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State of New Hampshire

DEPARTMENT OF SAFETY
JAMES H. HAYES BLDG.
33 HAZEN DR.
CONCORD, N.H. 03305
(603) 271-2791

EDDIE EDWARDS
ASSISTANT COMMISSIONER

STEVEN R. LAVOIE
ASSISTANT COMMISSIONER

ROBERT L. QUINN
COMMISSIONER

June 12, 2024

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Safety, Office of Highway Safety (OHS) to enter into a **Sole Source** contract with SUNY (State University of New York) Research Foundation (VC#164451-B001) in the amount of \$106,875.00 to provide software licenses required to operate the DRE Data Entry & Management System. Effective upon Governor and Council through June 26, 2027. 100% Federal funds

Funds are available in the following account in SFY2025, and contingent upon the availability and continued appropriations in SFY2026 and SFY2027 with the authority to adjust between fiscal years through the budget office, if needed and justified.

02-23-231010-75430000 - Dept. of Safety – OHS – NHTSA	<u>SFY 2025</u>	<u>SFY 2026</u>	<u>SFY 2027</u>
038-500177 – Technology – Software	\$31,875.00	\$37,500.00	\$37,500.00
	Total		\$106,875.00

EXPLANATION

This request is Sole Source because the SUNY (State University of New York) Research Foundation owns the intellectual property rights in and to the Technology, Drug Recognition Expert (DRE) Data Entry and Management System (University at Albany Case Number / Technology ID: 15-22-010). The DRE Data Entry & Management System (DRE Data System) is a comprehensive data collection and reporting tool designed to improve the management and monitoring of a state's Drug Recognition Expert program. This tool serves as a statewide data tracking system for the DRE program, providing in-depth information and data analyses in the area of drug impaired driving. The DRE Data System has three primary components: A Mobile & web applications for real time data collection, State specific database containing evaluation and toxicology data as well as narrative reports and a reporting & query tool. This tool will make management of the DRE program almost instantaneous, thus providing the ability to gather real time data in our efforts to reduce drug impaired driving.

In the event that Federal Funds are no longer available, General Funds will not be requested to support this program.

Respectfully submitted,

Robert L. Quinn
Commissioner of Safety



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

518/442-3270
Fax: 518/442-3350
www.albany.edu

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

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This non-exclusive license agreement (hereinafter, "Agreement") is made and is effective as of the date the Governor and Executive Council of the State of New Hampshire approve this Agreement following execution of this Agreement (hereinafter, "Effective Date"), by and between **THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK**, a non-profit educational corporation, organized and existing under the laws of the State of New York, having an office at University at Albany, Office for Technology Transfer, ETEC 170, 1400 Washington Avenue, Albany, New York 12222 (hereinafter, "FOUNDATION"), on behalf of the University at Albany, Institute for Traffic Safety Management and Research; and New Hampshire Office of Highway Safety, a state governmental agency, having a primary address at 33 Hazen Drive, Concord, NH 03305 (hereinafter, "LICENSEE"). FOUNDATION and LICENSEE may sometimes be referred to hereinafter as a "Party" or collectively as "Parties."

RECITALS

WHEREAS, FOUNDATION owns certain intellectual property rights in and to the Technology, **Drug Recognition Expert (DRE) Data Entry and Management System** (University at Albany Case number / Technology ID Technology ID: 15-22-010) as defined in this Agreement; and

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

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

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

1. DEFINITIONS

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

- 1.1. "License Fee" has the meaning assigned and ascribed in Section 3.1.
- 1.2. "License Renewal Fee" has the meaning assigned and ascribed in Section 3.2.
- 1.3. "Payments Due" means, individually or collectively, any License Fees, License Renewal Fees, or other amounts due to FOUNDATION under this Agreement.
- 1.4. "Technology" means the Drug Recognition Expert Data Entry and Management System for Mobile and Web-Based Applications ("DRE Data System"). DRE Data System is a comprehensive data collection and reporting tool designed to improve the management and monitoring of a state's DRE program, more fully described in Exhibit A. The Technology is referenced internally as FOUNDATION Docket Number R2-15-22.

- 1.5. **“Term”** means the period of time beginning on the Effective Date and extending for one (1) year, plus a thirty (30)-day grace period; provided, however, that the Term will be renewed for up to two (2) additional years upon payment of the annual License Renewal Fee as provided in Section 3.2.

2. GRANT OF RIGHTS AND RETAINED RIGHTS

- 2.1. **Non-Exclusive License.** Subject to the terms of this Agreement, including without limitation Section 2.2, FOUNDATION grants to LICENSEE a non-exclusive license to use the Technology.

2.2. **Retained Rights.**

FOUNDATION owns all right, title and interest in and to the Technology and reserves, without limitation, the rights to:

- (a) Use the Technology for academic, educational, and research purposes, including, without limitation, sponsored research and collaborations;
- (b) Publish or otherwise disseminate any information about the Technology at any time; and
- (c) At FOUNDATION’s sole discretion, grant to other entities non-exclusive licenses to use the Technology.

2.3. **Scope of License.**

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

(a) Basic Service:

- (i) Full access to the DRE Data System for up to 75 users in the first year, increasing to up to 100 users in the second year, and up to 100 users in the third year.
- (ii) The services specified in Exhibit B.

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

3. CONSIDERATION AND PAYMENT TERMS

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

- 3.1. **License Fee.** Within thirty (30) days of the Effective Date, LICENSEE shall pay to FOUNDATION a License Fee payment of **THREE HUNDRED SEVENTY-FIVE**

U.S. DOLLARS (US\$375.00) per DRE user, for a maximum total of TWENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE U.S. DOLLARS (US\$28,125.00), plus THREE THOUSAND SEVEN HUNDRED FIFTY U.S. DOLLARS (US\$3,750.00) for the remaining services to be provided by FOUNDATION in the first year of this Agreement, of which the entire amount paid to FOUNDATION is Refundable in accordance with the terms of Subsection 3.5.

- 3.2. **License Renewal Fee.** The Term of this Agreement will be extended for up to two (2) additional years if, on or before the respective anniversary of the Effective Date, LICENSEE pays to FOUNDATION a License Renewal Fee as follows: for year two: **THREE HUNDRED SEVENTY-FIVE U.S. DOLLARS (US\$375.00) per DRE user, for a maximum total of THIRTY-SEVEN THOUSAND FIVE HUNDRED U.S. DOLLARS (US\$37,500.00)**, of which the entire amount paid to FOUNDATION is Refundable in accordance with the terms of Subsection 3.5; for year three: **THREE HUNDRED SEVENTY-FIVE U.S. DOLLARS (US\$375.00) per DRE user, for a maximum total of THIRTY-SEVEN THOUSAND FIVE HUNDRED U.S. DOLLARS (US\$37,500.00)**, of which the entire amount paid to FOUNDATION is Refundable in accordance with the terms of Subsection 3.5. If the License Renewal Fee is not paid within the thirty (30)-day grace period, this Agreement will be terminated immediately, notwithstanding the provisions of Section 7.1.
- 3.3. **Payment Terms.** All dollar amounts for Payments Due referenced herein will refer to U.S. Dollars. Payments with designated payment dates are due and payable on or before those dates.
- 3.4. **Payment Address.** All payments for Payments Due shall be made payable to "The Research Foundation for The State University of New York" and shall be sent to the following address:

Office for Technology Transfer
University at Albany, SUNY
ETEC 170
1400 Washington Avenue
Albany, NY 12222
Attr: Peter Gonczlik, Director

For Wire Transfers:

Bank: Key Bank of New York
66 South Pearl Street
Albany, NY 12207
Account Number: 10970107
Routing Number: ABA 0213-00077
Swift Code: KEYBUS33

Please include the notation: "U Albany OIDC, case # R2-15-22"

- 3.5. **Refund Policy.** Payments made by LICENSEE are nonrefundable except in the event of FOUNDATION's breach of this Agreement as specifically set forth in this Section 3.5. In the event that FOUNDATION is unable to provide an operable DRE Data System to LICENSEE after diligent efforts, or if access to the DRE Data System is unavailable to LICENSEE for a continuous period of thirty (30) days, FOUNDATION will terminate this Agreement and issue to LICENSEE a pro-rata refund of the unused portion of the respective License Fee or License Renewal Fee.
- 3.6. **Conditional Nature of Agreement.** Notwithstanding any provision of this Agreement to the contrary, all obligations of LICENSEE hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of NHTSA funds. In no event shall LICENSEE be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the services to be provided hereunder, in whole or in part, LICENSEE shall have the right to withhold payment until such funds become available, if ever, notwithstanding FOUNDATION'S right to terminate the License for non-payment after thirty days, and shall have the right to reduce or terminate the services under this Agreement immediately upon giving the FOUNDATION notice of such reduction or termination. LICENSEE shall not be required to transfer funds from any other account or source to the Account identified in Section 3.7 in the event funds in that Account are reduced or unavailable.
- 3.7. **Contract Price/Price Limitation/Funding Source.** This Agreement is 100% Federally funded by the U.S. Department of Transportation, National Highway Transportation Safety Administration. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the total Contract Price of **ONE HUNDRED SIX THOUSAND EIGHT HUNDRED SEVENTY-FIVE U.S. DOLLARS (US\$106,875.00)** unless and until the Parties execute a written amendment to this Agreement to increase or reduce services levels provided by FOUNDATION. The payment by the LICENSEE of the Contract Price pursuant to the terms of this Agreement shall be the only and the complete reimbursement to the FOUNDATION for all expenses, of whatever nature incurred by the FOUNDATION in the performance hereof, and shall be the only and the complete compensation to the FOUNDATION for the services rendered hereunder. All payments under this Agreement from LICENSEE to FOUNDATION shall be made from Account Unit 10-7543000-500177 , Class 038.

4. LICENSEE OBLIGATIONS

LICENSEE agrees to the following terms and conditions:

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

5. DATA

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

6. RESERVED

7. TERMINATION

7.1. Termination for LICENSEE Breach.

- (a) LICENSEE acknowledges and agrees that LICENSEE's obligations under the following provisions are material terms of this Agreement, and LICENSEE's failure to meet its obligations under these provisions will be treated as a material breach of this Agreement ("Material Obligations"): (i) obligations under Article 3 to make Payments Due to FOUNDATION on the schedule set forth herein; and (ii) obligations under Article 4.
- (b) If LICENSEE should: (i) fail to perform any covenant, condition, or undertaking of the Material Obligations of this Agreement; or (ii) materially breach any other provision of this Agreement; then FOUNDATION may give written notice of such default to LICENSEE. If LICENSEE should fail to cure such default within thirty (30) days of notice of such default, then this Agreement may, at FOUNDATION's option, be terminated by written notice to LICENSEE.

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

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

7.4. Accrued Obligations. Except as provided in Section 3.5, termination of this Agreement will not relieve LICENSEE, including its affiliates, and FOUNDATION of any obligation or liability accrued hereunder prior to such termination, or rescind or give rise to any right to rescind any payments made or other consideration given to FOUNDATION hereunder prior to the time such termination becomes effective. Such termination will not affect in any manner any rights of FOUNDATION arising under this Agreement prior to the date of such termination.

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

8. WARRANTY AND LIABILITY

8.1. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, FOUNDATION MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY

KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTY OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND VALIDITY OF INTELLECTUAL PROPERTY RIGHTS. ALL MATERIALS PROVIDED BY FOUNDATION UNDER THIS AGREEMENT ARE PROVIDED "AS-IS".

- 8.2. NO WARRANTY OR REPRESENTATION IS MADE THAT THE TECHNOLOGY WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. NOTHING IN THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, OBLIGATES FOUNDATION EITHER TO BRING OR TO PROSECUTE ACTIONS OR SUITS AGAINST THIRD PARTIES FOR INFRINGEMENT OR ENFORCEMENT OR TO FURNISH ANY INTELLECTUAL PROPERTY, INFORMATION OR MATERIALS NOT PROVIDED IN THE LICENSED SUBJECT MATTER.
- 8.3. IN NO EVENT WILL FOUNDATION BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM THE EXERCISE OF THIS LICENSE OR THE USE OF THE TECHNOLOGY, INCLUDING, WITHOUT LIMITATION, FOR LOST PROFITS, LOST DATA, OR DOWNTIME, WHETHER OR NOT FOUNDATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.4. IN NO EVENT WILL FOUNDATION'S AGGREGATE LIABILITY TO LICENSEE OR ANY THIRD PARTY FOR ANY CLAIMS, LOSSES, INJURIES, SUITS, DEMANDS, JUDGMENTS, LIABILITIES, COSTS, EXPENSES, OR DAMAGES, FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, EXCEED THE FEES RECEIVED BY FOUNDATION FROM LICENSEE PURSUANT TO THIS AGREEMENT. LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES. THE LIMITATIONS SPECIFIED IN THIS ARTICLE 8 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- 8.5. THIS AGREEMENT DOES NOT CONFER BY IMPLICATION, ESTOPPEL, OR OTHERWISE ANY LICENSE OR RIGHTS TO ANY OTHER FOUNDATION PROPERTY OTHER THAN THOSE RIGHTS EXPRESSLY STATED HEREIN.
- 8.6. LICENSEE's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. FOUNDATION agrees that it has an adequate remedy at

law for any breach of this Agreement by the LICENSEE and hereby waives any right to specific performance or other equitable remedies against LICENSEE.

9. ASSIGNMENT

- 9.1. **Assignment by LICENSEE.** This Agreement and the license granted hereunder may not be assigned or transferred by LICENSEE except in connection with the sale or other non-bankruptcy transfer of LICENSEE's business to which the license granted hereunder relates. LICENSEE shall give FOUNDATION at least thirty (30) days prior written notice of any assignment or transfer of LICENSEE's business to which the license granted hereunder relates, and shall provide FOUNDATION with documentation executed by the assignee or transferee that confirms their agreement to be bound by the terms and provisions of this Agreement.
- 9.2. **Assignment by FOUNDATION.** FOUNDATION shall provide LICENSEE written notice at least thirty (30) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of LICENSEE which will not be unreasonably withheld. For purposes of this section, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of FOUNDATION, or (b) the sale of all or substantially all of the assets of FOUNDATION, or (c) the sale of IP rights in DRE Data Collection to a third party.

10. NON-USE OF NAMES

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

11. COMPLIANCE WITH LAWS

- 11.1. **General Compliance.** The Parties and their affiliates shall comply with all applicable local, county, state, federal or foreign laws, rules, and regulations relevant to

LICENSEE's use of the Technology. FOUNDATION specifically agrees to comply with the Federal certifications and assurances contained in Exhibit D.

- 11.2. **Export Control Laws.** LICENSEE and its affiliates shall comply with all U.S. laws and regulations controlling the export of certain commodities and technical data, including, without limitation, all export control regulations of the U.S. Department of Commerce and the International Traffic In Arms Regulations of the U.S. Department of State, subject to all exemptions and exclusions thereto. Among other things, these laws and regulations prohibit the export, or require a license for the export, of certain types of commodities and technical data to specified countries.
- (a) **LICENSEE Export.** Unless prior, written authorization is obtained from FOUNDATION, and in full compliance with all U.S. laws and regulations, LICENSEE shall not knowingly export, directly or indirectly, to any restricted country, any technical data received from FOUNDATION under this Agreement. LICENSEE is solely responsible for obtaining all licenses, permits, or authorizations as required from time to time by the U.S. and any other government for any such export or re-export. FOUNDATION makes no representation that an export license is or is not required, nor does FOUNDATION make a representation that, if required, a license will be issued by the U.S. Department of Commerce or other appropriate governmental entity.
- (b) **LICENSEE Disclosure to Foundation.** LICENSEE shall not disclose or transfer to FOUNDATION any export controlled technology or technical data identified on any U.S. export control list, including, but not limited to, the Commerce Control List (CCL) at 15 C.F.R. § 774 and the U.S. Munitions List (USML) at 22 C.F.R. § 121. In the event LICENSEE intends to provide FOUNDATION with export controlled information, LICENSEE shall inform FOUNDATION, in writing, thirty (30) days prior to the release of export controlled technology or technical data. LICENSEE agrees not to provide any export controlled information to FOUNDATION without the written authorization of FOUNDATION.
- 11.3 During the term of this Agreement, FOUNDATION shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law.
- 11.4 No payments or transfers of value by FOUNDATION or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

- 11.5 FOUNDATION agrees to permit the LICENSEE or United States access to any of FOUNDATION's books, records and accounts for the purpose of ascertaining compliance with this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.
- 11.6 FOUNDATION shall at its own expense provide all personnel necessary to perform the services to be provided hereunder. FOUNDATION warrants that all personnel engaged in those services shall be qualified to perform such services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

12. CONFIDENTIALITY

- 12.1. **Confidential Information.** As used in this Agreement, "Confidential Information" means confidential or proprietary information exchanged between the Parties hereunder and relating to the Technology or the performance of the obligations set forth herein, including without limitation: (i) written or other tangible information marked as "confidential" or "proprietary"; (ii) orally disclosed information that is identified as confidential and summarized in a notice delivered within thirty (30) days of the disclosure; and (iii) information that should reasonably be considered confidential under the context in which the disclosure is made.
- 12.2. **Confidentiality Obligations.** Each Party agrees to: (i) maintain the other Party's Confidential Information with the same level of care as it does its own valuable and sensitive information of a similar nature and, in any event, with not less than a reasonable degree of care; and (ii) not disclose the other Party's Confidential Information to any other party, without the prior written consent of the disclosing Party. Each Party agrees to limit its use of the other Party's Confidential Information to the purposes permitted by this Agreement. The obligation of confidentiality under this Section 12.2 shall continue for five (5) years after the expiration or termination of this Agreement.
- 12.3. **Exceptions.** The obligations of either Party under Section 12.2 will not apply to information that the receiving Party can demonstrate: (i) was in its possession at the time of disclosure and without restriction as to confidentiality; (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by the receiving Party; (iii) has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by the receiving Party unless the receiving Party should reasonably conclude that the information is Confidential Information; (iv) is independently developed by the receiving Party without regard to the Confidential Information of the disclosing Party; or (v) is required to be disclosed by law, or order of a court of competent jurisdiction or regulatory authority; provided, however, the receiving Party shall: (a) give disclosing Party, to the

extent possible, advance notice prior to disclosure so the disclosing Party may contest the disclosure or seek a protective order; and (b) limit the disclosure to the minimum Confidential Information that is legally required to be disclosed.

13. MISCELLANEOUS

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

If to LICENSEE, to:

NH Office of Highway Safety
33 Hazen Drive
Concord, NH 03305
Attn: David Martinelli

If to FOUNDATION, to:

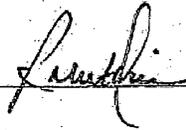
Office for Tecnology Transfer
University at Albany, SUNY
ETEC 170
1400 Washington Avenue
Albany, NY 12222
Attn: Peter Gonczlik, Director

- 13.5. **Waiver.** No waiver by either Party hereto of any breach or default of any of the covenants or agreements herein set forth will be deemed a waiver as to any subsequent or similar breach or default.
- 13.6. **Independent Parties.** This Agreement will not be construed as creating a relationship of employment, agency, partnership, joint venture, or any other form of legal association between LICENSEE and FOUNDATION. The relationship between the Parties will never be construed to be that of employer-employee. Neither Party has any power to bind the other Party or to assume or to create any obligation or responsibility on behalf of the other Party or in the other Party's name.
- 13.7. **Force Majeure.** Neither Party will be liable for failure or delay of fulfillment of all or part of this Agreement, directly or indirectly owing to acts of nature, governmental orders or restriction, war, warlike conditions, revolution, riot, looting, strike, lockout, fire, flood, or any other cause or circumstances beyond the Party's control.
- 13.8. **Headings.** The headings of the articles and sections are inserted for convenience of reference only, and are not intended to influence the interpretation of this Agreement.
- 13.9. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Further, either Party's signature to a copy of this Agreement will be deemed a signature to, and may be attached to, any other identical copy of the Agreement. Facsimile or electronic signatures will be as binding and effective as original signatures.
- 13.10. **Third Parties.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.
- 13.11. **Further Assurances.** The FOUNDATION, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

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

**NH OFFICE OF
HIGHWAY SAFETY**

**THE RESEARCH FOUNDATION FOR
THE STATE UNIVERSITY OF NEW YORK**

BY: 

BY: 

Name: Robert L. Quinn

Name: Peter Gonczlik

Title: Commissioner,
NH Department of Safety

Title: Director, Office for Technology
Transfer

Date: 6/6, 2024

Date: May 21, 2024

Approval by the Attorney General (Form, Substance, and Execution):

By: ^{Attorney} 

On: 06/10/24

Approval by the Governor and Executive Council:

G&C Item number: _____

G&C Meeting Date: _____

EXHIBIT A

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

INTRODUCTION

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

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

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

OVERVIEW OF DRE DATA ENTRY AND MANAGEMENT SYSTEM

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

DRE Tablet and Web Applications

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

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

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

DRE Database

The DRE database captures all of the data fields contained in the tablet and web applications, including the data from the toxicology reports as well as the data from the evaluation. As a result, any of the data fields captured on the applications can be queried through the database. In addition to being used to conduct analyses and prepare reports for the DRE program management staff, the database is used to meet federal reporting requirements. Data can be extracted on a regular basis and uploaded to the national DRE database maintained by the vendor under contract to the National Highway Traffic Safety Administration.

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

Reporting and Query Tool

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

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

EXHIBIT B

SERVICES INCLUDED IN LICENSE FEE

CONFIGURED TABLET AND WEB APPLICATIONS

ITSMR will configure the tablet and web applications for use by the state's DRE program.

In addition, ITSMR will provide the necessary security for the DRE application.

DRE DATABASE

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

QUERY TOOL AND STANDARD REPORTS

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

Note – ITSMR will complete the configuration of the Tablets, Web Applications, DRE Database, Query Tool and Standard Reports within six weeks of the Effective Date of this agreement.

DOCUMENTATION

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

MAINTENANCE AND SUPPORT SERVICES

ITSMR will provide maintenance and support services related to updating the application, maintaining the database, and assisting in troubleshooting any technical problems that occur in using either the tablet or the application. Any routine upgrades and/or changes to the tablet and web applications made during the Term of this Agreement will be shared with the LICENSEE. Technical assistance will be available by telephone (518-453-0291 x118) Monday-Friday, 9am-5pm Eastern Time and other hours by email to Techsupport@itsmr.org.

NON-DRE ADMINISTRATOR USERS

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

TRANSMISSION OF DATA TO NATIONAL DATABASE

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

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

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

EXHIBIT C

OBLIGATIONS OF LICENSEE

MAINTENANCE OF LICENSEE-OWNED EQUIPMENT

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

SECURING LICENSEE-OWNED EQUIPMENT

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

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

- DREs should connect the tablet to a Wi-Fi signal a minimum of once every 30 days and check for DRE Data Entry & Management System software updates.
- DREs should connect the tablet to the MobileIron software a minimum of once every 180 days.
- Lockscreen passwords should be implemented on every device. Lock screens should be set to time out when the device is left idle for 10 minutes or less, with password protection to log back into the device. Password length and complexity must adhere to industry standards and DREs must not share their passwords with anyone.
- DREs are strongly encouraged to encrypt their tablets and require a password prior to the initial startup. The encryption feature prevents any unauthorized attempt to extract or remove data from the tablet via USB drives or connectivity to another device.
- Develop Acceptable Use policies and require each end user to sign a written acknowledgement of the policies. Acceptable Use policies may cover a wide range of topics including the appropriate use of email, internet, and downloading of software. A sample Policy and Procedure document for the LICENSEE's use is attached as Exhibit E. It is highly recommended that the LICENSEE modify this document to meet its specific needs.

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

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

EXHIBIT D

REQUIRED FEDERAL CERTIFICATIONS AND ASSURANCES

U.S. Department of Transportation/NHTSA Grant Conditions for Contractors:

NONDISCRIMINATION

The State highway safety agency and Contractor will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities") as applicable. These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (entitled Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 28 CFR 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683 and 1685–1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100–209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131–12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (preventing discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (requiring that recipients of Federal financial assistance provide meaningful access for applicants and beneficiaries who have limited English proficiency (LEP));
- Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government (advancing equity across the Federal Government); and
- Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (clarifying that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation).

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Contractor hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Contractor receives Federal financial assistance from DOT, including NHTSA."

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI of the Civil Rights Act of 1964 and other non-discrimination requirements (the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all applicable programs and activities of the Contractor, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Contractor agrees with and gives the following Assurances with respect to its Federally assisted Highway Safety Grant Program:

1. The Contractor agrees that each "activity," "facility," or "program," as defined in § 21.23(b) and (e) of 49 CFR part 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Contractor will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Highway Safety Grant Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

"The Research Foundation for the State University of New York, on behalf of the University at Albany, Institute for Traffic Safety Management and Research, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will use best efforts to affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

3. The Contractor will insert the clauses of appendix A and E of this Assurance (also referred to as DOT Order 1050.2A, available at https://www.fhwa.dot.gov/civilrights/programs/title_vi/USDOT_Order_0502A.pdf) in every applicable contract or agreement subject to the Acts and the Regulations.

4. The Contractor will insert the clauses of appendix B of DOT Order 1050.2A, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Contractor.

5. That where the Contractor receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Contractor receives Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Contractor will include the clauses set forth in appendix C and appendix D of this DOT Order 1050.2A, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Contractor with other parties:

a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Contractor for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Contractor, or any transferee for the longer of the following periods:

- a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. the period during which the Contractor retains ownership or possession of the property.

9. The Contractor, as applicable, will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Contractor agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Contractor also agrees to comply (and as applicable require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing NHTSA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by NHTSA. You must keep records, reports, and submit the material for review upon request to NHTSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Contractor gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Highway Safety Grant Program. This ASSURANCE is binding on the State highway safety agency, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Highway Safety Grant Program. The person(s) signing below is/are authorized to sign this ASSURANCE on behalf of the Contractor.

CERTIFICATION REGARDING FEDERAL LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. As applicable, the undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the

eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Awarding Agency: Office of Highway Safety (OHS)
Federal Awarding Agency: National Highway Traffic Safety Administration (NHTSA), US DOT NHTSA Region 1 55 Broadway, RTV-8E Cambridge, MA 02142
FAIN Number: Bill & Supplemental Bill – 405d - FAIN Number (Subaward): 69A3752230000405dNHL, 69A3752230SUP405dNHL, 69A3752330000405dNHL, 69A3752330SUP000405dNHL, 69A3752430000405dNHM, 69A3752430SUP405dNHM
Project Title & Number: DRE Training
Funding Source; PSP & Task #: 24-07 M6OT 07
UEI #: NHH3T1Z96H29 Expiration: December 18, 2024
Award Title: NHTSA Section 405d ALCOHOL
ALN - Assistance Listing Number: 20.616
Is This a Research and Development Project (Yes or No): NO

I understand that failure to comply with applicable Federal statutes and regulations may subject State officials to civil or criminal penalties and/or place the State in a high-risk grantee status in accordance with 2 CFR 200.

I sign these Certifications and Assurances based on personal knowledge, after appropriate inquiry, and I understand that the Government will rely on these representations in awarding grant funds.

Authorized Contract Signatory: 

Date: 5/21/2024

Signor's Printed Name: Peter Gonczlik

Signor's Title: Director, office

for Technology transfer

EXHIBIT E

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

- The tablet used by the Drug Recognition Expert (DRE), and any associated equipment, has been purchased by XXXX. The tablet remains the property of XXX and the DRE will adhere to policies and procedures as instructed by the State DRE Coordinator.
- All Drug Recognition Experts will utilize the DRE Data Entry & Management System tablet application for all Drug Influence Evaluations, effective XX/XX/XXXX.
- All Drug Influence Evaluations and Narrative reports will be finalized and submitted to the Institute for Traffic Safety Management & Research (ITSMR) server within seven (7) days following the evaluation date.
- All Toxicology reports will be entered into the System and submitted to the ITSMR server within fourteen (14) days after receipt of the official toxicology report from the laboratory.
- DREs are required to connect the tablet to a WiFi signal a minimum of every thirty (30) days and check for DRE Data Entry & Management System software updates. The State DRE Coordinator will audit this activity. DREs who fail to adhere to this policy may be removed from the DRE program.
- DREs are required to connect the tablet to the MobileIron software a minimum of once every 180 days.
- DREs are required to implement a lock screen on their device and the time-out feature shall be set to no more than ten (10) minutes of inactivity. Password length and complexity will adhere to industry standards and DREs will not share their passwords with anyone.
- DREs will be required to encrypt their tablets to prevent unauthorized extraction of sensitive data from the device. Failure to adhere to this policy may result in disciplinary action.
- The tablet permits access to internet websites. Drug Recognition Experts shall utilize the tablet for work-related internet activities only and shall not visit inappropriate websites. DREs found in violation of this policy may face disciplinary action and removal from the DRE program.
- The tablet allows the end user to download third-party applications. DREs are personally responsible for any costs associated with the purchase of third-party applications.
- DREs shall not download any inappropriate applications or applications that may cause interference with the DRE Data Entry & Management System.
- DREs shall contact ITSMR prior to downloading any third-party software. DREs are responsible for any expenses incurred for repairs to software/hardware needed due to negligence or malicious third-party application downloads.
- DREs are permitted to configure the email application within the tablet to utilize personal or work-related email addresses. DREs are expected to adhere to accepted and professional standards while using the email functionality within the tablet. Inappropriate activity may result in removal from the DRE program.

- DREs are expected to familiarize themselves with the functionality of the tablet and the DRE Data Entry & Management System. If a DRE requires assistance with the programmatic functionality of the System he/she will:
 - Contact fellow DREs or DRE Instructors and try to resolve the issue.
 - If the issue cannot be resolved at that level, the DRE will contact the State DRE Coordinator.
 - If the State Coordinator cannot resolve the issue, the State DRE Coordinator will contact ITSMR.
- If the DRE encounters a technical error rather than a question regarding programmatic functions, the DRE should contact ITSMR at 518-453-0291 during ITSMR business hours (Monday – Friday, 8:30 a.m. – 5:00 p.m. Eastern time). ITSMR can also be contacted via email at techsupport@itsmr.org. The email is monitored by ITSMR staff after business hours. The DRE should also notify the State DRE Coordinator.
- If the tablet is lost, stolen, or damaged, the DRE shall notify the State DRE Coordinator immediately. The DRE shall also notify ITSMR so that the data on the tablet can be wiped from it.
- DREs will be required to perform a minimum of five (5) Drug Influence Evaluations per calendar year in order to be issued a tablet. DREs who do not meet this minimum standard shall return their tablet to the State DRE Coordinator and will be required to enter completed evaluations via the web application of the DRE Data Entry & Management System.
- DREs and their command staff may have a need for data from the DRE Data Entry & Management System. All requests for data must be made to the State DRE Coordinator. If the State Coordinator does not have the ability to provide the requested information, the State Coordinator will contact ITSMR for assistance.

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

Signature

Date

Printed Name



**The Research
Foundation for**

The State University of New York

Office of General
Counsel & Secretary

35 State Street
Albany, New York

Mailing Address:
Post Office Box 9
Albany, New York
12201-0009

(T) 518.434.7045
(F) 518.935.6707

www.rfsuny.org

January 18, 2022

**Re: The Research Foundation of State University of New York
Confirmation of IRC 501(c)(3) Tax Exempt Status**

To Whom It May Concern:

The Research Foundation for The State University of New York (the "Foundation") is a private, non-profit corporation and is an organization described in Internal Revenue Code Section 501(c)(3). Enclosed for your information is the April 11, 2008, determination letter in which the Internal Revenue Service concluded the Foundation qualified for exemption from federal income taxes. As of the date of this letter, the determination remains unchanged.

The Foundation has been a tax-exempt organization under Internal Revenue Code since its inception in 1951.

The Foundation's public charity status is identified as an organization exempt from Federal Income Tax under Internal Revenue Code Section 509(a)(1) of the code.

If you have further questions concerning this subject, please do not hesitate to contact me at (518) 434-7045.

Sincerely,

DocuSigned by:
A handwritten signature in black ink, appearing to read "Christopher L. Ashley", is written over a white rectangular background.
C100611B11C6400...

Christopher L. Ashley
General Counsel & Secretary

**Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements**

**Department of the Treasury
P.O. Box 2508
Cincinnati, Ohio 45201**

Date: APR 11 2008

The Research Foundation of State
University of New York
c/o Brian K Haynes
Bond, Schoeneck & King PLLC
One Lincoln Center
Syracuse, NY 13202-1355

Employer Identification Number:
14-1368361
Person to Contact - ID#:
Sirijun Mayi - #31-07372
Contact Telephone Number:
877-829-5500 Phone
Public Charity Status:
509(a)(1) and 170(b)(1)(A)(vi)

Dear Applicant:

Our letter dated November 7, 1951 stated that you were exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code and classified as a public charity under sections 509(a)(1) and 170(b)(1)(A)(iv) and later modified to section 509(a)(3) of the Code.

Based on the information you submitted, we have modified your public charity status to the Code section listed in the heading of this letter. The effective date of your reclassification is July 1, 2007. Since your exempt status was not under consideration, you continue to be classified as an organization exempt from Federal income tax under section 501(c)(3) of the Code.

Publication 557, Tax-Exempt Status for Your Organization, provides detailed information about your rights and responsibilities as an exempt organization. You may request a copy by calling the toll-free number for forms, 800-829-3676. Information is also available on our Internet Web Site at www.irs.gov.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

If you have any questions, please call our toll free number shown in the heading of this letter.

Sincerely,



**Robert Choi
Director, Exempt Organizations
Rulings and Agreements**



New York State Department of Taxation and Finance
New York State and Local Sales and Use Tax
Exempt Organization
Exempt Purchase Certificate

ST-119.1
 (10/11)

Single purchase certificate

Blanket certificate

Your exempt organization number
 is not your federal employer
 identification number (see instructions).

Exempt organization number (6-digit number
 issued by the New York State Tax Department)

EX - 1 | 1 | 9 | 2 | 2 | 2

Name of seller			Name of exempt organization/purchaser The Research Foundation for The State University of New York		
Street address			Street address Post Office Box 9		
City	State	ZIP code	City	State	ZIP code
			Albany	NY	12209-0009

The exempt organization must be the direct purchaser and payer of record.

You may not use this form to purchase motor fuel or diesel motor fuel exempt from tax.

Representatives of governmental agencies or diplomatic missions may not use this form.

Carefully read the instructions and other information on the back of this document.

I certify that the organization named above holds a valid Form ST-119, *Exempt Organization Certificate*, and is exempt from New York State and local sales and use taxes on its purchases.

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to the vendor as agent for the Tax Department for the purposes of section 1838 of the Tax Law and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Print or type name of officer of organization Emily Kunchala	Title Chief Financial Officer
Signature of officer of organization 	Date issued January 1, 2022

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



**The Research
Foundation for**

The State University of New York

To: Peter Gonczlik, Director
Office for Innovation Development & Commercialization

From: Thenkurussi Kesavadas, Vice President for Research and Operations Manager

Date: May 24, 2024

Subject: Transaction Authority

As required by the RF Delegation of Authority Policy and Procedure, this memo is to notify you that you are authorized to act in the name of the RF in the following capacity:

You may authorize:

TRANSFER AND COMMERCIALIZATION SERVICES (TT OPERATIONS INTEGRATED WITH RF CENTRAL OFFICE)

- Assignments of IP Rights
- Confidentiality (MDCA/NDA) Agreements
- Contracts with third parties for RF-owned intellectual property (for IP developed at UAlbany only) (e.g., collaboration, IP management, IP transfer, etc.)
- Copyright registration applications
- Data Use and Transfer Agreements (IP related)
- Engagement of Counsel for representation of RF before the USPTO and foreign patent offices
- Equity Agreements
- Exclusive Licenses
- Inter-Institutional Innovation Management Agreements
- Internal Applications to RF Central Office (e.g., TAF, EIR, etc.)
- Material Transfer Agreements
- New Technology Disclosure Approval
- Non-Exclusive License Agreements
- Option Agreements
- Powers of Attorney (IP Prosecution)
- Refer companies to RFIinsure program

Peter Gonczlik
Name

Director, Office for Innovation Development & Commercialization
Title



**The Research
Foundation for**

The State University of New York

AWARD AND CONTRACT EXECUTION

<u>Peter Gonczlik</u>	ID&C Patents
Name	<u>ID&C Operations</u>
	Title

This authority is effective immediately and shall run until revoked by the Operations Manager or Deputy Operations Manager.

It is also noted that no person may authorize a payment to oneself or benefitting oneself, including but not limited to: personnel transactions, reimbursements, and travel expenditures. Any transaction that benefits, or could be perceived as benefiting, an individual with approval authority requires approval by another Qualified Designee of equal authority or greater.

Acknowledged and Agreed: _____ May 24, 2024

Thenkurussi Kesavadas, Vice President for Research and Operations Manager

Designee Signature and Date: Peter Gonczlik May 24, 2024

