

Supplement to the State of New Jersey Waivered Services Terms and Conditions APPLICABLE TO INFORMATION TECHNOLOGY CONTRACTS

- A. SUPPLEMENT TO THE NEW JERSEY WAIVERED SERVICES TERMS AND CONDITIONS** - This Supplement to the State of New Jersey Waivered Services Terms and Conditions ("Supplement") shall apply to Information Technology Contracts awarded by the State of New Jersey on behalf of an Agency (collectively referred to as the "State" unless the context indicates otherwise). The terms in this Supplement modify the terms of the New Jersey Division of Purchase and Property Waivered Services Contracts Standard Terms and Conditions, ver. June 29, 2011 ("Standard Terms and Conditions"). The combined terms of the Standard Terms and Conditions and this Supplement shall prevail over any conflicts set forth in or incorporated by reference into a Contractor's standard license, service or other agreement ("Contractor Standard Form Agreement") and/or proposal submitted in response to a Solicitation.
- B. DEFINITIONS** – All capitalized terms used in this Supplement shall have the same meaning as stated in the Standard Terms and Conditions. In addition, the following definitions shall apply to Information Technology Contracts :
- a. The term "Acceptance" means the written confirmation by an Agency that Contractor has completed a Deliverable according to the specified requirements.
 - b. The term "Contractor Intellectual Property" means any intellectual property that is owned by Contractor and contained in or necessary for the use of the Deliverables or which the Contractor makes available for the State to use as part of the work under the contract. Contractor Intellectual Property includes COTS or Customized Software owned by Contractor, Contractor's technical documentation, and derivative works and compilations of any Contractor Intellectual Property.
 - c. The term Commercial Off the Shelf Software ("COTS") means Software provided by Contractor that is intended for general use.
 - d. The term "Custom Software" means Software and Work Product that is developed by Contractor at the request of the Agency to meet the specific requirements of the Agency and is intended for its use.
 - e. The term "Customized Software" means COTS that is adapted by Contractor to meet specific requirements of the Agency that differ from the standard requirements of the base product.
 - f. The term "Deliverable" means the goods, products, Services and Work Product that Contractor is required to deliver to the State under the contract;
 - g. The terms "goods" and "products" shall be deemed to include, without limitation, Software and Hardware.
 - h. The term "Hardware" shall be deemed to include computer equipment and any Software provided with the Hardware that is necessary for the Hardware to operate.
 - i. The term "Information Technology Contract" shall mean, notwithstanding any definition in New Jersey Statutes, a Contract for one or more of the following: Hardware, Software, Services, telecommunication goods and services, and all related goods.
 - j. The terms "Services" shall be deemed to include, without limitation (i) Information Technology ("IT") professional services; (ii) Software and Hardware-related services, including without limitation, installation, configuration, and training and (iii) Software and Hardware maintenance and support and/or Software and Hardware technical support services.
 - k. The term "Software" means, without limitation, computer programs, source codes, routines, or subroutines supplied by Contractor, including operating software, programming aids, application programs, application programming interfaces and software products, and includes COTS, Customized Software and Custom Software, unless the context indicates otherwise.
 - l. The term "Solicitation" means the terms and conditions set forth in the State's Request for Proposal ("RFP"), Request for Quotation ("RFQ"), and/or other Agency Request.
 - m. The term "State Intellectual Property" means any intellectual property that is owned by the State. State Intellectual Property includes any derivative works and compilations of any State Intellectual Property.
 - n. The term "Third Party Intellectual Property" means any intellectual property owned by parties other than the State or Contractor and contained in or necessary for the use of the Deliverables. Third Party Intellectual Property includes COTS owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.

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- o. The term "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, Software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's subcontractors or a third party engaged by Contractor or its subcontractor pursuant to the contract. Notwithstanding anything to the contrary in the preceding sentence, Work Product does not include State Intellectual Property, Contractor Intellectual Property or Third Party Intellectual Property.

C. CHANGES/ADDITIONS TO THE STANDARD TERMS AND CONDITIONS -

- 1. **ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS** – Add the following to Section VI(B):

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the Contractor must agree as follows:

- a) The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- b) The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- c) The Contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other Contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17:27-3.7 requires all Contractors and subcontractors, if any, to further agree as follows:

- 1. The Contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
- 2. The Contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- 3. The Contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- 4. In conforming with the targeted employment goals, the Contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

- 2. **COMPLIANCE – DATA AND PRIVACY LAWS** – Add the following as Section VI (P):

The Contractor must comply with all State and Federal data and privacy laws, rules and regulations applicable to both the Contractor and the State under the contract.

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3. **BUY AMERICAN** - Add the following as Section VI(Q):

Pursuant to N.J.S.A. 52:32-1, if applicable to the Contract, if manufactured items or farm products will be provided under this Contract to be used in a public work, they shall be manufactured or produced in the United States and the Contractor shall be required to so certify.

4. **PROHIBITED INVESTMENT IN IRAN** – Add the following as Section VI(R):

Pursuant to P.L. 2012, c. 25 or N.J.S.A. 52:32-55 et seq. (Chapter 25), a person or entity listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran shall be ineligible to bid on, submit a proposal for, or enter into or renew a Contract with a State Agency for goods or services. Accompanying Contractor's proposal, the Contractor shall submit to the Division the State's Disclosure of Investment Activities in Iran certification.

5. **ORGAN DONATION** – Add the following as Section VI(S):

As required by N.J.S.A. 52:32-33.1, the State encourages Contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

6. **ASSIGNMENT OF ANTITRUST CLAIM(S)** – Add the following as Section VI(T):

The Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing the contract, the Contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the Contractor:

- a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It shall advise the Attorney General of New Jersey:
 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; or
 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

7. **INDEMNIFICATION AND LIMITATION OF LIABILITY– Section III(H) is deleted in its entirety and replaced with the following Section III(H):**

1. INDEMNIFICATION - The Contractor's liability to the State and its employees in third party suits shall be as follows:
 - a) The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
 - i. For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the Contract or the order; and

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- ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of the contract; and
 - iii. The Contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in these Standard Terms and Conditions.
- b) In the event of a claim or suit involving third-party Intellectual Property Rights, the Contractor, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will (1) promptly notify Contractor in writing of the claim or suit; (2) Contractor shall have control of the defense and settlement of any claim that is subject to subsection (a); provided, however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Contractor at its expense. Furthermore, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Agency, nor purport to act as legal representative of the State of New Jersey or any Agency, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement.
- c) Notwithstanding the foregoing, Contractor has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State's unauthorized combination, operation, or use of a product supplied under the Contract with any product, device, or Software not supplied by Contractor; (2) the State's unauthorized alteration or modification of any product supplied under the contract; (3) the Contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Contractor with such designs, specifications, requests, or instructions, Contractor reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Contractor to proceed with one or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update or modification to the product provided by Contractor.
- d) Contractor will be relieved of its responsibilities under subsection (a)(i) and (ii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.
- e) This section states the entire obligation of Contractor and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
- f) The provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.
- g) The Contractor agrees that any approval by the State or Agency of the work performed and/or reports, plans or specifications provided by the Contractor shall not operation to limit the obligations of the Contractor assumed in the Contract.
- h) The State of New Jersey will not indemnify, defend or hold harmless the Contractor. The State will not pay or reimburse for claims absent compliance with Section X of the Terms and Conditions (also Section 7(2) of this Addendum) and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

2. STATE RESPONSIBILITIES

Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Section III(H)(1)(a)(i) and (ii) which results in an unaffiliated third party claim. This is Contractor's exclusive remedy for these claims.

3. LIMITATION OF LIABILITY

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- a) The Contractor's liability to the State for actual, direct damages resulting from the Contractor's performance or non-performance of, or in any manner related to, the Contract for any and all claims, shall be limited in the aggregate to 200% of the fees paid to Contractor for the products or Services giving rise to such damages, except that such limitation of liability shall not apply to the following:
 - i. The Contractor's indemnification obligations as described in Section III (H)(1); and
 - ii. The Contractor's breach of its obligations of confidentiality described in Section III (K); and
- b) The Contractor shall not be liable for consequential or incidental damages.

8. **CONTRACTOR PERFORMANCE WARRANTIES** – Replace Section III (C) with the following:

a. COTS and Customized Software

- 1. Unless the Contractor Standard Form Agreement provides greater coverage as determined by the State, in its sole discretion, Contractor warrants that COTS and Customized Software products licensed to the State shall operate in all material respects as described in the Solicitation and/or Contractor technical documentation for ninety (90) days after Acceptance. The State shall notify Contractor of any COTS or Customized Software product deficiency within ninety (90) days after Acceptance. For a contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 8(a) and 8(b) of this Supplement.
- 2. Except for the portion of Contractor's COTS or Customized Software product that intentionally contains one or more of the following for the purpose of anti-virus protection, Contractor warrants that, at the time of delivery and installation of the COTS or Customized Software provided pursuant to the contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the such COTS or Customized Software, collect unlawful personally identifiable information on users, or prevent the such COTS or Customized Software from performing as required under the contract.
- 3. In the event of any breach of this warranty, the Contractor shall correct the product errors that caused the breach of warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its usage and recover the fees paid to Contractor for the license and any unused, prepaid, technical support fees paid. Under no circumstances does this warranty provision limit the Contractor's obligation in the event of a breach of confidentiality.
- 4. Contractor does not warrant that COTS or Customized Software is error-free or that it will operate uninterrupted.

b. Custom Software

- 1. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, Contractor warrants that Custom Software Deliverables shall operate in all material respects as described in the applicable specification documentation for one hundred and eighty (180) days after Acceptance. The State shall notify Contractor of any Custom Software deficiency within one hundred and eighty (180) days after Acceptance of the Custom Software Deliverable (the "Notice Period"). Where the Contractor is providing multiple Custom Software Deliverables over the term of the Contract, the Notice Period shall begin to run after the Acceptance of the final Custom Software Deliverable under the Contract. At that time, the State may assert defect claims relating to any and all of the Custom Software Deliverables provided under the Contract; however, the State may also assert claims earlier, in its discretion, without waiving the Notice Period.
- 2. For a contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 8(a) and 8(b) of this Supplement.

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3. Contractor warrants that, at the time of Acceptance of the Custom Software Deliverable provided pursuant to the contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Custom Software, collect unlawful personally identifiable information on users, or prevent the Custom Software from performing as required under the contract. Under no circumstances does this warranty provision limit the Contractor's obligation in the event of a breach of confidentiality.
4. In the event of any breach of this warranty, Contractor shall correct the Custom Software errors that caused the breach of warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the State may recover a portion of the fees paid to Contractor for the Custom Software with the uncorrected defect or in the event that the Custom Software is still deemed, by the State in its sole discretion, to be usable by the State even with the uncorrected defect, the State may recover a portion of the fees paid to Contractor for the Custom Software (up to the total amount of such charges for such Custom Software) to reflect any reduction in the value of the Custom Software Deliverable as a result of the uncorrected defect. Under no circumstances does this warranty provision limit the Contractor's obligations in the event of a breach of confidentiality.
5. Contractor does not warrant that Custom Software is error-free or that it will operate uninterrupted.

c. IT Services

1. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, Contractor warrants that all Services will be provided in a professional manner consistent with industry standards. The State shall notify Contractor of any Services warranty deficiencies within ninety (90) days from performance of the deficient Services.
2. In the event of any breach of this warranty, the Contractor shall re-perform the deficient Services, or if Contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to Contractor for the deficient Services.

d. Hardware

1. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, Contractor warrants that the equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
2. Contractor warrants that all equipment supplied to the State and operated by electrical current is UL listed where applicable.
3. Contractor warrants that all new machines are to be guaranteed as fully operational for one year from time of Acceptance by the State. For the avoidance of doubt, Acceptance with respect to Hardware in this subsection (d) shall occur no later than sixty (60) days after delivery, as evidenced by a signed delivery receipt. The Contractor shall render prompt service without charge, regardless of geographic location.
4. Contractor warrants that sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
5. Contractor warrants that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
6. Contractor warrants that all Software included with the Hardware shall perform substantially in accordance with specifications, for one (1) year from the time of Acceptance. Contractor warrants that Software media will be free from material defects in materials and workmanship for a period of one (1) year from the date of Acceptance.
7. In the event of any breach of this warranty, Contractor shall promptly repair, replace or refund the purchase price of product rejected for failure to conform with Contractor's product specifications.

- e. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

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9. **AVAILABILITY OF RECORDS** – Section III (J) is hereby amended to restate the period of record retention as five (5) years from the date of final payment. Such records shall be made available to the State, including the Comptroller, for audit and review.

10. **CONFIDENTIALITY** - Delete Section III (K) in its entirety and replace with the following:

- a. The State's obligation to maintain the confidentiality of Contractor's confidential information provided to the State under the Contract is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.
- b. By virtue of the contract, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the contract. Contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Contractor Confidential Information"). Notwithstanding the previous sentence, the Contractor acknowledges the terms and pricing of the Contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
- c. The State's Confidential Information shall consist of all information or data in any form whatsoever supplied by the State, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not).
- d. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.
- e. The parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care in doing so that it uses to protect its own confidential information.
- f. In the event that the State receives a request for Contractor Confidential Information related to the Contract pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Contractor shall take any action it deems appropriate to protect its documents and/or information.
- g. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the Contractor of its obligation to take action to protect such information if the Contractor is aware of a legal reason to do so.
- h. Notwithstanding the requirements of nondisclosure described in this Section III (K), either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in subsection (f), or if Contractor is unsuccessful in defending its rights as described in subsection (f), or (iv) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection (g), or if the State is unsuccessful in defending its rights as described in subsection (g).

11. **OWNERSHIP** - Delete Section III (M) in its entirety and replace with the following:

- a. Contractor Intellectual Property; COTS and Customized Software – Contractor retains ownership of all Contractor Intellectual Property, and any modifications thereto and derivatives thereof, that Contractor supplies to the State pursuant to the Contract. Contractor grants the State a non-exclusive, perpetual royalty-free license to use Contractor Intellectual Property delivered to the State for the purposes contemplated by the contract.
- b. Third Party Intellectual Property – Unless otherwise specified in the Solicitation that the State, on its own, will acquire and obtain a license to Third Party Intellectual Property, Contractor shall secure on the State's behalf, in the name of the State and subject to the State's approval, a license to Third Party Intellectual Property

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sufficient to fulfill the business objectives, requirements and specifications identified in the Contract at no additional cost to the State beyond that in the bid price. Under no circumstances will the State accept a license for Third Party Intellectual Property that contains terms and conditions that conflict with the terms and conditions of the Contract. If Contractor uses Third Party Intellectual Property, Contractor must indemnify the State for infringement claims with respect to the Third Party Intellectual Property. Contractor agrees that its use of Third Party Intellectual Property shall be consistent with the license for the Third Party Intellectual Property, whether supplied by the Contractor, secured by the State as required by the Solicitation, or otherwise supplied by the State.

- c. Work Product; Custom Software – The State owns all Custom Software which shall be considered “work made for hire”, i.e., the State, not the Contractor, subcontractor, or third party, shall have full and complete ownership of all such Custom Software. To the extent that any Custom Software may not, by operation of the law, be a “work made for hire” in accordance with the terms of the Contract, Contractor, subcontractor, or third party hereby assigns to the State, or Contractor shall cause to be assigned to the State, all right, title and interest in and to any such Custom Software and any copyright thereof, and the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.
- d. Work Product; Services – The State owns all Deliverables developed for the State in the course of providing Services under the Contract, including but not limited to, all data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the Contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the Services required under the Contract.
- e. State Intellectual Property – Data and Background Information. The State owns all State Intellectual Property and State data and background information provided to Contractor pursuant to the contract. The State’s data and background information shall include, without limitation, all data, technical information, and materials provided to Contractor by the State to facilitate performance of the contract, including but not limited to all reports, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents. The items described in the preceding sentence shall be delivered or returned to the State of New Jersey upon thirty (30) days’ notice by the State or thirty (30) days after the expiration or termination of the Contract. Only to fulfill the purposes of the Contract does the State grant Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of State Intellectual Property and State data and background information. Notwithstanding anything to the contrary contained in the Terms and Conditions or this Supplement, no part of the State’s data will be disclosed, sold, assigned, leased or otherwise disposed of to any person or entity other than the State unless specifically directed to do so in writing by the Contract Manager. The State’s license to Contractor is limited by the term of the Contract and the confidentiality obligations set forth in Section 7.1 of this Supplement.
- f. No Rights – Except as expressly set forth in the contract, nothing in the Contract shall be construed as granting to or conferring upon Contractor any right, title, or interest in State Intellectual Property or any intellectual property that is now owned or licensed to or subsequently owned by or licensed by the State. Except as expressly set forth in the contract, nothing in the Contract shall be construed as granting to or conferring upon the State any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor. Except as expressly set forth in the contract, nothing in the Contract shall be construed as granting to or conferring upon the State any right, title, or interest in any Third Party Intellectual Property that is now owned or subsequently owned by a Third Party.

12. **AUDIT NOTICE AND DISPUTE RESOLUTION** – Add the following as Section V (E):

To the extent Contractor’s proposal or Standard Form Agreement permits Contractor to conduct periodic audits of the State’s usage of the Contractor Intellectual Property provided thereunder, such provision is amended to include the following audit notice and dispute resolution process:

- a. AUDIT NOTICE – Notwithstanding anything to the contrary in Contractor’s proposal or Standard Form Agreement, in the event that the Contractor seeks to exercise a right in its proposal or Standard Form Agreement to audit the State’s use of Contractor Intellectual Property, Contractor shall deliver simultaneous written notice, no less than thirty days in advance of the audit start date (unless the Contractor’s notice provides a longer notice period), to:
 - a. the Director of the New Jersey Department of Treasury, Division of Purchase and Property:

**Supplement to the State of New Jersey
Waivered Services Terms and Conditions
APPLICABLE TO INFORMATION TECHNOLOGY CONTRACTS**

Procurement Bureau, Technology Unit
P.O. Box 230
Trenton, NJ 08625-0230

- b. the Chief of Staff of the New Jersey Office of Information Technology:
Office of the Chief Technology Officer
300 Riverview Plaza
Trenton, NJ 08625
- c. and the State Contract Manager.

The notice shall reference the specific audit provision(s) in Contractor's proposal or Standard Form Agreement being exercised and include copies of same, specify the means by which the Contractor will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.

- b. **AUDIT DISPUTE RESOLUTION** -- If the State, in good faith, provides Contractor with written notice of an alleged error in the amount of underpaid fees due Contractor as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the Contract while they endeavor to resolve the dispute under this paragraph.
- c. **STATE NOT LIABLE FOR AUDIT COSTS** -- Notwithstanding anything to the contrary in Contractor's proposal or Standard Form Agreement, the State will not reimburse Contractor for any costs related to an audit.
- d. **NO AUDIT RIGHT CREATED** -- In the event that the Contractor's proposal or Standard Form Agreement does not permit audits of the State's usage of Contractor Intellectual Property Section 12 of these terms shall not be interpreted to provide such an audit right.

13. **REFERENCES TO EXTERNAL DOCUMENTATION** - Add the following as Section V (F):

Any external documentation incorporated by reference into Contractor's proposal or Standard Form Agreement are subject to the State's Standard Terms and Conditions and this Supplement. In the event of any conflict between the terms of a document incorporated by reference into Contractor's Standard Form Agreement and/or proposal, and the Standard Terms and Conditions, the State's Standard Terms and Conditions and this Supplement shall prevail.

I HEREBY ACCEPT THE TERMS AND
CONDITIONS OF THIS AGREEMENT

NAME:

TITLE:

COMPANY NAME:

DATE: