data, or other materials received under this Agreement except in full compliance with all United States and other applicable acts, laws, and regulations.

6. The Licensed Products and Documentation are provided to Customer as a commercial item strictly under the terms and conditions of this Agreement and include only those rights customarily available to the public. The Customer is not authorized to permit disclosure by any agency or other part of the Federal Government that exceeds in any way the use and disclosure rights (i) conveyed to Customer in this Agreement; or (ii) provided in FAR 12.212 (Computer Software) and (for Department of Defense use or disclosure) DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), whichever set of rights provided in (i) or (ii) are the more restrictive. If an agency or other part of the Federal Government has a need for rights not conveyed under this Agreement, it must negotiate with DSI for the transfer of such rights.

7. DSI shall not, at any time, recruit or employ any of Customer's employees or agents who have worked on the Emergency Contract or project, or who had any influence on decisions affecting the Emergency Contract or project.

8. All notices required or permitted to be given shall be in writing sent by courier or certified mail, return receipt requested, to the recipients at the addresses contained in this Agreement or to such other recipients as the parties may specify from time to time by written notice to the other party, and deemed to be effective upon delivery.

9. This Agreement and any attached exhibits, addenda, and amendments, each of which is hereby incorporated by reference, constitute the complete and exclusive agreement between the parties concerning the subject matter of this Agreement and supersede any prior or contemporaneous communication regarding the subject matter of this Agreement. In case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number 1 receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) this Agreement and any other Agreement amendments with the latest dated amendment having the highest priority and 2) contract award and any attached addenda.

10. Any modification of any term or condition of this Agreement or any amendment to this Agreement shall be effective only if in writing and signed by authorized representatives of both parties. No other act, usage, or custom shall be deemed to modify this Agreement.

11. Any waiver of any default or breach of this Agreement shall be effective only if in writing and signed by an authorized representative of the party providing the waiver. No such waiver shall be deemed to be a waiver of any other or subsequent breach or default.

12. If any provision of this Agreement is held to be invalid, the remaining portions of this Agreement shall remain in full force.

13. Neither party may assign this Agreement, in whole or in part, without the written consent of the other party and any such attempt at assignment shall be void. Notwithstanding the immediately preceding sentence, the Customer may assign to any agency, board, commission, division or other State of Nebraska entity with prior written notice to DSI and DSI may assign this Agreement in the event of a sale of all or substantially all of its assets or equity, provided that prior notice is given to Customer. This Agreement shall extend to and be binding upon any successors and permitted assigns of the parties. Successors shall be required to execute an Addendum accepting assignment of this Agreement. This Addendum shall not include new or additional terms and conditions, but shall make successor subject to the terms and conditions contained in this Agreement.

14. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this Agreement due to a natural disaster, government actions or terrorism or other similar event outside the control of and not attributable to the fault or negligence of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the Agreement. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under the Agreement which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with DSI's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under this Agreement.

15. If a version of this Agreement is provided in a language other than English and there is an inconsistency between the terms and conditions of the two versions, the English version shall control. The exchange of a fully executed Agreement by fax, whether by separately executed counterparts or otherwise, shall be binding on the parties.

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

17. This Agreement does not constitute and shall not be construed as constituting a partnership, agency, distributorship, or joint venture between the parties. Neither party shall have any right to obligate or bind the other party in any manner whatsoever.

18. Any purchase order of Customer accompanying either an Attachment to this Agreement or a Customer payment is for Customer's internal use only and its terms shall not alter or amend the terms of this Agreement, any additional or varying terms contained in such instrument being expressly rejected.

19. DSI shall comply with all applicable local, State and Federal statutes and regulations regarding civil rights laws and equal opportunity employment. Neither DSI nor any subcontractors shall discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the employee or applicants hire, tenure, terms, conditions or privileges of employment, because of his or her race, color, religion, sex disability or national origin.

20. DSI certifies that it maintains a drug free workplace environment. DSI agrees to provide a copy of a drug free workplace policy at any time upon request by the Customer.

21. DSI shall, if requested by the Customer, certify in writing that no relationship exists between DSI and any other person or organization that constitutes a conflict of interest with respect to this Agreement. No official or employee of the Customer who exercises any functions or responsibilities in the review or approval of this Agreement shall voluntarily acquire any personal interest, directly or indirectly, in this Agreement.

22. Nebraska Technology Access Standards. DSI shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under this Agreement comply with the applicable standards. In the event such standards change during DSI's compliance, the Customer may create a change order to the Agreement to request that DSI comply with the changed standard at a cost mutually agreed to by both parties.

23. DSI may subcontract the performance of any maintenance services for

Accessory Products. DSI shall be responsible for services performed by its subcontractors. DSI is solely responsible for fulfilling the Agreement, with responsibility for all third party maintenance services offered and products to be delivered as stated in this Agreement.

EACH PARTY REPRESENTS THAT IT HAS FULL AUTHORITY AND POWER TO ENTER INTO AND PERFORM UNDER THIS AGREEMENT, AND THAT THE PERSON SIGNING ON BEHALF OF EACH HAS BEEN PROPERLY AUTHORIZED AND EMPOWERED TO ENTER INTO THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY IT.

By execution, signer certifies that signer is authorized to accept and execute this Agreement on behalf of DSI.

DATA SYSTEMS INTERNATIONAL, INC.

By: 

Print Name: Mark L. Baldwin

Title: SVP Administration & General Counsel

Date: June 29, 2016

By execution, signer certifies that signer is authorized to accept and execute this Agreement on behalf of Customer.

STATE OF NEBRASKA

By: 

Print Name: ANNA HYLER

Title: OPERATION & LOGISTIC MANAGER - DAS

Date: 7/1/16



SOFTWARE LICENSE, SERVICES AND MAINTENANCE AGREEMENT ATTACHMENT A

Customer: State of Nebraska
Address: 1526 K Street, Suite 130
Lincoln, NE 68508

LICENSE GRANT: Data Systems International, Inc. (DSI), grants to Customer, and Customer accepts, subject to the terms and conditions set out in the Agreement of which this Attachment is a part, a non-exclusive and non-transferable, perpetual, limited license to use the Licensed Products noted below:

LICENSED PRODUCTS: dcLINK for EnterpriseOne Licensed Products		
<u>Description</u>	<u># of Licenses</u>	<u>License Fee</u>
Base Foundation – CNC Software	1	Incl.
Logistics Suite	1	Incl.
DSI TCP / IP User Licenses/dcLINK User License, Production	130	\$195576.75
DSI TCP / IP User Licenses/dcLINK User License, Test/Development	1	Incl.
AssetTrac Module	1	\$9000.00
TranServer License, Production	1	Incl.
TranServer License, Test/Development	1	Incl.
TOTAL LICENSE FEE (In US Dollars)		Previously Paid

Licensed Products listed above which are designated for testing/development shall not be used or transferred into production.

MAINTENANCE FEES:		
Initial Period of Coverage – Begin Date:	08/01/2016	
Initial Period of Coverage – End Date:	07/31/2017	
Maintenance Services Fee Due for First Year and Each Additional Year of Initial Period of Coverage*	\$41,347.86	(In U.S. Dollars)

**The State will pay for each year of maintenance services on an annual basis. Fee is based on Licensed Products listed above.*

THIS ATTACHMENT, INCLUDING ITS TERMS AND CONDITIONS, AND THE AGREEMENT OF WHICH IT IS A PART, AND ALL DOCUMENTS INCORPORATED INTO SUCH AGREEMENT IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PRIOR OR CONCURRENT UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS ATTACHMENT AND THE AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, IN THE EVENT OF A CONFLICT BETWEEN THE PRICES CONTAINED IN THIS ATTACHMENT AND THE AGREEMENT, THE PRICES IN THIS ATTACHMENT SHALL PREVAIL. ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED AND ARE RATIFIED HEREBY. THIS ATTACHMENT SHALL NOT BE EFFECTIVE UNTIL THE DATE OF EXECUTION OR SECOND SIGNATURE.

EACH PARTY REPRESENTS THAT IT HAS FULL AUTHORITY AND POWER TO ENTER INTO AND PERFORM UNDER THIS AGREEMENT, AND THAT THE PERSON SIGNING ON BEHALF OF EACH HAS BEEN PROPERLY AUTHORIZED AND EMPOWERED TO ENTER INTO THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY IT.

By execution, signer certifies that signer is authorized to accept and execute this Attachment on behalf of DSL.

By execution, signer certifies that signer is authorized to accept and execute this Attachment on behalf of Customer.

DATA SYSTEMS INTERNATIONAL, INC.

By: 

Print Name: Mark L. Baldwin

Title: SVP Administration & General Counsel

Date: June 29, 2016

STATE OF NEBRASKA, STATE PURCHASING BUREAU

By: 

Print Name: KWA TYLER

Title: Operations & Logistics Manager-DL

Date: 7/1/16

**SOFTWARE LICENSE, SERVICES AND MAINTENANCE AGREEMENT
EXHIBIT A**

During the term of the Software License, Services and Maintenance Agreement by and between Data Systems International, Inc. and Customer, DSI agrees to extend to Customer the following prices:

MOBILE DATA COLLECTION DEVICE/ACCESSORIES/MEDIA/MANUFACTURER SERVICE AGREEMENTS

Hardware & Accessories (See Honeywell Complete Price Book)

Discount %
40% of Prices
listed in
Honeywell
Complete Price
Book

Media

See Media Price
Book

Everything Else

List Price

DSI LICENSED PRODUCTS FOR ORACLE/JDE ENTERPRISE ONE

License Fee

DEVICE LICENSE, FULL ACCESS-

PD Full Access Device License, Production

1,781.25

DEVICE LICENSE, FULL ACCESS-

NP Full Access Device License, Non-Production

1,188.00

APPLICATION SERVER, PD Application Server License, Production

5,212.50

APPLICATION SERVER, NP Application Server License, Non-Production

3,475.00

Mobile Application Platform (Mobile Client Web/Application Studio

MOBILE PLATFORM-250 USERS Forms/Local Device Database) - (250 User Tier)

200,000.00

DSI MAINTENANCE FEE PERCENTAGE

17.40%

Maintenance Fee for additional Licensed Products acquired by Customer on or after July 11, 2016 shall be based 17.4% of the license fee paid by Customer for the Licensed Products and shall be added to the maintenance fee for all Licensed Products upon expiration of any Period of Coverage.

SERVICES

The following are hourly rates by resource for Services that Customer may elect to receive from DSI and which shall be detailed in a statement of work or scope document mutually agreed upon and signed by both parties.

Hourly Rate

Installer/Scripter/Integrator

175.00

Analyst/Designer/Programmer Analyst/Infrastructure Architect

200.00

Implementation Coordinator/Project Manager

225.00



CONFIDENTIAL