CITY OF
LINCOLN
NEBRASKA

CITY ATTORNEY

[illegible] City, NE [illegible]

March 31, 2023

Mike Muskovin
Invictus Apps. Inc. d/b/a Prepared

VIA EMAIL

Re: Adhesion Letter

Dear Mr. Muskovin,

This letter is in regards to today's contract negotiations between your company and the City of Lincoln ("City") for the purchase of Prepared Live Enhanced annual licenses and related professional services. Today's negotiations included yourself (Head of Sales), Jessica Loos (Emergency Communications Manager), and myself (Police Legal Advisor). While many of my concerns have been addressed, Invictus/Prepared has been unwilling to negotiate the following terms:
Section 5.9, No Set Offs: The City requested that you strike "All fees paid by Client are not refundable." The contract requires all fees to be paid up front. The City ask that this language be replaced with language allowing the fees to be prorated and returned to the Client (City of Lincoln).

Section 14.3, Disclaimers of Warranties: You indicated Invictus/Prepared does not negotiate this section even though this section provides no guarantee that your software will work or remedies to the Client (City).

Section 15, Limitations of Liability, Additional Disclaimers: You indicated Invictus/Prepared does not negotiate this section even though this section generally states that Invictus/Prepared shall not be liable for their product or services, and generally provides no remedies to the Client (City).

I write this letter to point out the limited enforceability for contracts of adhesion, especially with regard to warranties and the limitation of liability provisions as contained in such agreement, and to summarize the factors supporting such a finding in this case.

The City has reviewed availability, relative costs, and efficiency of starting over with other software products, if available, and associated service and maintenance options. The City's Purchasing Department has deemed this a sole source, thus there are no other options for the City. The City has concluded, at this point, Invictus/Prepared services are the only reasonable, cost effective solution available. Since the City, through its requested revisions of the Invictus/Prepared's Standard Terms and Conditions, has unsuccessfully attempted to negotiate eliminating the unfavorable provisions in the Agreement, the two key elements for establishing a contract for adhesion have been met. *Ray Tucker and Sons, Inc. v. GTE Directory Sales Corp.*, 571 N.W.2d 64, 253 Neb. 458 (1997).

Respectfully,

Tonya Peters
Police Legal Advisor