



# TENNESSEE WILDLIFE RESOURCES AGENCY

ELLINGTON AGRICULTURAL CENTER  
P. O. BOX 40747  
NASHVILLE, TENNESSEE 37204

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## Memorandum

**TO:** Ms. Krista Lee, Executive Director, Fiscal Review Committee

**FROM:** Ed Carter, Executive Director, and Tennessee Wildlife Resources Agency 

**DATE:** July 10, 2017

**SUBJECT:** Request for Approval of Non-Competitive Contract

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The Tennessee Wildlife Resources Agency respectfully requests approval to award a non-competitive contract to SmartCop, Inc.

This "Computer Aided Dispatch (CAD)" software is offered exclusively by SmartCop. Officer safety is our first priority and this contract will allow TWRA to purchase the number one utility software used by law-enforcement dispatch offices to track personnel and officer activity using GPS in real time. This program enhances officer safety and situational awareness of supporting officer backup positions. SmartCop CAD software maximizes public safety by providing real time information to Wildlife Officers, and our Dispatch personnel.

This unique software system, with its many features and benefits, is necessary to enhance our radio system. It integrates with the Brandt System for licensing information used by TWRA and several neighboring states. It also integrates with the National Crime Information Center (NCIC) and other programs to give us maximum available information. The program will auto-populate citation forms, activity reports, boating accident forms, and gives us the ability to develop reports that have not been previously available.

TWRA proposes to award a five year contract with the following funding:

First Twelve Months	\$769,963.00
Second Twelve Months	\$134,414.60
Third Twelve Months	\$134,414.60
Fourth Twelve Months	\$134,414.60
Fifth Twelve Months	\$134,414.60

Please contact Clyde Hicks at (615) 781-6604 with any questions or concerns. We appreciate your consideration of this matter.

Enclosures:

The State of Tennessee

AN EQUAL OPPORTUNITY, EQUAL ACCESS, AFFIRMATIVE ACTION EMPLOYER



<b>Request Tracking #</b>	32801 - CAD
<b>10. eHealth Pre-Approval Endorsement Request</b> – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>11. Human Resources Pre-Approval Endorsement Request</b> – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
<b>13. Maximum Contract Cost – with ALL options to extend exercised</b>	\$ 1,500,000
<b>14. Was there an initial government estimate? If so, what amount?</b>	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, \$1,500,000
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	Quote
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	The Agency met with the top law enforcement software vendors. The price is the rate across the vendors. SmartCOP, Incorporated provides more features at the same rate.
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	The Agency and Contractor communicated through teleconference, WebEx and personal presentations.
<b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	The number one utility of this software is Officer Safety. The CAD uses GPS location and current officer activity to track personnel in real time. This allows each officer to have a situational awareness of other officers and their activity. This will assist in dispatching and allows maximum possible protections for backup. Officer radios are equipped with a panic button to signal for help, and the GPS feature pinpoints their location. Officer efficiency is improved as they are dispatched by priority and location. The CAD allows ad-hoc reporting to measure performance and to review decisions based on resource allocations. By also connecting with the Brandt system, officers will access its data base and know who they are dealing with when presented with licensing. If citations, activity reports, boating accidents, and other reports are required, the CAD auto-fills information and quickly completes required paperwork, leaving more time for active patrol and enforcement. CAD will replace many of the existing systems and manual forms now used in this activity, which will result in future savings.

Request Tracking #	32801 - CAD
19. Proposed contract impact on current State operations	<p>The impact of SmartCOP's software will</p> <ol style="list-style-type: none"> <li>1) Provide protection for the Wildlife Officers</li> <li>2) Integrate the existing subsystems into one central system which will result in future savings.</li> <li>3) Integrate with the Agency's R.E.A.L. system for licensing information</li> </ol>
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	<p>The Tennessee Wildlife Resource Agency would like to request sole source procurement for the acquisition of the "Computer Aided Dispatch" software system offered exclusively by SmartCOP, Incorporated. This unique software product is necessary to complete and enhance our radio system. SmartCOP's CAD offers many features and benefits, and integrates with the Brandt system for licensing information. The number one utility of this software is Officer Safety. The CAD uses GPS location and current officer activity to track personnel in real time. This allows each officer to have a situational awareness of other officers and their activity. This will assist in dispatching and allows maximum possible protections for backup. Officer radios are equipped with a panic button to signal for help, and the GPS feature pinpoints their location. Officer efficiency is improved as they are dispatched by priority and location. The CAD allows ad-hoc reporting to measure performance and to review decisions based on resource allocations. By also connecting with the Brandt system, officers will access its data base and know who they are dealing with when presented with licensing. If citations, activity reports, boating accidents, and other reports are required, the CAD auto-fills information and quickly completes required paperwork, leaving more time for active patrol and enforcement. CAD will replace many of the existing systems and manual forms now used in this activity, which will result in future savings. TWRA's Information Technology Division and its Law Enforcement Division have researched similar systems. Their conclusion is that no other software offers as complete a resource for Officer Safety, GPS tracking, Officer Efficiency, Ad-Hoc Reporting, and also to interface with the Brandt Licensing System. This software solution is only available from SmartCOP, Incorporated and that is why we request sole source approval.</p>
<b>For No Cost and Revenue Contracts Only</b>	
21. What costs will the State incur as a result of this contract? If any, please explain.	

Request Tracking #	32801 - CAD
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
<b>For Sole Source and Proprietary Procurements Only</b>	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	<p>The number one utility of this software is Officer Safety. The CAD uses GPS location and current officer activity to track personnel in real time. This allows each officer to have a situational awareness of other officers and their activity. This will assist in dispatching and allows maximum possible protections for backup. Officer radios are equipped with a panic button to signal for help, and the GPS feature pinpoints their location. Officer efficiency is improved as they are dispatched by priority and location. The CAD allows ad-hoc reporting to measure performance and to review decisions based on resource allocations. By also connecting with the Brandt system, officers will access its data base and know who they are dealing with when presented with licensing. If citations, activity reports, boating accidents, and other reports are required, the CAD auto-fills information and quickly completes required paperwork, leaving more time for active patrol and enforcement. CAD will replace many of the existing systems and manual forms now used in this activity, which will result in future savings.</p>

Request Tracking #	32801 - CAD
<p>26. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</p>	<p>CTS America (SmartCOP, Inc.), a privately held Florida corporation, is engaged in system development, implementation, and support services for a fully integrated suite of public safety products including Computer Aided Dispatch (CAD), Records Management System (RMS), Mobile Computing with Field Based Reporting, and Jail Management System (JMS). Founded in 1988 and incorporated in 1999, CTS' mission is simple, yet very important: Maximize public safety by providing real-time information through integrated software solutions for law enforcement officers, firefighters, EMS personnel, dispatchers, and report takers.</p> <p>We are proud to say that we accomplish this mission by providing our customers with the most advanced, complete software solution available which yields proven benefits such as reducing crime, increasing safety, and boosting agency efficiency.</p> <p>Headquartered in Pensacola, Florida, CTS actively and successfully competes in all size markets, with products that scale from an agency of ten officers to thousands of officers. Agencies all across the United States depend on CTS and they have seen the benefits of a fully-integrated, single source solution. The system's ability to furnish information through a single database reduces redundant data entry and improves information flow. Users of the CTS system find that it enhances agency efficiency, improves response times, and improves officer and citizen safety in a cost effective manner.</p> <p>CTS utilizes Commercial Off the Shelf (COTS) software that is unique and customized, not in code but through configuration that results in a longer lifecycle, frequent updates and next-generation releases to keep current with functional requirements and leveraging new technologies.</p> <p>The CTS solution is flexible enough to serve current and future needs of an agency. Our design serves the needs of an agency and provides interoperability among outside agencies using the Global Justice Data Model from the Department of Justice. CTS' feature-rich, integrated system is based upon advanced, yet proven technology derived from current industry standards and best practices.</p>

Request Tracking #	32801 - CAD
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, Method: Name/Address:
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	The Agency met with the top law enforcement software vendors. The price is the rate across the vendors. SmartCOP, Incorporated provides more features at the same rate.
Signature Required for all Special Contract Requests	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	
Signature: <i>Ed Carter</i> <sup>Gu</sup>	Date: <u>12/23/2016</u>



## STS Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** STS Contracts  
Department of Finance & Administration  
E-mail : [it.abc@tn.gov](mailto:it.abc@tn.gov)

**FROM :** Clyde.Hicks, Procurement  
E-mail : [Clyde.Hicks@tn.gov](mailto:Clyde.Hicks@tn.gov)

**DATE :** December 7, 2016

**RE :** Request for STS Pre-Approval Endorsement

### Applicable RFS #

**STS Endorsement Signature & Date:** State Security Confidential Information Applicability: Applicable

**Mark F. Bengel (by WMH)**

Digitally signed by Mark F. Bengel (by WMH)  
DN: cn=Mark F. Bengel (by WMH), o=TN Finance & Admin,  
ou=Strategic Technology Solutions, email=william.hafley@tn.gov,  
c=US  
Date: 2017.02.15 17:28:02 -06'00'

**Chief Information Officer**

*NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.*

Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

<b>Contracting Agency</b>	<b>Tennessee Wildlife Resources Agency</b>
<b>Agency Contact</b> (name, phone, e-mail)	<b>Michael May, (615) 781-6639, <a href="mailto:Michael.May@tn.gov">Michael.May@tn.gov</a></b>
<p><b>Attachments Supporting Request</b> (mark all applicable)</p> <p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.</p> <p><input type="checkbox"/> Solicitation Document</p> <p><input checked="" type="checkbox"/> Special Contract Request</p> <p><input type="checkbox"/> Amendment Request</p> <p><input type="checkbox"/> Proposed Contract/Grant or Amendment</p> <p><input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any)</p>	
<b>Information Systems Plan (ISP) Project Applicability</b>	

**Applicable RFS #**

To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.

IT Director/Staff Name Confirming (required): Michael May

Applicable – Approved ISP Project#

Not Applicable

**Subject Information Technology Service Description**

Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, *etc.* As applicable, identify the contract or solicitation sections related to the IT services.

The Computer Aided Dispatch (CAD) software from Caliber Public Safety offers GPS location to all law enforcement officers for situational awareness. It allows for all types of reporting to measure performance. It will replace many of our existing systems (Citations, Activity Reporting, Boating Accidents) and manual forms. Also, the system will integrate with our current R.E.A.L. system for licensing information. The new R.E.A.L. system developed by Brandt Information Systems currently supports other states that utilize this software.



**PHIL BREDESEN**  
Governor

**TENNESSEE BUREAU OF INVESTIGATION**

901 R.S. Gass Boulevard  
Nashville, Tennessee 37216-2639  
(615) 744-4000  
TDD (615) 744-4001

June 1, 2017



**MARK GWYN**  
Director

**Vendor Background Check Approval**

This correspondence confirms that the following personnel from SmartCop have undergone a fingerprint background check through the FBI's III (nationwide criminal history database) and Tennessee's Criminal History database. No prohibitors were found. This does not signify that there was no criminal history record information found on any of the individuals, however, there were no records found that would prohibit their access.

**Employee Name**

Elizabeth Blair
Ty Warner
Ulysses Hill
T. Preston Chesser
Matt Warnock
Kenneth Repine
Vicki Floyd
Juan Fraga
Kenneth Cochran
Brandon Rudd
Stanley Perkins

At your company's discretion, this letter may be provided to current and potential customers in the state of Tennessee.





**BILL HASLAM**  
Governor

**TENNESSEE BUREAU OF INVESTIGATION**  
901 R.S. Gass Boulevard  
Nashville, Tennessee 37216-2639  
(615) 744-4000  
TDD (615) 744-4001



**MARK GWYN**  
Director

**TENNESSEE INFORMATION ENFORCEMENT SYSTEM  
VENDOR USER AGREEMENT**

This agreement is made and entered into between the Tennessee Bureau of Investigation (TBI), a department of government of the State of Tennessee and SMW7 COP, referred to herein as the Vendor, to be effective on the date hereafter provided.

The Tennessee Bureau of Investigation, administering the Tennessee Crime Information Center (TCIC), pursuant to the laws of Tennessee including Chapter 10 of Title 38 and a written agreement between the TBI for the State of Tennessee and the Department of Justice for the United States Government, agrees to provide available criminal justice-related information and/or interfaces for the transmission and/or retrieval of said information, subject to the following provisions:

The vendor must have a specific agreement / contract with each criminal justice agency for which it provides services for the administration of criminal justice, to include criminal justice dispatching functions or data processing/information services for the criminal justice agency or agencies to access the Tennessee Information Enforcement System (TIES) network. Pursuant to the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Security Policy, the agreement between the vendor and the criminal justice agency must incorporate the CJIS Security Addendum approved by the Director of the FBI (acting for the U. S. Attorney General), as referenced in Title 28 CFR 20.33 (a)(7). The security addendum specifically authorizes access to criminal history record information and criminal justice information, limits the use of the information to the specific purposes for which it is provided, ensures the security and confidentiality of the information consistent with applicable laws and regulations, and the CJIS Security Policy provides for sanctions, and contains such other provisions as the Attorney General may require.

The TBI, the CJIS Systems Agency (CSA) in Tennessee, will provide the vendor with such access to the TIES network as needed by the vendor for the performance of its duties, pursuant to the provisions of the agreement with the criminal justice agency for which it provides services. Such access by the vendor shall be in compliance with the CJIS Security Policy, as amended, and the rules, regulations, policies, and procedures promulgated by the TBI, the National Crime Information Center (NCIC), and the International Justice and Public Safety Network (NIets), relating to the operation of these networks and the acquirement, transmission, use and dissemination of criminal justice information available for these networks.

~~If the vendor provides a workstation or software interface application for the criminal justice agencies to utilize the TIES network, to include sending and receiving images when applicable, the vendor must ensure that the application is kept up to date with current~~



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functions and requirements. The vendor and its product must also have been approved by TBI.

The vendor agrees that use of the TIES network will be strictly limited to the administration of criminal justice support functions of the vendor. Under no circumstances shall criminal justice information be disseminated further. Remote access is only allowed for technical support. The vendor must not unlawfully access the TIES network/data for any other reason. The use of any remote access software is permitted only for the purpose of providing technical support to the private network or individual TIES devices. Furthermore, any software used to remotely access criminal justice computer systems, whether for maintenance, repair, or any other purpose, must be implemented in such a manner as to provide for the following:

- A. No connection shall be made without operator intervention to allow the connection. This can be achieved in any manner applicable to the software being used, but shall not allow access without an operator manually enabling it;
- B. Any person accessing the criminal justice system must have his/her own unique ID for connecting to the device via the remote control software;
- C. Passwords for accessing the criminal justice system must meet the CJIS standards for passwords; and,
- D. All connections must be logged with date, time, ID of remote user, and duration of the connection.

Through the supported agency, the vendor must submit to TBI, for review and approval, written documentation describing the use of remote access software, and the security measures that will be implemented to ensure the integrity of the TIES network/data, prior to installing any type of remote control access software on the private network or the TIES devices.

The vendor must not add additional TIES network accessible devices without TBI approval, through the supported agency. TIES network access must be limited to devices approved by TBI. The vendor shall be responsible for all maintenance/diagnostics beyond the connectivity point provided by the TBI. Since public safety and criminal justice operations are critical to the lives, safety, and property of citizens, the vendor must provide the highest operational support priority to the criminal justice devices serviced by the vendor. Other applications must not interfere with the delivery of criminal justice messages. The vendor shall familiarize the agency with the hardware, software, boot-up procedures and error messages. The vendor must configure the device software as specified by the TBI.

The vendor shall advise its employees of the penalties for misuse of criminal justice information. The vendor's employees, who manage, operate, develop, access and maintain criminal justice systems, shall be subject to background investigations as prescribed by the TBI and the FBI, which include the submission of applicant fingerprint cards. In addition, all applicable vendor employees shall read the CJIS security addendum and sign the certification form, which shall be appended to this agreement.



## Vendor CJIS Online Administrator



### CJIS Online Administrator Profile

Company Name	SMARTCOP										
Administrator Name and Title	Ty Warner / CJIS Admin										
Address	9165 Roe St.										
City / State / Zip	Pensacola, FL 32514										
Phone Number	1800-374-0101										
Fax Number	1-850-429-0522										
Email Address	nwarner@hart-computer.com										
Vendor Description	Software provider for Report management, Dispatch, and mobile law enforcement users.										
Categories Related to the Vendor <i>Check all that apply.</i>	<table><tr><td><input checked="" type="checkbox"/> CAD</td><td><input checked="" type="checkbox"/> Mobiles</td></tr><tr><td><input checked="" type="checkbox"/> Workstations</td><td><input type="checkbox"/> Networking</td></tr><tr><td><input checked="" type="checkbox"/> Switches</td><td><input type="checkbox"/> Consulting</td></tr><tr><td><input checked="" type="checkbox"/> Custom Software</td><td><input type="checkbox"/> Training</td></tr><tr><td><input type="checkbox"/> Testing</td><td><input type="checkbox"/> Other _____</td></tr></table>	<input checked="" type="checkbox"/> CAD	<input checked="" type="checkbox"/> Mobiles	<input checked="" type="checkbox"/> Workstations	<input type="checkbox"/> Networking	<input checked="" type="checkbox"/> Switches	<input type="checkbox"/> Consulting	<input checked="" type="checkbox"/> Custom Software	<input type="checkbox"/> Training	<input type="checkbox"/> Testing	<input type="checkbox"/> Other _____
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<input checked="" type="checkbox"/> Custom Software	<input type="checkbox"/> Training										
<input type="checkbox"/> Testing	<input type="checkbox"/> Other _____										

Please fax completed form to (615) 744-4555



**TENNESSEE BUREAU OF INVESTIGATION**  
**Tennessee Information Enforcement System**  
**Vendor Profile**



**Vendor Information**

Company Name	SmartCOP
Mailing Address	9165 Roe St.
Phone Number	1-800-374-0101
Fax Number	1-850-429-0522
Website	www.smartcop.com

**Contact for your Tennessee Customers**

(Concerning daily operation of your product)

Contact Name	Ty Warner		
Phone Number	1-850-232-2941	Fax Number	
Email Address	t.warner@nortiscomputer.com		

**Contact for TBI Employees (if different than above)**

(Concerning CJIS and TIES policies and procedures)

Contact Name			
Phone Number		Fax Number	
Email Address			

**Product Information (attach additional sheets if necessary)**

Product Name and Version	ADM 9.8.4
TN Agencies using this product	TWRA
Other States using this product	FL, GA, AL

Please note: Any product that will interface with TBI's message switch must first be tested and approved by TBI.



**TENNESSEE BUREAU OF INVESTIGATION**  
**Tennessee Information Enforcement System**  
**Vendor Profile**



**Vendor Information**

Company Name	SmartCOP
Mailing Address	9165 Roe St.
Phone Number	1-800-374-0101
Fax Number	1-850-424-0522
Website	www.smartcop.com

**Contact for your Tennessee Customers**

(Concerning daily operation of your product)

Contact Name	Ty Warner		
Phone Number	1-850-232-2941	Fax Number	
Email Address	t.warner@harriscomputer.com		

**Contact for TBI Employees (if different than above)**

(Concerning CJIS and TIES policies and procedures)

Contact Name			
Phone Number		Fax Number	
Email Address			

**Product Information (attach additional sheets if necessary)**

Product Name and Version	CAD 9.9.6
TN Agencies using this product	TWRA
Other States using this product	FL, GA, AL

**Please note: Any product that will interface with TBI's message switch must first be tested and approved by TBI.**



**TENNESSEE BUREAU OF INVESTIGATION**  
**Tennessee Information Enforcement System**  
**Vendor Profile**



**Vendor Information**

Company Name	SMAW+COP
Mailing Address	9165 Roe St.
Phone Number	1-800-374-0101
Fax Number	1-850-429-0522
Website	www.sma+cop.com

**Contact for your Tennessee Customers**

(Concerning daily operation of your product)

Contact Name	Ty Warner		
Phone Number	1-850-232-2941	Fax Number	
Email Address	twarner@nortiscomputer.com		

**Contact for TBI Employees (if different than above)**

(Concerning CJIS and TIES policies and procedures)

Contact Name			
Phone Number		Fax Number	
Email Address			

**Product Information (attach additional sheets if necessary)**

Product Name and Version	RMS 9.8.6
TN Agencies using this product	TWRA
Other States using this product	FL, GA, AL

**Please note: Any product that will interface with TBI's message switch must first be tested and approved by TBI.**



**TENNESSEE BUREAU OF INVESTIGATION**  
**Tennessee Information Enforcement System**  
**Vendor Profile**



**Vendor Information**

Company Name	SmartCOP
Mailing Address	9165 Roe St.
Phone Number	1-800-374-0101
Fax Number	1-850-429-0522
Website	www.smartcop.com

**Contact for your Tennessee Customers**

(Concerning daily operation of your product)

Contact Name	Ty Warner		
Phone Number	1-850-232-2941	Fax Number	
Email Address	twarner@war:scomputer.com		

**Contact for TBI Employees (if different than above)**

(Concerning CJIS and TIES policies and procedures)

Contact Name			
Phone Number		Fax Number	
Email Address			

**Product Information (attach additional sheets if necessary)**

Product Name and Version	MCT 9.9.3
TN Agencies using this product	TWRA
Other States using this product	FL, GA, AL

**Please note: Any product that will interface with TBI's message switch must first be tested and approved by TBI.**

Nothing in this agreement shall be interpreted as giving authority to the vendor to invade the privacy of any citizen. The vendor agrees to immediately remove any employee from assignments covered by this contract for security violations, pending further investigation. In addition, any violation of system discipline or operational policies related to system discipline shall immediately be reported in writing to the TBI's Information Security Officer.

The TBI reserves the right to terminate this agreement, with or without notice, upon determining that the vendor has violated terms of this agreement and/or the rules, regulations, policies and procedures of TBI, TIES, FBI, NCIC, or Nlets.

**Vendor:**

Ty Warner / Ty Warner  
Authorized Representative (Printed Name / Signature)

CJIS Administrator  
Title

5/3/17  
Date

**Tennessee Bureau of Investigation:**

[Signature]  
Director

5/23/17  
Date

[Signature]  
CJIS Systems Officer

5/19/17  
Date

RECEIVED

MAY 09 2017  
CJIS Support Center  
TN Bureau of Investigation



## Terms and Conditions

Event Number: **32801-0000016293**

### Smart Cop (CAD system)

#### **Standard Terms and Conditions**

Instructions to Bidders:

1. Read the entire bid, including all terms and conditions and specifications.
2. If submitting the bid by mail: All bid prices must be typed or written in ink on the Line Details portion of the Invitation to Bid (ITB); any corrections, erasures or other forms of alteration to unit prices must be initialed by the bidder.
3. If submitting the bid by mail, the bid must be manually signed in ink; failure to do so will cause rejection of your bid. If submitting the bid on-line, your electronic signature constitutes having signed the bid.
4. Bid prices shall include delivery of all items F.O.B. destination or as otherwise specified.
5. Address all inquiries and correspondence to the Purchasing Agent indicated in the Invitation to Bid.
6. I (we) agree to strictly abide by all the statutes and terms contained in the rules of the Department of General Services, Central Procurement Office which are by reference made a part hereof, in addition to the Standard and Special Terms & Conditions, and Specifications embodied in this Invitation to Bid.
7. **IMPORTANT:** By submitting the bid, the Bidder certifies compliance with the above and further certifies that this bid is made without collusion or fraud.
8. State statutes require that all bidders be registered prior to the issuance of a contract or a purchase order. Vendors/Bidders can register online at the State of Tennessee Supplier Portal:  
<https://supplier.edison.tn.gov>.
9. I (We) propose to furnish and deliver any and all of the supplies, services, and/or other commodities named in the Invitation to Bid, and for which I (we) have set prices in my (our) offering.
10. It is understood and agreed that this bid, when certified by authorized signature, shall constitute an offer, which when accepted in writing by the Department of General Services, Central Procurement Office, and subject to the terms and conditions of such acceptance, will constitute a valid binding contract between the State of Tennessee and the Vendor/Contractor (bidder) submitting such offering.
11. By my (our) written signature on this bid I (we) guarantee and certify that all items included in the bid meet or exceed any and all State specifications covering such items. I (We) further agree, if awarded a contract or purchase order as a result of this bid, to deliver such commodities, service or merchandise which meet or exceed the specifications.

12. It is understood and agreed that no contract may be assigned, sublet, or transferred without the written consent of the Central Procurement Office.

13. The inclusion in any response of a limitation of remedies or liabilities clause may be cause for rejection, unless otherwise specified in this solicitation or in accordance with the provisions of *Tennessee Code Annotated* § 12-3-701 or Central Procurement Office Rules, policies or procedures.

14. All bidders have the right to inspect the bid file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested bidders should contact the Purchasing Agent following the bid opening date or once the file is open for the seven (7) day inspection period. A "File Open for Inspection" letter will be sent to all bidders detailing the bidder(s) recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the bid file will be provided to the bidder. If there is no request to inspect the bid file by the end of the seven (7) day inspection period, the Purchasing Agent will proceed with the award.

15. Protest by Vendor: Pursuant to Tenn. Code Ann. § 4-56-103, any actual proposer may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: [http://tn.gov/generalserv/cpo/for\\_bidders.html](http://tn.gov/generalserv/cpo/for_bidders.html)

16. Bid Mailing Instructions: Each individual bid proposal must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the bid opening date. Bids should be mailed in a properly labeled sealed envelope to the following address:

Department of General Services, Central Procurement Office  
Attn: Bidder Services  
3rd Floor, William R Snodgrass, Tennessee Tower  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102

17. Subject to paragraph 13, the Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106

18. Contracts are entered into solely for the convenience of the State of Tennessee. The vendor/contractor understands and agrees that the State of Tennessee, as a signatory party to a contract, is solely responsible for its performance, and that the officers and employees of the Department of General Services, Central Procurement Office, act exclusively as agents of the State for the award, consummation, and administration of contracts and are not personally liable for any performance or nonperformance by the State.

19. A bid must be received in the Central Procurement Office on or before the date and hour designated for the bid opening or the bid will be rejected.

20. The Central Procurement Office may reject any or all bids. Action to reject all bids shall be taken only for unreasonably high prices, errors in the Invitation to Bid (ITB), cessation of need, unavailability of funds, or any other reason approved by the Procurement Commission. The Procurement Commission has authorized rejection of all bids for failure to secure adequate competition. If an ITB is to be re-advertised, all prior bids shall remain closed to inspection until the evaluation of the re-advertisement is complete.

21. All present and former employees or officials of the State are referred to Tennessee Code Annotated 12-4-103.

22. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-bid conference or other scheduled function should contact the Central Procurement Office to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephonically, or otherwise, and should be made no less than ten (10) days prior to the scheduled event, to allow time for the Central Procurement Office to provide such aid or service.

23. No person on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State Constitutional and/or statutory law shall be excluded from participation in, or denied benefits of, or be otherwise subjected to discrimination in the performance of the Contract or in the employment practices of the vendor/contractor. The vendor/contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to employees and applicants, notices of non-discrimination.

24. TAXES: Purchases of goods by the State of Tennessee are exempt from Tennessee sales and use tax pursuant to Tenn. Code Ann. 67-6-329(a) (4), and the state is generally exempt from Federal excise tax. Contractors are subject to Tennessee sales and use tax on all materials and supplies used in the performance of a contract, whether such materials and supplies are purchased by the contractor, produced by the contractor, or provided to the contractor by the State, pursuant to Tenn. Code Ann. 67-6-209. The contractor agrees to pay all taxes incurred in the performance of an awarded contract.

State agencies which procure products for the purpose of resale shall register with the Department of Revenue. Upon registration the agency will issue resale certificates to the successful contractor(s) for products procured for resale. The agency is responsible for the collection of the appropriate sales or use tax when the product is sold.

25. Exceptions to terms and conditions and/or those proposed by the bidder which may vary from the invitation to bid may render the bid unresponsive and subject the bid to rejection.

26. Unless otherwise stated, all goods called for by a purchase order must be tendered in a single delivery in compliance with the delivery time specified and payment is due only on such tender. Partial shipments and/or back orders will only be accepted with receiving agency's prior authorization.

27. All products, materials, supplies and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available as of the date of the bid opening, unless otherwise stated in this event.

28. Manufacturers of chemical products which are the subject of purchase contracts for the State of Tennessee shall list and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDS search repository or on the manufacturer's website so that such information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public. In lieu of posting a MSDS on MSDSSEARCH, a bidder shall include the manufacturer's universal resource locator (URL) for its MSDS in the event. For purposes of this MSDS requirement, the Department of General Services recognizes the following URL for national MSDS search repository:MSDS-SEARCH, which can be accessed on the internet at: <http://www.msdssearch.com>.

29. Conflict of Interest: The State may not consider a solicitation response from an individual who is, or within the past six (6) months has been, a state employee. For purposes of this solicitation, an individual shall be considered to be a "state employee" and prohibited from submitting a response to this solicitation for six (6) months after such time as all compensation for salary, termination pay, and annual leave has been paid to such state employee. A contract with or a solicitation response from a company, corporation, or any other contracting entity in which a controlling interest is held by a state employee shall be considered to be a contract with or a solicitation response from a state employee as though the state employee were submitting a response or entering a contract on his or her behalf. Notwithstanding the foregoing, a contract with or a solicitation response from a company, corporation, or any other contracting entity that employs an individual who does not own a controlling interest in such entity and who is, or within the past six months has been, a state employee shall not be considered a contract with or a solicitation response from a state employee and shall not constitute a prohibited conflict of interest.

30. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The contractor agrees that it will be subject to the exclusive jurisdiction of the courts of Tennessee in actions that may arise under this contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Section 9-8-101 through 9-8-407.

31. State and Federal Compliance: The contractor shall comply with all applicable state and federal laws and regulations in the performance of this contract.

32. Professional Licensure and Department of Revenue Registration: All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Proposer provides for consideration and evaluation by the State as a part of a proposal in response to this solicitation, shall be properly licensed to render such opinions. Before the Contract resulting from this solicitation is signed, the apparent successful Proposer (and Proposer employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Proposer to submit evidence of proper licensure. Before the Contract resulting from this solicitation is signed, the apparent successful Proposer must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Proposer provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: [TN.Revenue@tn.gov](mailto:TN.Revenue@tn.gov).

33. Prohibition of Illegal Immigrants: The requirements of State of Tennessee's Public Acts, 2006, Chapter Number 878 and Executive Order 41 addressing the use of Illegal Immigrants in the performance of any contract to supply goods or services to the State of Tennessee, shall be a material provision of this contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this contract.

As required by Public Acts, 2006, Chapter Number 878, no person may enter into a contract to supply goods or services to the State without first attesting in writing that the person will not knowingly utilize the services of Illegal Immigrants in the performance of this contract, and will not knowingly utilize the services of any subcontractor who will utilize the services of Illegal Immigrants in the performance of this contract. For purposes of this contract, "Illegal Immigrant" shall be defined as any person who is not either a United States citizen, a lawful permanent resident, or a person whose physical presence in the United States is authorized or allowed by the department of homeland security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the contract. The contractor hereby attests, certifies, warrants, and assures that it shall comply with this term and condition for the entire contract period.

The contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or

submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract. The contractor may appeal the imposition of the one-year prohibition by utilizing an appeals process established by the Commissioner of Finance and Administration.

As per Executive Order 41, the contractor shall be required to submit semi-annual Attestation Forms and obtain a signed Attestation Form from any subcontractor prior to the use of the subcontractor and semi-annually thereafter during the contract period. The records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State. Records shall include but are not limited to the following:

Documentation on contractors' employees and subcontractor personnel working on this contract showing that they are legal to work in the United States and payroll records.  
Signed and dated Attestation Forms for your company that have been submitted to the Central Procurement Office and Attestation Forms obtained from subcontractor(s).

Note: The contractor shall be required to obtain prior approval to subcontract from the Central Procurement Office.

By authorized signature on this Invitation to Bid the contractor constitutes signing the Attestation Form for the initial six (6) months of the contract period. The contractor shall be required to submit signed Attestation Forms on a semi-annual basis from the start date of the contract period through to its completion date to the Central Procurement Office. Such attestations shall be maintained by the contractor in a permanent file on the vendor premises and made available to State officials upon request. The State of Tennessee provides an "approved Attestation Form" to support the reaffirmation process. The form can be accessed and printed from the internet at [http://tn.gov/generalserv/cpo/for\\_bidders.html](http://tn.gov/generalserv/cpo/for_bidders.html)

34. Modifications and Amendments: This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Chief Procurement Officer, the Commissioner of Human Resources, and the Comptroller of the Treasury).

35. Records: The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

36. Monitoring: The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

37. HIPAA Compliance: The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by

the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.

d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

# Special Terms and Conditions

## 1. F.O.B. Destination (Agency Term Contract)

F.O.B. Point:

Agency Name: Tennessee Wildlife Resources Agency

Address: 440 Hogan Road Nashville, TN 37220

## 2. Term of Contract - Multi-Year

Total Number of Years if all Options are Exercised: 5

Start Date: 07/01/2017

Initial End Date: June 30, 2022

Final End Date: June 30, 2022

The anticipated effective (start) date and expiration (end) dates of the contract are shown above. If award has not been made by the anticipated effective date, then the contract shall become effective upon the date the bid is accepted and contract awarded by the State, as indicated by the purchasing agent's signature on the contract notice of award (note: the change of effective date may not result in a change of the anticipated expiration date.)

**RENEWAL OPTIONS:** This contract may be renewed upon satisfactory completion of the initial contract term. The State reserves the right to execute up to the number of renewal options listed above annually under the same terms and conditions for a period not to exceed 12 months each by the State. It is mutually understood and agreed that the State's commitment is limited to a base term contract, not to exceed twelve (12) months, which is subject to renewal annually at the State's sole option.

It is understood and agreed that the State reserves the right to extend the term contract period resulting from this solicitation an additional period of time, not to exceed 180 days beyond the normal expiration date of such contract, upon mutual written agreement by both parties, under the same terms and conditions. Provided, however, in no event shall the maximum term of a contract exceed a total of sixty (60) months.

## 3. Volume, Multi-Year

The total purchases of any individual item on the contract are not known. The Central Procurement Office has attempted to give an accurate estimate of probable purchases of each item from the current contract period and projected estimates for the new contract period. The Central Procurement Office does not guarantee that the state will buy any or all estimated amounts of any specified item or any total amount.

1st 12 MONTHS	\$ 796,963.00
2nd 12 MONTHS	\$ 134,414.60
3rd 12 MONTHS	\$ 134,414.60
4th 12 MONTHS	\$ 134,414.60
5th 12 MONTHS	\$ 134,414.60

The vendor/contractor will only be paid for products or services rendered hereunder pursuant to purchase order releases issued to vendor/contractor from the state. The vendor/contractor is not entitled to be paid the maximum liability for any one year under the contract or any extensions of the contract for product or service not requested by the state. Maximum liability represents available funds for payment to vendor/contractor and does not guarantee payment of any such funds to the vendor/contractor per year under this contract unless the state requests product or service and vendor/contractor provides said product or service. The state is under no obligation to request product or service from vendor/contractor in any specific dollar amounts per year under this contract and the state may not request any product or service at all from vendor/contractor during the contract period.

#### **4. Bids Requested on Standard State Specifications for Products and/or Services**

Unit price bids are requested on products or services that equal or exceed (unless specifications limit the dimensions or brand(s)/model(s) of products to be bid). The absence of detailed specifications or the omission of detail description shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used. All interpretations of specifications shall be made from this statement. It is understood that the specifications or references to available specifications shall be sufficient to make the terms of such specifications binding on the vendor/contractor. Bidders must submit for bid evaluation applicable cuts, sketches, descriptive literature, and technical specifications covering the product offered, when applicable. Reference to literature submitted previously will not satisfy this requirement.

Bids requested on architect/engineer/designer specifications, if applicable. Bids are requested per architect/ engineer/designer's specification attached. Bids are to be lump sum and/or unit prices as shown on the price sheet. Any errors or omissions in plans or specifications shall be resolved prior to submission of a bid. Submission of a bid shall constitute agreement and compliance with such specifications and plans. All shop drawings and product sheets required by specifications shall be submitted to architect/engineer/designer prior to fabrication and/or installation.

#### **5. Bid Offer Expiration**

Enter the expiration date of your bid offer in the space provided on this Invitation to Bid. A minimum period of thirty (30) days from the bid closing date is requested. The state shall have sixty (60) days to accept the bid if a minimum period is not stated.

#### **6. Debarment and Suspension**

The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

## **7. Delivery Time (On-Time)**

The contractor shall be required to maintain or to have available for their own use personnel, equipment, and products sufficient to perform "on-time" as specified in this Invitation to Bid.

## **8. Freight F.O.B. State Agency (In-House)**

All quotations shall be F.O.B. destination. The term F.O.B. destination shall mean delivered and unloaded in-house or on-site service, with all charges for transportation and unloading prepaid by the vendor/contractor.

## **9. Firm Bid Price Period (Price Increase Allowed After Time Frame)**

Prices quoted shall be firm for 365 days following the contract start date, except in the event an unexpected charge is imposed on the contractor holder by federal, state, county or city government entity during the term of the contract. The vendor/contractor may invoice the state for the imposed charge amount as long as it provides proof (invoice or statement, etc.) of the imposed charge to the user agency. The state shall also be advised of and receive the benefit of any price decrease in excess of five (5) percent automatically. The vendor/contractor holder must provide written price reduction information within ten (10) days of its effective date. Requests for price changes based on vendor/contractor's cost: Written requests for price changes based on vendor/contractor's actual cost for other than an imposed charge by federal, state, county, or city government entity after the firm price period shall be submitted in writing to the Central Procurement Office. Any increase shall be based on the vendor's/contractor's actual cost increase, may not constitute additional profit as shown in written cost documentation and must contain data establishing or supporting the general or industry wide nature of the change. At the option of the state, (1) request may be granted, (2) the contract may be canceled and awarded to the next low bidder, (3) the contract may be canceled and the commodity/service be re-advertised for award, or (4) continue the contract without change. The Central Procurement Office will accept or reject all such written requests within forty-five (45) working days of the date of receipt of complete and verified documentation. Approval of Price Increases: If approved, the Central Procurement Office will modify the contract to reflect the approved price increase and issue the revised contract. The vendor/contractor shall honor all purchase orders dated prior to the approved price increase acceptance date at the original contract price. Approval of any price increase renews the firm price period. Price Increase Rejection: When the state rejects a request for a price increase, the vendor/contractor will be notified in writing of the state's intention. If the contract is to be canceled, the vendor/contractor shall be notified of the cancellation date via certified mail. The vendor/contractor will be required to honor all purchase orders that were prepared and dated prior to the date of the cancellation, if received by the vendor/contractor within a thirty (30) days following the date of the cancellation.

## **10. Bidder's Qualification**

Bidders must, upon request of the state, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions and specifications. The Assistant Commissioner, Department of General Services, Central Procurement Office, reserves the right to make the final determination as to a bidder's ability to perform.

## **11. Insurance Required**

The successful bidder(s) shall procure and maintain for the duration of the contract, at their own cost and expense insurance against claims for injuries to persons or damages to property including contractual liability which, may arise in connection with the performance of the work performed by the contractor, his agents, representatives, employees or subcontractors under the contract.

The insurance carrier(s) must be licensed to conduct business in the State of Tennessee. The insurance will be evidenced by an original or .pdf format document certificate of insurance. The certificate shall list the State of Tennessee as the certificate holder and must list the company name and address on file with the State. Should any of the policy coverage(s) provided have a major change, expire, or be canceled before the expiration date the Contractor shall fax or email vendor.insurance@tn.gov, a copy

of their insurer's cancellation notice within two (2) business days of receipt. The State of Tennessee shall be held harmless for any injuries, claims or judgments against the contractor.

Certificates for liability coverages shall name the State of Tennessee Central Procurement Office as an additional insured. The following Insurance Coverages are required:

Workers' Compensation Insurance: a certificate shall be provided which indicates the contractor provides workers' compensation coverage in compliance with the state laws of Tennessee., and Employer's Liability with the following limits:

E.L. Each Accident\$500,000  
E.L. Disease- Each Employee\$500,000  
E.L. Disease - Policy Limit\$500,000

General Liability and Property Damage Insurance: Comprehensive General Liability Insurance, including but not limited to, bodily injury, property damage, contractual liability, products liability, with combined single limits of \$500,000 per occurrence with a minimum aggregate of \$1,000,000.

The successful bidder(s) shall provide the Central Procurement Office with an original certificate of insurance or .pdf format document as proof of insurance coverage, as stated above, naming the State of Tennessee, Central Procurement Office as additional insured, within ten (10) business days after request. If the certificate of insurance is in .pdf format, it must be received directly from the insurance company.

Upon award, failure to maintain insurance coverage for the duration of the contract period may result in cancellation of the contract. In the event that the insurance policy on file in the Central Procurement Office expires or is canceled, the contractor will be required to cease work until proof of insurance is presented.

## **12. Inspection/Facilities**

The Central Procurement Office may inspect the facilities of any bidder or may require additional information regarding a bidder's ability to perform the proposed contract. Bids may be rejected for lack of apparent ability to perform the proposed contract.

## **13. Inspection of Materials, Equipment and Products**

All materials, equipment, and products are subject to inspection and testing. Items that do not meet specifications will be rejected. Failure to reject upon receipt does not relieve the vendor/contractor of liability. When subsequent tests after receipt are conducted and when such tests reveal damage or failure to meet specifications, the state may seek damages regardless of whether a part or all of the merchandise has been consumed.

## **14. Bid Rejection**

The Central Procurement Office reserves the right to reject any bid that contains prices for individual items or services that are inconsistent or unrealistic when compared to other prices in the same or other bids, if such action would be in the best interest of the state.

Errors: Each correction made by the bidder on the bid response must be initialed in ink by each correction. No corrections will be made in pencil. No bid or line item shall be altered or amended after the bid opening. In the case of errors in the extension price, the unit price will govern. Failure to comply with the above may be cause for rejection of part or the entire bid.

## **15. Single Award**

A single contract for all line items will be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. Prices shall be calculated as follows: The bidders unit bid price shall be multiplied by the line item quantity to obtain

the line item total. If more than one line item is included in the bid document, each line item total shall be added together for a total price for all line items bid. The bidder must bid all line items to be considered for an award.

## **16. Award Criteria**

An award shall be made to the lowest responsive and responsible bidder considering the following:

Ability to Perform  
Conformity to Specifications  
Lowest Composite Score

## **17. State Contract Administrator**

Questions or problems arising from bid procedures or subsequent order and delivery procedures should be directed to:

State of Tennessee  
Tennessee Wildlife Resources Agency  
440 Hogan Road  
Nashville, TN 37220  
Attn: Holly Crick  
Phone: 615-781-6544

## **18. Purchase Order Releases (Agency Term Contract)**

Orders for products or services that are included on agency term contracts shall be prepared by agencies on Departmental Purchase Release Orders and forwarded to the vendor/contractor. These purchase orders, when received by the vendor/contractor, serve as authorization for shipment of product(s) or start of service.

Billing Instructions:

The vendor/contractor shall invoice the state only after product has been received by the user agency or upon completion of the service described in the purchase order/contract, unless otherwise authorized in writing by the user agency and as required below prior to any payment.

The contractor shall submit an invoice, with all necessary supporting documentation, to the state agency billing address. Such invoice shall clearly and accurately detail the following required information:

1. Invoice/reference number; (assigned by the contractor);
2. Invoice date;
3. Contract and/or purchase order number; (assigned by the state);
4. Account name;
5. Procuring state agency and division name;
6. Account/customer number (uniquely assigned by the vendor/contractor);
7. To the above-referenced account name;
8. Contractor name;
9. Contractor Identification Number; (as referenced in the contract);
10. Contractor contact (name, phone, and/or fax for the person to contact with billing questions);
11. Contractor remittance address;
12. Description of delivered product(s) or service; and
13. Total amount due for delivered product(s) or service.

The contractor understands and agrees that the invoice shall;

- Include only charges for service described in contract or Purchase Order and in accordance with payment terms and conditions set forth in the contract or purchase order;
- Not include any future work but will only be submitted for completed service, unless otherwise authorized in writing by the user agency; and
- not include sales tax or shipping charges (unless otherwise stipulated in the contract or purchase order).

Payment: The contractor agrees that timeframe for payment (and any discounts) begins when the state is in receipt of a correct invoice meeting the minimum requirements above. It shall be the responsibility of the "bill to" agency to make payment in accordance with the Prompt Payment Act of 1985. Any questions concerning payment should be addressed to the "bill to" agency and not to the Central Procurement Office.

## **19. Negotiations**

The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications and/or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.

## **20. Contract Cancellation**

Termination for Convenience: The State may terminate this contract without cause. Said termination shall not be deemed a breach of contract by the State. The State shall give the vendor/contractor at least ninety (90) days written notice before the effective cancellation date.

The vendor/contractor shall be entitled to receive compensation for product(s) shipped or services satisfactorily completed as of the cancellation date, but in no event shall the state be liable to the vendor/contractor for compensation for any product(s) or services which have not been rendered.

Upon such termination, the vendor/contractor shall have no right to any actual general, special, incidental, consequential, or any other claims whatsoever of any description or amount.

Termination for Cause: If the vendor/contractor fails to fulfill its obligations under this contract in a timely or proper manner, or if the vendor/contractor violates any terms of this contract, the State shall have the right to immediately terminate the contract upon written notice of intent to cancel. The State shall have the right to withhold payment in excess of fair compensation for completed services. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this contract by the contractor.

At the end of any fiscal year any contract may be canceled by the state without notice, in the event that funds to support the contract become unavailable.

The vendor/contractor will be required to honor all purchase orders that were prepared and dated prior to the date of the termination, if received by the vendor/contractor within a period of thirty (30) days following the date of cancellation.

## **21. Subcontracting**

The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without obtaining the prior written approval of the Central Procurement Office. Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work provided.

## **22. Service Contracts: Conflict of Interest**

The contractor warrants that no part of the total contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the contractor in connection with any work contemplated or performed relative to this contract.

## **23. Warranty.**

Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

## **24. Inspection and Acceptance.**

The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

## **25. Maximum Liability.**

In no event shall the maximum liability of the State under this Contract exceed One Million, Five Hundred Thousand Dollars (\$1,500,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the

Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

**26. Limitation of State's Liability.**

The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

**27. Limitation of Contractor's Liability.**

In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

**28. Confidentiality of Records.**

Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

**29. Intellectual Property Indemnity.**

The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

### **30. Software License Warranty.**

Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

### **31. Software Support and Maintenance Warranty.**

Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

### **32. Extraneous Terms and Conditions.**

Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

### **33. Personally Identifiable Information.**

While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice.

The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

**STATE OF TENNESSEE**  
**DEPARTMENT OF GENERAL SERVICES**  
**CENTRAL PROCUREMENT OFFICE**

**INVITATION TO BID**  
**EFFORTS TO ACHIEVE DIVERSITY BUSINESS ENTERPRISE PARTICIPATION**

The Governor's Office of Diversity Business Enterprise (Go-DBE) is the state's central point of contact to attract and assist minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

**Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)**

Businesses that are a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

**Service-Disabled Veteran Business Enterprise (SDVBE)**

"Tennessee service disabled veteran owned business" means a service-disabled veteran owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function with at least a twenty percent (20%) disability that is service-connected meaning that such disability was incurred or aggravated in the line of duty in the active military, naval or air service.

**Small Business Enterprise (SBE)**

"Tennessee small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis".

For additional program eligibility information visit,  
[http://www.tn.gov/businessopp/program\\_elig.html](http://www.tn.gov/businessopp/program_elig.html).

**INVITATION TO BID INSTRUCTIONS**

As part of this Invitation to Bid, the Respondent should complete the Diversity Utilization Plan, which begins on the following page. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at: <http://www.tn.gov/businessopp/regdivcomp.html> or by calling Go-DBE toll free at 866-894-5026.

**RESPONDENT'S  
DIVERSITY UTILAZATION PLAN**

Respondent's Company Name:		
Solicitation Event Name:	Event Number:	
Respondent's Contact Name:	Phone:  (    )	Email:
Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input type="checkbox"/> No  If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE  Certifying Agency:		

**Estimated level of participation by diversity businesses if awarded a contract pursuant to this ITB:**

<b>Diversity Business Information</b> (List all subcontractors, joint-ventures, and suppliers)	<b>Percent of Contract</b>	<b>Estimated Amount</b>	<b>MBE/ WBE/ SDVBE/ SBE Designation</b>	<b>Currently Certified (Yes or No)</b>
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office. We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title of Respondent Signatory (above) \_\_\_\_\_



## SOFTWARE LICENSE AND SERVICES AGREEMENT

THIS AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by SmartCOP, Inc. ("Licensor"), with its principal place of business at 180 North Palafox Street, Pensacola, FL 32502, and Tennessee Wildlife Resources Agency ("Licensee"), with its principal address at 5105 Edmondson Pike, Nashville, TN 37211.

WHEREAS, Licensor has the exclusive right to license the public safety software suite known as Caliber SmartCOP<sup>®</sup>, a comprehensive, integrated software product suite designed to provide Computer Aided Dispatch, Mobile Data Computer Systems, Record Management Systems, Case Management Systems, Jail Management Systems, Civil Enforcement, and Administrative Programs.

WHEREAS, Licensee desires to acquire a non-exclusive and non-transferable license to use and configure to use the software modules listed in Product Schedule & Pricing (attached as Appendix 1) (collectively referred to hereafter as "Software Products"), subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Licensor and Licensee agree as follows:

### ARTICLE I. THE LICENSE

1.01 **License.** Licensor hereby grants to Licensee a non-exclusive, non-transferable and limited right and license to use and configure the Software Products in object code format solely for Licensee's internal operations (the "License") for the term set forth in Section 1.02 and subject to the terms and conditions set forth in this Agreement, in consideration for the payment of the fees specified in the Product Schedule & Pricing (attached as Appendix 1), including Annual Maintenance Fees. The License includes the right to use and configure only those Software Products listed in the Product Schedule & Pricing (attached as Appendix 1) hereto. Licensee may license additional Software Products through a written amendment to this Agreement specifying an additional license fee and signed by both parties. The Software Products may, if applicable, include Other Products that are provided in connection with the software Products pursuant to authority granted to Licensor by such third parties or through sublicense agreements with Licensee.

1.02 **Term.** The License shall commence upon the installation of the first Software Product set forth on the Product Schedule & Pricing (attached as Appendix 1) hereto (the "Delivery Date"), provided that Licensee has paid all applicable fees. The License shall continue in perpetuity, unless terminated pursuant to the terms hereof.

1.03 **Fees and Charges.** Licensee shall pay to Licensor, without deduction or set-off, a license fee (the "License Fee") for the Software Products in the amount and at the time set forth on the Product Schedule & Pricing (attached as Appendix 1) as "Standard Payment Terms." During the term of this Agreement, Licensor shall, from time to time, deliver invoices to Licensee. Each invoice delivered to Licensee by Licensor shall be due and payable upon receipt thereof by Licensee. In the event Licensee fails to pay all or any portion of an invoice on or before ninety (90) days after the date it becomes due, in addition to all other remedies Licensor has under this Agreement or otherwise, Licensor shall have the option to suspend or terminate all Software and Services under this Agreement. Suspension or termination of any such Software and/or Services shall not relieve the Licensee of its obligation to pay its outstanding invoices, including any applicable late charges. Late payments will incur a charge of 1.0% per month, not to exceed the maximum amount allowed by law. Licensee shall pay any and all applicable federal, state and local sales, use, value added, excise, duty and any other taxes of any nature (except any taxes based on Licensor's net income) assessed on the Licensor's product offerings. To the extent Licensee imposes additional requirements on Licensor for Services other than those expressly provided in this Agreement, Licensor retains the right to make additional price adjustments and/or any other adjustments that may be necessitated. Before performing these additional Services, Licensor will notify Licensee that the Services are subject to additional charge(s).



1.04 **Taxes.** If applicable, Licensee is responsible for and shall pay all federal, state and local sales, use, value added, and ad valorem taxes due in connection with the licensing and use of the Software Products.

1.05 **Sublicensing and Assignment Prohibited.** This License does not provide Licensee the right to sublicense any of the Software Products, and Licensee is strictly prohibited from sublicensing without the explicit written permission of Licensor.

1.06 **Exclusions.** Except as expressly authorized in writing, Licensee shall not allow, direct or authorize (directly or indirectly) any other party to:

- a. Use the Software Products for any purpose other than in connection with Licensee's internal operations;
- b. Copy the Software Products;
- c. Cause or permit reverse compilation or reverse assembly of all or any portion of the Software Products;
- d. Distribute, rent, lease or transfer to any third party any portion of the Software Products;
- e. Export the Software Products in violation of U.S. Department of Commerce export administration regulations; or
- f. Copy for use or distribute for use any third party software products resold to Licensee by Licensor without paying the appropriate license fee.

1.07 **Other Products.** "Other Products" shall mean, if applicable, the additional products being purchased by Licensee from Licensor as specified in the Product Schedule & Pricing (attached as Appendix 1) under such terms and conditions as are defined from time to time. If applicable to Licensee, and provided Licensee enters into any applicable sublicense or other relevant agreements for the Other Products, as may be required by the vendors of the Other Products (hereinafter referred to as the "Sublicense Agreements") and subject to the terms and conditions of this Agreement, Licensee is granted a sublicense with respect to the Other Products designated in the Product Schedule & Pricing (attached as Appendix 1).

1.08 Subject to Section 1.07, the license grants to the Other Products shall be as set forth in their applicable Sublicense Agreements. To the extent that the Product Schedule & Pricing (attached as Appendix 1) does not specifically outline Other Products for which a Sublicense Agreement is required, the Licensee shall be deemed to have been granted a sublicense in the Other Products (or Software Programs, if applicable) which are subject to the terms of this Agreement.

## ARTICLE II. DELIVERY

2.01 **Acceptance.** Licensor shall deliver to Licensee one (1) copy of the Software Products (in machine-readable object code). Licensee shall be conclusively deemed to have accepted the Software Products upon Licensee's first use of the Software Product in a production environment ("Go-Live") unless Licensee notifies Licensor in writing within ten (10) days of Go-Live that the Software Products have been rejected as failing to operate substantially in accordance with the written agreement between Licensor and Licensee, and describing in detail each nonconformity. Upon receipt of the nonconformity list, Licensor shall have thirty (30) days to repair any nonconformities listed on the nonconformities list by modifying the Software Products as necessary at Licensor's expense, such that the Software Products affected by the nonconformities operate substantially in accordance with the written agreement between Licensor and Licensee.

2.02 **Installation.** Licensor shall provide Licensee with installation support in accordance with Licensor's standard installation procedures for one (1) copy of the server portion of each Software Product as well as the client portion of each Software Product for the fee set forth in the Product Schedule & Pricing (attached as Appendix 1).

## ARTICLE III. MAINTENANCE AND SUPPORT SERVICES

3.01 **Maintenance and Support.** Licensee may obtain maintenance and support services for the Software Products by entering into a separate Software Maintenance and Support Agreement with Licensor, a sample copy of which is attached hereto as Appendix 2.



#### ARTICLE IV. CONFIDENTIALITY AND COPIES

4.01 **Confidentiality.** To the extent allowed by law, Licensor and Licensee shall not disclose one another's Confidential Information.

4.02 **Confidential Information.** The term "Confidential Information" as used in this Agreement includes any information (whether or not reduced to writing and whether or not patentable or protected by copyright) that either Licensor or Licensee treats as proprietary or confidential (whether owned or developed by either party or received by either party from third parties), including without limitation either party's trade secrets, business methods, business policies, procedures, techniques, financial information, "know how", research or development projects or results, algorithms, computer software and hardware, computer programs (whether source or object code), hardware or manuals, trade secrets, or other knowledge or processes of or developed by Licensor or Licensee. Failure to mark any of the confidential information as confidential or proprietary shall not affect its status as part of Confidential Information under the terms of this Agreement.

4.03 **Obligations.** Licensor and Licensee shall protect each other's Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, that each utilizes for its own Confidential Information and that it does not wish disclosed to the public.

4.04 **Exclusions.** This Agreement imposes no obligation upon either party ("Recipient") with respect to the other party's ("Discloser's") Confidential Information that Recipient can establish by legally sufficient evidence: (a) was in the possession of or was rightly known by Recipient without an obligation to maintain its confidentiality prior to receipt from Discloser; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; or (d) is required to be disclosed by applicable law; provided that Recipient notifies Discloser of such requirement prior to disclosure, and provided further that Recipient makes diligent efforts to limit disclosure. Recipient shall keep confidential any Confidential Information received for three (3) years after the termination of this Agreement.

4.05 **Copies.** Licensee may make additional copies of any printed materials provided by Licensor up to the number of simultaneous users set forth in the Product Schedule & Pricing (attached as Appendix 1) but shall not make copies in excess of such number without the prior written consent of Licensor. Licensee may make two (2) copies of the Software Products solely for use by Licensee as back-up copies for disaster recovery. Every copy of the manual or the Software Products made by Licensee shall include the copyright notices included on the copies delivered to Licensee. Licensee shall not make or maintain any other copy of the Software Products or any portion, derivative or modification of any of them.

#### ARTICLE V. WARRANTY

5.01 **Software Warranty.** Licensor warrants, for Licensee's benefit only, that the Software Products will perform substantially in accordance with the Software Product's documentation for a period of one (1) year after the date on which Licensee's license for such Software Product is i) initially installed by Licensor per the Product Schedule & Pricing (attached as Appendix I) and SOW, or ii) if by Licensee, initially delivered to Licensee by Licensor. Licensor's warranty shall not apply to Software Product that has been modified by Licensee or third parties, or to Software Product that is installed on computer systems not approved by Licensor. Licensee agrees to notify Licensor in writing before expiration of the preceding period of the failure of any Software Product to satisfy the foregoing warranty and, after verification thereof by Licensor, Licensor will undertake to correct any reported error in accordance with Licensee's signed Software Maintenance and Support Agreement. Licensee acknowledges that the Software may not satisfy all of Licensee's requirements and the use of the Software Products may not be uninterrupted or error-free. Licensor warrants, for Licensee's benefit only, that it possesses the necessary intellectual rights to license to Licensee the Software Product provided hereunder.

5.02 **Services Warranty.** Licensor warrants that it will perform the Services in a professional and workmanlike manner.



5.03 **Manufacturer's Equipment Warranty.** Licensee acknowledges that all equipment, if any, supplied by Licensor hereunder is manufactured by third parties and Licensee agrees that the only warranties applicable to the Equipment are such warranties as may be provided by the manufacturers thereof and such warranties begin the date Licensee receives the equipment. Licensor makes no warranty of any kind with respect to any equipment. Licensee agrees to look solely to the manufacturer with respect to all mechanical, service and other claims and the right to enforce all warranties on such equipment made by said manufacturer are hereby, to the extent Licensor has the right, assigned to Licensee. Licensor is not responsible for modifications to the manufacturer's published warranties, which modifications are determined solely at the discretion of the distributor or manufacturer.

5.04 **Other Products.** Licensee acknowledges and agrees that Other Products provided to Licensee by Licensor is provided to Licensee pursuant to the terms of the licensor's applicable license, and Licensee agrees to be bound thereby and that such terms govern any conflict between those terms and this Agreement. Licensee will acquire only those rights in the Other Products granted by applicable license and accorded by applicable law. In the event that any Other Products provided by Licensor to Licensee requires acceptance of a "shrink wrap" or "box top" license or agreement or execution of a "click-through" license or agreement for the access, opening, unpacking, installation or configuration thereof, Licensee acknowledges and agrees that Licensor may act as an agent on Licensee's behalf in accepting and executing such license or agreement on behalf of Licensee. LICENSOR PROVIDES THE OTHER PRODUCTS "AS IS" AND WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. THE WARRANTIES, INDEMNITIES, AND REMEDIES SET FORTH IN THIS SECTION 5 DO NOT APPLY TO OTHER PRODUCTS OR ANY BREACH, INFRINGEMENT, OR MISAPPROPRIATION ALLEGED TO BE CAUSED BY OTHER PRODUCTS. Licensee acknowledges it must look exclusively to the manufacturer of the Other Products for any warranty, maintenance, support or other service or remedy relating thereto. Software Maintenance does not apply to Other Products.

5.05 **Exclusions.** Licensor shall have no obligation to perform warranty services for: (1) third party equipment or software not installed by Licensor; (2) any equipment or Software Products for which warranty or maintenance has been performed by a third party not authorized by Licensor; (3) any equipment or Software Products that have been substantially altered, damaged or modified by someone other than Licensor or its subcontractors; (4) any equipment or Software Products which have been damaged as a result of Licensee's failure to operate them in accordance with the operating instructions of the manufacturer or software vendor; (5) failures due to force majeure or exposure to unusual physical or electrical stress; or (6) failure by Licensee to back up software and data contained in its system on a regular basis, but not less than once every day.

5.06 **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREUNDER, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE SOFTWARE PRODUCT, EQUIPMENT, SERVICES, OTHER PRODUCTS, ANY THIRD PARTY SOFTWARE OR OTHER MATERIALS, SERVICES, INFORMATION OR TECHNOLOGY, AND LICENSOR EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **ARTICLE VI. OWNERSHIP AND USE**

6.01 **Ownership.** Licensor is not granting Licensee, either directly or by implication, any right, title or interest in Licensor's Software Products, applications, software, code and/or systems. Licensee is acquiring the perpetual right to utilize the run-time version of Licensor's Software Products that are current as of the time of the termination of the contract between Licensor and Licensee. Licensee agrees not to disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, or derive code from any of Licensor's Software Products, applications, software, code and/or systems, or permit or encourage any third party to do so. Under no event shall Licensee transfer, assign and/or sell the run-time version, the object code or the source code of Licensor's Software Products, applications, software, code and/or systems to any person or entity.

6.02 **Use.** Licensee may keep one (1) copy of the Software Products resident on the file server for Licensee's network ("Network") at the site designated on the Product Schedule & Pricing (attached as Appendix 1) to this



Agreement (the "Installation Site") and may keep one (1) copy of the client portion of each Software Product resident on as many computers owned or controlled by Licensee and connected to the file server for as long as Licensee restricts access to the Software Products resident on the server to the number of simultaneous users set forth in the Product Schedule & Pricing (attached as Appendix 1). Notwithstanding the foregoing, if the Network becomes inoperable (whether due to maintenance thereof, modification, disaster, or otherwise), the Software Products may be temporarily used on a different file server at the Installation Site or another computer center. Temporary use on a different file server, however, shall not exceed thirty (30) days without the prior written consent of Licensor.

6.03 **Modification.** Licensee shall only make changes or modifications to the Software Products using the Configuration Tools Modules listed on the Product Schedule & Pricing (attached as Appendix 1) and provided by the Licensor. Violation of this prohibition will be grounds for termination of this agreement pursuant to Article VIII, and Licensor shall have no further duties, liabilities or obligations with respect to the Software Products.

## **ARTICLE VII. LIMITATION OF LIABILITY AND INDEMNIFICATION**

7.01 **Limitation of Liability.** Licensor, its officers, directors, shareholders, members, employees, and/or agents shall not have any liability to Licensee, its officers, directors, shareholders, members, agents and/or employees for losses, damages and/or injuries arising out of: (1) third party equipment or software not installed by Licensor; (2) any equipment or Software Products for which maintenance has been performed by a third party not authorized by Licensor; (3) any equipment or Software Products that have been substantially altered, damaged or modified by someone other than Licensor or its subcontractors; (4) any equipment or Software Products which have been damaged as a result of Licensee's failure to operate them in accordance with the operating instructions of Licensor, the manufacturer, or the software vendor; (5) failures due to force majeure or exposure to unusual physical or electrical stress; or (6) failure by Licensee to back up software and data contained in its system on a regular basis, but not less than once every day. This limitation of liability includes all claims for losses, damages and/or injuries arising in tort, contract, negligence, strict liability, or otherwise, including, without limitation, damages for physical or mental pain or suffering, medical expenses, wrongful death, loss of good will, work stoppage, computer failure or malfunction, loss of work product, or any and all other commercial or personal injury damages or losses, direct or indirect. Notwithstanding the form (e.g., contract, tort or otherwise) in which any legal or equitable action may be brought, in no event will Licensor or its suppliers be liable for damages or losses that exceed, in the aggregate, the following for each respective breach or series of related breaches: (i) with respect to equipment, the purchase price paid by Licensee for the equipment that gave rise to such damages or losses; (ii) with respect to Software Products the amount of License Fees paid by Licensee for the Software that gave rise to such damages or losses; and (iii) with respect to any Services provided hereunder, the amount of fees paid for the Services that gave rise to such damages or losses. Except with regard to payments due Licensor neither party will be liable for any delays or failures in performance due to circumstances beyond its reasonable control that could not be avoided by its exercise of due care. Licensor's liability for any form of action shall only apply after any and all appropriate insurance coverage has been exhausted.

7.02 **Indemnification for Infringement.** Licensor shall, at its expense, indemnify and defend Licensee against any claim that the Software Products (excluding Other Products) infringe any United States patent or copyright and pay any resulting final judgment or settlement cost, provided that Licensee gives Licensor prompt, written notice of any such claim and allows Licensor to control the defense and all related settlement negotiations. Licensee shall allow Licensor, at Licensor's option and expense, if any infringement claim has occurred or in Licensor's reasonable judgment is likely to occur: (i) to procure the right for Licensee to continue using the Software Products; (ii) to replace or modify the Software Products so that they become non-infringing and functionally equivalent; or (iii) if neither of the foregoing alternatives is available on terms which are reasonable in Licensor's discretion, Licensee shall, upon the request of Licensor, return the Software Products to Licensor, whereupon Licensee can seek applicable remedy from Licensor pursuant to a breach of this Agreement. Licensor shall have no liability to indemnify or defend Licensee to the extent the alleged infringement is based on: (a) a modification of the Software Products by anyone other than Licensor or someone acting on behalf of Licensor, (b) use of the Software Products other than in accordance with the written agreement between Licensor and Licensee, or (c) a modification by Licensor of the Software Products at the direction of Licensee.



## ARTICLE VIII. TERMINATION

8.01 Licensor may terminate the License if Licensee: (i) fails to pay the License Fee, including Annual Maintenance Fees, when due as set forth in the Product Schedule & Pricing (attached as Appendix 1); (ii) makes or distributes, or fails to use its best efforts to prevent others from making or distributing, copies of the Software Products (except as expressly permitted by this Agreement) or derivations or modifications thereof; (iii) uses the Software Products in violation of the provisions of this Agreement; or (iv) fails to comply with any other material obligation under this Agreement and such failure, action, use or non-compliance remains uncured for thirty (30) days after receipt of written notice thereof. Upon termination of the License, Licensee shall discontinue use and return all copies of the Software Products in its possession or control to Licensor, but Licensee's obligation to pay accrued charges and fees and to protect the confidentiality of the Software Products shall continue.

8.02 The continued use of the Software Products is contingent on Licensee paying the Annual Maintenance Fees pursuant to the Software Support and Maintenance Agreement delineated specifically for the Software Products. If Licensee fails to pay the Annual Maintenance Fees, then Licensee shall forfeit the right and License to use the Software Products and shall return the Software Products to Licensor.

## ARTICLE IX. MEDIATION

9.01 The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided, however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorney's fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties.

9.02 Nothing in this Section Article IX shall preclude any party from applying to a court of competent jurisdiction for, and obtaining if warranted, preliminary or ancillary relief pending the conduct of mediation, or an order to compel the mediation provided for herein. The parties agree that the state and federal courts in Florida shall be the exclusive courts in which either party may seek such relief.

## ARTICLE X. MISCELLANEOUS

10.01 **Notice.** Any notice hereunder by either party shall be given by personal delivery or by sending such notice by certified mail, postage pre-paid, to the other party at its address set forth herein or at such other address designated by written notice. Notice shall be deemed to have been received upon the date of actual delivery.

10.02 **Interpretation.** The validity and interpretation of this Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Florida, without regard to the principles of Florida's conflicts of laws thereof.

10.03 **Severability.** If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, the validity and enforceability of all of the remaining provisions hereof shall not be affected thereby.

10.04 **Failure to Exercise Rights.** The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights nor shall the same be deemed to be a waiver of any subsequent breach.



10.05 Licensee grants to Licensor the right to use Licensee’s name and trademarks solely as a client reference in promotional and marketing materials in accordance with generally accepted industry standards and practices for such references.

10.06 **Independent Parties.** Licensor and Licensee are independent parties. Nothing in this Agreement will be construed to make either party an agent, employee, franchisee, joint venturer or legal representative of the other party.

10.07 **Force Majeure.** Neither Party shall be liable to the other Party or shall be subject to termination of this Agreement by the other Party, for any delay, nonperformance, loss or damage (other than for failure to pay any amount when due) because of reasons beyond its reasonable control including, but not limited to, acts of God, acts, regulations or laws of any government, acts of terrorism, war, riots, civil unrest, power failures, accidents in transportation or other causes beyond the reasonable control of the respective Party.

10.08 **Titles.** The titles of the Articles and Sections hereof are for convenience only and do not in any way limit or amplify the terms and conditions of this Agreement.

10.09 **Sublicense & Assignment.** Licensee may not transfer, assign or sublicense its rights, duties or obligations under this Agreement to any person, company or entity, in whole or in part. Licensor may assign to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status. Licensor may perform any obligation pursuant to this Agreement using agents and subcontractors. The Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors and permitted assigns.

10.10 **Survival.** Except as otherwise provided, any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.

10.11 **Complete Agreement.** This Agreement, together with the Appendices, constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings, statements, warranties, representations, and agreements, oral and written, relating hereto. Any amendment hereof must be in writing and signed by both parties.

10.12 This Agreement may be executed by the parties hereto in multiple counterparts and shall be effective as of the date first above written, when each party shall have executed and delivered a counterpart hereof, whether or not the same counterpart is executed and delivered by each party. When so executed and delivered, each such counterpart shall be deemed an original and all such counterparts shall be deemed one and the same document. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery in person of manually signed documents.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed and delivered this Agreement as of the date first above written.

Licensor	Licensee
By: _____	By: _____
Printed Name: <u>Shane K Lincke</u>	Printed Name: _____
Title: <u>VP Research &amp; Development</u>	Title: _____
Date: _____	Date: _____



## APPENDIX 2

### SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

THIS AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by SmartCOP, Inc. ("Licensor"), with its principal place of business at 180 North Palafox Street, Pensacola, FL 32502, and Tennessee Wildlife Resources Agency ("Licensee"), with its principal address at 5105 Edmondson Pike, Nashville, TN 37211.

WHEREAS, Licensor has the exclusive right to license the public safety software suite known as SmartCOP, a comprehensive, integrated software product suite designed to provide Computer Aided Dispatch, Mobile Data Computer Systems, Record Management Systems, Case Management Systems, Jail Management Systems, Civil Enforcement, and Administrative Programs.

WHEREAS, Licensor has agreed to provide Licensee a non-exclusive and non-transferable license to use and configure the following software modules for Licensee's internal operations: SmartCAD, SmartRMS, SmartMOBILE and SmartJAIL (hereafter "Software Products").

WHEREAS, Licensee has requested Licensor to provide maintenance and support services on the Software Products.

NOW, THEREFORE, Licensor and Licensee agree as follows:

**1.0 Maintenance and Support Services.** Licensor will provide software maintenance and support services ("Maintenance and Support Services") on the date the Software Product is installed (the "Start Date"), primarily via telephone and electronic mail as set forth below. To enable Licensor to provide effective support, the Licensee will establish auto remote access procedures compatible with Licensor's then current practices which may be revised over time.

Licensor agrees to provide Licensee Maintenance and Support Services consistent with the following:

#### **Service Maintenance**

Any deficiencies found by Licensee during its use of the Software Products will be reported to Licensor's technical support staff by Licensee. Licensor's technical support personnel are available twenty-four (24) hours a day, seven (7) days a week, 365 days per year, holidays included. Licensees use a toll free number to secure assistance: 1-877-762-7826.

#### **Correcting Deficiencies**

During the maintenance and support period, Licensor will be responsible for ensuring performance deficiencies are corrected. Licensor maintains sufficient technical help to support the ongoing operation of the system and to develop required enhancements.

When a call is received, the Licensor call taker will secure all information necessary to properly evaluate the caller's difficulty. Wherever possible, the call taker will work with the caller to resolve the issue immediately using Licensor's knowledge base of resolutions. When such resolution is not possible, the call taker will escalate the call to Level II support.

At Level II a lead engineer determines the severity of the call and assigns it to the appropriate engineer for resolution. When the call is completed, the engineer will notify the support desk of the solution and note the solution in the knowledge base. The caller will be notified as to resolution and any instructions for correcting the problem.



## **New Service Versions**

During the maintenance and support period, continual system review and recommendations for enhancements are supported. Licensee will make available updates to the Software Products that incorporate any new features or enhancements to the licensed Software Products made generally available to Licensor's other Licensees ("Updates") at no additional charge other than the payment of the Annual Maintenance Fee. Update releases will be distributed and installed remotely via a VPN connection to minimize downtime. Release Notes accompanying each release will identify corrections and enhancements made in each software module and any installation instructions as warranted. Updates may require additional professional services to be performed by Licensor outside of the scope of those Maintenance and Support Services described herein, including additional training and the professional services for the installation and implementation of the Update that will be subject to Licensor's then-prevailing policies, terms and billable fees related to pricing and hourly rates.

## **Selection of New Functions (Enhancements)**

Licensor welcomes all suggestions for enhancements from Licensee. All enhancements will be reviewed and those deemed beneficial to most users will be incorporated and included in the subsequent release of the software. Users will be notified via telephone or e-mail when a suggestion will be incorporated into a release and when to expect the release. In addition, enhancements will be identified in the Release Notes that accompany software updates.

## **Support Services:**

Licensor's support staff is available via a toll-free number 24 hours a day, 7 days a week, 365 days a year for an immediate response. When a call is received, a Licensor call taker works with Licensee personnel to immediately resolve errors using Licensor's knowledge base of resolutions. When such resolution is not possible, the call is escalated.

The following outlines Licensor's support procedure:

### **Priority 1- Urgent/Emergency**

- Issues that affect officer safety.
- Application introducing data corruption.
- Program will not start.
- Critical work cannot be completed to meet deadlines.

### **Steps to Resolution**

1. A Licensee support technician will immediately contact the Licensee to acknowledge receipt of the issue, and to inform the Licensee of Licensor's plan to resolve the issue.
2. Licensor personnel will begin resolving the issue while continuously updating the Licensee with the status of the issue.
3. Engineering and support personnel are permanently assigned to assist until the problem is resolved.

### **Priority 2- High/Non-Emergency**

- Software module/function is down/non-functional.

### **Steps to Resolution**



1. A Licensee support technician will immediately contact the Licensee to acknowledge receipt of the issue, and to inform the Licensee of Licensor's plan to resolve the issue.
2. Licensor personnel will begin to resolve the issue while continuously updating the Licensee with the status of the issue.
3. Engineering and support personnel are permanently assigned to assist until the problem is resolved.

#### Priority 3- Medium Priority

- Problem exists but critical systems are functional.
- Problem can be temporarily circumvented.
- Licensee states problem is not critical but would like a fix as soon as possible.
- Non-application related issues that have rendered the system inoperable.

#### Steps to Resolution

1. A Licensee support technician will immediately contact the Licensee to acknowledge receipt of the issue, and to inform the Licensee of Licensor's plan to resolve the issue.
2. Licensor personnel will begin to resolve the issue and will update the Licensee as to the status of the issue.
3. Engineering and support personnel are permanently assigned to assist until the problem is resolved.
4. Licensor personnel will inform the Licensee as to the delivery date for the software patch that will resolve the issue.

#### Priority 4- Minor Priority

- Minor problem with little or no impact on services.
- Licensee impact is minimal.
- Deferred maintenance is acceptable, and a schedule can be determined between support and the Licensee.
- Licensee states problem can be addressed at a later date.

#### Steps to Resolution

1. Licensor personnel will begin to resolve the issue and will update the Licensee as to the status of the issue.
2. Licensor personnel will inform the Licensee as to the delivery date of the software patch that will resolve the issue. All future status reports will be communicated to the Licensee via problem submission reports or direct Licensee inquiry via telephone or online TCN status query.

2.0 **Fees.** In consideration for the Maintenance and Support Services, Licensee shall pay the “Annual Maintenance Fee” as detailed in the Product Schedule & Pricing (attached as Appendix I). The Annual Maintenance Fee, subject to increase at Licensor’s discretion, will be billed annually in advance beginning on the first use of the Software Product in a production environment (“Go-Live”) and thereafter on the anniversary of the Start Date or on an alternative date mutually agreed to by both parties. In addition to the Annual Maintenance Fee, Licensee shall reimburse Licensor for its direct expenses, should onsite assistance be requested by the Licensee or required to expedite resolution. Licensor may update its reimbursement policies from time to time, in which case such updated policies shall apply for purposes of the Maintenance and Support Services under this Agreement, provided that such updated reimbursement policies must generally apply to all clients of Licensor.



3.0 **Term.** The initial term of the Maintenance and Support Services shall be for five (5) year(s) beginning on the Start Date. Thereafter, this Maintenance and Support Services shall automatically renew on an annual basis, unless terminated by either party upon giving to the other party not less than ninety (90) days' notice in writing prior to the end of the initial term or any subsequent anniversary of such date. Licensee shall pay the then prevailing Annual Maintenance Fee in advance for each term of the Maintenance and Support Services under the Agreement and where the notice of non-renewal has not been provided in accordance with these terms, the Licensee is obliged to pay the Annual Maintenance Fee for the then applicable term. Licensor shall not refund any Annual Maintenance Fees if the Maintenance and Support Services under this Agreement are terminated. The continued use of the Software Products is contingent on Licensee paying the Annual Maintenance Fees. If Licensee fails to pay the Annual Maintenance Fees, then Licensee shall forfeit the right and License to use the Software Products and shall return them to Licensor.

If Licensee fails to make the Annual Maintenance Fee payments when due, or in the event Licensee materially breaches this Agreement and such breach is not cured within thirty (30) days of receipt of written notice of breach, Licensor may suspend or cancel the Maintenance and Support Services. The reinstatement of any cancelled Maintenance and Support Services is subject to additional charges and fees.

4.0 **Licensee's Cooperation.** If Licensee requests maintenance or support, Licensee shall cooperate with Licensor in all aspects of such service in order to facilitate Licensor providing electronic and onsite assistance to Licensee, including without limitation providing Licensor with information by telephone, documentation (if necessary), access to Licensee's computer system through high speed connectivity, and implementation (when feasible).

5.0 **Exclusions and Modifications.** Licensor shall have no obligation to perform maintenance or support services for: (1) third party equipment or software not installed by Licensor; (2) any equipment or Software Products for which maintenance has been performed by a third party not authorized by Licensor; (3) any equipment or Software Products that have been substantially altered, damaged or modified by someone other than Licensor or its subcontractors; (4) any equipment or Software Products which have been damaged as a result of Licensee's failure to operate them in accordance with the operating instructions of the manufacturer or software vendor; (5) failures due to force majeure or exposure to unusual physical or electrical stress; or (6) failure by Licensee to back up software and data contained in its system on a regular basis, but not less than once every day.

6.0 **Limitations on Licensee Rights.** Except as expressly authorized in writing, Licensee shall not:

- a. Copy the Software Products;
- b. Cause or permit reverse compilation or reverse assembly of all or any portion of the Software Products;
- c. Distribute, rent, lease or transfer to any third party any portion of the Software Products; or
- d. Export the Software Products in violation of U.S. Department of Commerce export administration regulations.

7.0 **Ownership.** Licensee acknowledges that the Software Products, and all remains the exclusive property of Licensor and its successors and assigns. Licensee acknowledges that it has no rights to nor interest in the Software Products other than as expressly granted herein. Licensee shall not remove any identification or notices affixed to the Software Products or their packaging. Additionally, no license, right or interest in any Licensor trademark, trade name, and service mark is granted to Licensee hereunder.

8.0 **Licensee Obligations.** Licensee shall protect Licensor's trade secrets and intellectual property, including without limitation the Software Products, with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Licensee utilizes for Licensee's trade secrets and intellectual property it does not wish disclosed to the public.

9.0 **Sublicensing and Assignment Prohibited.** Without the prior written consent of Licensor, Licensee may not transfer, assign or sublicense its rights, duties or obligations under this Agreement to any person, company or entity, in whole or in part. Licensor may assign to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status. Licensor may perform any obligation pursuant to this Agreement using agents and subcontractors. The Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors and permitted assigns.



10.0 **Limitation of Liability.** Licensor’s total liability for damages related to this Maintenance and Support Agreement (whether based in contract, tort, negligence, strict liability or otherwise) shall in no event exceed the Annual Maintenance Fees paid by Licensee during the twelve (12) month period immediately previous to the event giving rise to the liability. This limitation of liability includes all claims for losses, damages and/or injuries arising in tort, contract, negligence, strict liability or otherwise, including claims, losses, injuries, or damages arising out of Licensor’s negligence or gross negligence.

11.0 **Interpretation.** The validity and interpretation of this Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Florida, without regard to the Florida principles of conflicts of laws.

12.0 **Severability.** If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, the validity and enforceability of all of the remaining provisions hereof shall not be affected thereby.

13.0 **Failure to Exercise Rights.** The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights nor shall the same be deemed to be a waiver of any subsequent breach.

14.0 **Titles.** The titles of the Articles and Sections hereof are for convenience only and do not in any way limit or amplify the terms and conditions of this Agreement.

15.0 **Survival.** Except as otherwise provided, any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.

16.0 **Complete Agreement.** This Agreement, together with the Appendices, constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings, statements, warranties, representations, and agreements, oral and written, relating hereto. Any amendment hereof must be in writing and signed by both parties.

17.0 This Agreement may be executed by the parties hereto in multiple counterparts and shall be effective as of the Effective Date, when each party shall have executed and delivered a counterpart hereof, whether or not the same counterpart is executed and delivered by each party. When so executed and delivered, each such counterpart shall be deemed an original and all such counterparts shall be deemed one and the same document. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery in person of manually signed documents.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed and delivered this Agreement as of the date first above written.

Licensor	Licensee
By: _____	By: _____
Printed Name: <u>Shane K Lincke</u>	Printed Name: _____
Title: <u>VP Research &amp; Development</u>	Title: _____
Date: _____	Date: _____