



State of Rhode Island  
Department of Administration / Division of Purchases  
One Capitol Hill, Providence, Rhode Island 02908-5855  
Tel: (401) 574-8100 Fax: (401) 574-8387

September 23, 2016

**ADDENDUM # 3**

**RFP: 7550892**

**Title: User Acceptance Testing Support**

**Bid Opening Date & Time: September 30, 2016 at 10:30 AM**

**Notice to Vendors:**

**Please find the attached IT Terms and Conditions, as well as Attachment A General Requirements.**

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**Sharon Louro  
Buyer**

**Interested parties should monitor this website, on a regular basis, for any additional information that may be posted.**

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## Information Technology (IT) Supplemental Terms and Conditions

### GENERAL PROVISIONS:

The terms and conditions of this Agreement are intended by the parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding, which may involve the Agreement. This agreement may not be modified, except by mutual consent executed in writing by both parties.

**1. DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

- a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
- b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
- c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
- d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- e) **"Buyer"** means the State's authorized contracting official.
- f) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
- g) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
- h) **"Custom Software"** means *Software that does not meet the definition of Commercial Software.*
- i) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier," "vendor" or other similar term, including its or their subcontractors and agents.
- j) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
- k) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.
- l) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, documentation, software code, tangible outcomes, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
- m) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
- n) **"Documentation"** means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.
- o) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).
- p) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
- q) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
- r) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- s) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- t) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
- u) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.

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- v) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- w) **"Machine Alteration"** means any change to a Contractor -- supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- x) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- y) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- z) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- aa) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- cc) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- dd) **"Performance Testing Period"** means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Site License"** means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
- ll) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- mm) **"Software Failure"** means a malfunction in the Contractor -- supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- nn) **"State"** means the government of the State of Rhode Island, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of Rhode Island.
- oo) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- pp) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of

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America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

**2. COMPLETE INTEGRATION:**

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

**3. SEVERABILITY:**

The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

**4. INDEPENDENT CONTRACTOR:**

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.

**5. APPLICABLE LAW:**

This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of Rhode Island; venue of any action brought with regard to this Contract shall be in Providence County, Providence, Rhode Island. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

**6. COMPLIANCE WITH STATUTES AND REGULATIONS:**

- a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of Rhode Island and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) If this Contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

**7. CONTRACTOR'S POWER AND AUTHORITY:**

*The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party, which might abridge any rights of the State under this Contract.*

**8. ASSIGNMENT:**

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose

of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

**9. WAIVER OF RIGHTS:**

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

**10. ORDER OF PRECEDENCE:**

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) statement of work, including any specifications incorporated by reference herein - said statement of work shall only be used to describe the vendor's work for the State and shall not be allowed to change the order hereof unless approved by the Legal Department, Department of Administration and the Chief Purchasing Officer;
- b) these General Provisions – Information Technology Supplemental Terms & Conditions;
- c) contract form, i.e., Purchase Order, Agreement, etc., and any amendments thereto;
- d) information technology special provisions; and
- e) all other attachments incorporated in the contract by reference.

**11. PACKING AND SHIPMENT:**

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
  - i) show the number of the container and the total number of containers in the shipment; and
  - ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.

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- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Division of Purchases.

**12. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:**

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the State's Division of Purchases.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
  - a) The State will not reimburse the Contractor for any Travel or Entertainment expenses.

**13. DELIVERY:**

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

**14. SUBSTITUTIONS:**

Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

**15. INSPECTION, ACCEPTANCE AND REJECTION:**

Unless otherwise specified in the Statement of Work:

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.

**16. SAMPLES:**

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

**17. WARRANTY:**

- a) Unless otherwise specified in the Statement of Work or RFP, the warranties in this subsection begin upon final acceptance of the all Deliverable or service in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed

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Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

- b) Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.
- c) Unless otherwise specified in the Statement of Work: (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption. (ii) Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified, recommended or approved by Contractor, or (C) misuse by the State. (iii) Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to: (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or (ii) should the State in its sole discretion consent, refund of all amounts

paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover.

"Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."

**18. SAFETY AND ACCIDENT PREVENTION:**

In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

**19. INSURANCE: See Attachment A**

**20. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**

a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefore.

**21. TERMINATION FOR THE CONVENIENCE OF THE STATE:**

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, by notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- (i) Stop work as specified in the Notice of Termination.
  - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
  - (iii) Terminate all subcontracts to the extent they relate to the work terminated.
  - (iv) Settle all outstanding liabilities and termination

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- settlement proposals arising from the termination of subcontracts;
- c) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
- (i) The Contract price for Deliverables or services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges; and
  - (ii) The total of:
    - A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
    - B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
    - C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
  - d) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause. In no event will lost profit be allowed.

**22. TERMINATION FOR DEFAULT:**

- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
  - i) Deliver the Deliverables or perform the services to acceptable quality standards as determined by the state within the time specified in the Contract or any amendment thereto;
  - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
  - iii) Perform any of the other provisions of this Contract.
  - iv) Breach of state policies or procedures
- b) The State's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event

- will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials. However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
  - (i) completed Deliverables,
  - (ii) partially completed Deliverables, and,
  - (iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract.

**23. FORCE MAJEURE:**

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond

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the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted Deliverables or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

**24. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**

- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

**25. STATE'S LIMITATION OF LIABILITY:**

The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the Purchase Price. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

**26. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of

the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.

**27. INDEMNIFICATION:**

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, personal injury or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

**28. INVOICES:**

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted monthly in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount.

**29. TAXES:**

Unless otherwise required by law, the State of Rhode Island is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services



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rendered or Goods supplied to the State pursuant to this Contract.

**30. NEWLY MANUFACTURED GOODS:**

All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

**31. CONTRACT MODIFICATION:**

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

**32. CONFIDENTIALITY OF DATA:**

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available through no fault of Contractor, is already rightfully in the Contractor's possession and which is not subject to prior contrary obligations of confidentiality, is independently developed by the Contractor without the use of such confidential data or information outside the scope of this Contract, or is rightfully obtained from third parties and which is not subject to prior contrary obligations of confidentiality. Contractor and its staff may be required to sign a non-disclosure form.

**33. NEWS RELEASES:**

Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Office of the CDO/CIO.

**34. DOCUMENTATION:**

a) The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary and proprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. Documentation must be sufficient to use, operate, support and integrate the system, satisfactory to the State. b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment.

If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice of any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

**35. RIGHTS IN WORK PRODUCT:**

All work will be "work for hire" with all rights to intellectual property inuring to the State. The Contractor agrees to make no claims to the intellectual property created in connection with this Contract.

a) State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the Rhode Island Access to Public Records Act.

b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

**36. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**

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- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 36a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State. *Unless* a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 36a) will be conditional upon the following:
- i) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - ii) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
  - (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge by the State. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- (i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made, recommended, approved or furnished by the Contractor; or,
  - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
  - (iii) The unauthorized modification by the State of the Equipment furnished hereunder or of the Software; or
  - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software unless such Software is approved or recommended by the Contractor.
- e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws and other intellectual property rights. Contractor further certifies and warrants to the State that it has the legal title to any Software or has obtained the right from the legal owners to use and to license to use to the State.
- 37. EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.

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**38. STOP WORK:**

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- (i) Cancel the Stop Work Order; or
  - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
- (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
  - (ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

**39. COVENANT AGAINST GRATUITIES:**

The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable

treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

**40. FOUR-DIGIT DATE COMPLIANCE:**

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

**41. AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

**42. GOVERNANCE:**

Contractor acknowledges that this engagement is through the Office of the State Chief Digital Officer (CDO) and the Division Of Purchasing.

**43. ADDITIONAL INFORMATION**

The State has the right to require the Contractor to provide additional and periodic information at any time to demonstrate the continued financial responsibility of the Contractor.

**44. NAMED INDIVIDUALS ONLY**

All work will be performed only by the specific employees named and agreed to. The Contractor will not use any other employee, independent contractor, company or subcontractor without the prior written consent of the CDO/CIO and the Division of Purchasing. Any breach of this condition will be cause for default, with the state reserving the right to cancel the Purchase Order. Any waiver of this condition allowing for substitution must be done in writing.

**45. INDIVIDUAL ENGAGEMENTS**

The State reserves the right to negotiate pricing on individual engagements. Such terms may be different from the stated amount in the Master Blanket or Purchase Order.

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**46. BACKGROUND CHECKS/ NON DISCLOSURE FORM**

The State reserves the right, in its absolute discretion, to conduct criminal and civil background checks prior to or during the term of this Contract. Contractor and its staff may be required to sign a non-disclosure form and/or HIPAA Business Associate Agreement.

If the Contractor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as noted in this Contract, the Contractor must comply with all terms and conditions of this Section of the Contract. If the Contractor is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor for this Contract.

The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA

**47. DRUG TESTS**

The State reserves the right, in its absolute discretion, to conduct drug test(s) on individuals prior to or during the term of this Contract.

**48. INDIVIDUAL DELIVERABLES:**

The State reserves the right, in its absolute discretion, to accept or reject individual deliverables, with an obligation to pay only for those deliverables accepted. The State may agree, in its absolute discretion, to pay a prorated amount of the deliverable price based on a percentage completion of the deliverables.

**49. CHANGE IN PRICE OF DELIVERABLES:**

Any change in the price for any deliverable must receive the prior written approval of the CDO/CIO, or his designee and the Division of Purchasing.

**50. CHANGES IN PERSONNEL:**

Contractor may be responsible, for reimbursement to the State, for all costs associated with unplanned turnover including, but not limited to briefing and training any new consultants hired by the Contractor after the issuance of the Purchase Order.

The cost reimbursement contemplated in this paragraph is not intended to suggest that the vendor providing services under a purchase order release is guaranteed the opportunity to replace resources due to unplanned turnover, rather replacement of named individuals under a purchase order release is subject to the terms outlined in Paragraph 45.

**51. MODIFICATIONS TO TERMS, CONDITIONS, POLICIES ETC:**

The Terms, Conditions, Policies and Procedures may be changed during the period of this Contract, provided fifteen (15) days prior written notice is provided to the Contractor. Posting on the Information Technology Divisions website shall constitute permissible notice under this section.

**52. PERIODIC REPORTING:**

The State reserves the right to request that the Contractor will provide a report, to the CD/CIO, his/her designee or an Agency IT manager, summarizing all contracts with the State, or in the case of an Agency IT Manager, for a Department, deliverables completed, hours and rates billed, and any material issues during that period.

**53. WAIVER OF NON-COMPETITION AND RELATED AGREEMENTS**

The Contractor agrees that the State may hire any employee, consultant or independent contractor of the Contractor after the employee, consultant or independent contractor has performed services for the State for period of eighteen (18) months (of 100 hours or more / month) or greater without the payment of any referral fee or other compensation to the Contractor. The Contractor agrees not to enforce any noncompetition or related agreements to which the employee, consultant or independent contractor is a party and waives any and all claims against the State. If the employee, consultant or independent contractor performed services for the State for a period of less than eighteen (18) months then a referral fee or alternate form of compensation will be negotiated in good faith, not to exceed fifteen percent (15%) of the first year state salary of the employee.

**54. Protection of Personal Information.**

Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Personal Information Breach any and all Personal Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

- (a) Each Contractor or Contractor Party shall

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implement and maintain a comprehensive data security program for the protection of Personal Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Personal Information, and information of a similar character, as set forth in all applicable federal and state laws

- (1) A security policy for employees related to the storage, access and transportation of data containing Personal Information;
  - (2) Reasonable restrictions on access to records containing Personal Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Personal Information, including but not limited to passwords; and
  - (5) Encrypting of Personal Information that is stored on laptops, portable devices or being transmitted electronically.
  - (6) Off shore access of PII is restricted unless a comprehensive plan is approved first by the State CDO/CIO and the State CISO. Such access will only be granted for time limited durations. At no time shall FTI(federal tax information) data be accessed outside the United States.
- (b) The Contractor and Contractor Parties shall notify the State CDO/CIO and Department and the Rhode Island Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Personal Information which Contractor or Contractor Parties possess or control has been subject to a Personal Information Breach. If a Personal Information Breach has occurred, the

Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Rhode Island Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Personal Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Rhode Island General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Personal Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Rhode Island entity or any affected individuals.

- (c) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Personal Information in the same manner as provided for in this Section.
- (d) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

## Attachment A

### General Requirements

All Contractors, and Contractors shall require all subcontractors, to procure at their own cost and expense and maintain in full force and effect during the entire term of the contract until all of their obligations have been discharged, including any warranty periods or extended reporting periods, against claims that may arise from or in connection with the performance of the Agreement and the results of the performance of the Agreement, the Contractor, his agents, representatives, officers, employees, subcontractors or any other entity or person for which the Contractor is legally responsible, the following insurance coverages:

Commercial General Liability Insurance: Commercial General Liability Insurance covering bodily injury (including death), broad form property damage, personal and advertising injury, independent contractors, products and completed operations and contractual liability. This insurance shall be in policy or policies of insurance written on an occurrence basis. A combined single limit of \$1,000,000 per occurrence and aggregate is required.

Automobile Liability Insurance. Automobile Liability Insurance for bodily injury and property damage for all automobiles used in conjunction with the performance of this Agreement covering all owned, non-owned, or hired vehicles. If a Contractor does not own an automobile, but one is used in the performance of this Agreement, then only hired and non-owned coverage is required. If a vehicle is not used in the performance of the Agreement, then automobile coverage is not required. A combined single limit of \$1,000,000 per occurrence shall be obtained.

Workers' Compensation and Employers' Liability. Statutory coverage as required by the compensation laws of the State of Rhode Island or any applicable state law in which any work related to the Agreement is performed and Employers' Liability with minimum limits of \$100,000 each accident, \$100,000 disease or policy limit and \$100,000 each employee. A Contractor neither eligible for, nor entitled to, Worker's Compensation who is an independent contractor under Rhode Island law must comply with the statutory procedure precluding an independent contractor from bringing a workers' compensation claim against the Insured Parties.

Technology Errors and Omissions Coverage: Technology Errors and Omissions Insurance covering any damages caused by an error, omission or any wrongful acts of Contractor, its subcontractors, agents, officers or employees under the Agreement. Coverage to include: product failure, security failure, professional liability including, but not limited to, intellectual property infringement, and personal injury if limited or uninsured under commercial general liability insurance. Coverage to be maintained for the term of the Agreement and for a period of three years after the Agreement has ended.

Combined single limit per occurrence shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.

Regulatory Liability, Information Security and Privacy Coverage (a/k/a Network Security and Privacy Liability Insurance): Regulatory Liability, Information Security and Privacy Coverage (a/k/a Network Security and Privacy Liability Insurance) in support of the security requirements of the procurement during the term and for a period of three years after the Agreement ends insurance covering **security and privacy liability (regardless of the media involved) including costs to defend and settle, regulatory proceedings defense including indemnity for payment of fines and penalties, digital asset loss; event breach costs** including but not limited to crisis management (such as forensic investigation, legal fees) and public relations (notification costs, call center operation costs, and credit file monitoring), **network interruption if applicable, cyber extortion and internet media liability if website access may cause privacy violations**. Limits of not less than \$2,000,000 per occurrence.

The State of Rhode Island, its departments, agencies, officers, agents, volunteers, any party authorized by R.I. Gen. Laws § 37-2-1, *et seq.* and the Purchasing Regulations participating in a procurement, and any other party directed by the State (together the “Insured Parties”) shall be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State shall not be limited by the insurance required by the Agreement.

The liability insurance coverages, except for Workers’ Compensation and Employers’ Liability, shall include the Insured Parties as Additional Insureds, but only with respect to the Contractor’s activities under this Agreement. The Contractor shall submit a copy of a policy endorsement or blanket endorsement evidencing the Insured Parties as additional insureds to the Contractor’s Liability policies.

Any deductible, self-insured retention, or form of self-insurance amount under the policies shall be the sole responsibility of the Contractor and shall be disclosed to and acceptable to the State.

This insurance shall be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophic form and must be placed with insurers authorized to do business in Rhode Island, rated “A-,” class VII or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. A lesser rating must be approved by the State. The insurance required by this Agreement, through a policy or endorsement, shall include:

- a) A Waiver of Subrogation waiving any right to recovery the insurance company may have against the Insured Parties;
- b) A provision that Contractor’s insurance coverage shall be primary as respects any insurance, self-insurance or self-retention maintained by the Insured Parties and that any insurance, self-insurance or self-retention maintained by the State or any additional insureds shall be in excess of the Contractor’s insurance and shall not contribute with it;
- c) Cross-liability/severability of interests for all policies and endorsements;

- d) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy; and,
- e) The legal defense provided to the Insured Parties under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the Insured Parties is necessary.

There shall be no cancellation, material change, or potential exhaustion of aggregate limits without thirty (30) days prior written notice by registered or certified mail from the Contractor or its insurer(s) to the Department of Administration, Division of Purchases Attn: Purchasing Agent, One Capitol Hill, Providence, RI 02908.

As evidence of the insurance required by this Agreement, the Contractor shall furnish Certificates of Insurance and required additional insured endorsements to the Department of Administration, Division of Purchases prior to a Division of Purchases award. Failure to comply with this provision may result in rejection of the bid offer. Certificates of Insurance and required endorsements shall thereafter be submitted annually or earlier upon expiration and renewal of any of the policies.

Certificates of Insurance and additional insured endorsements shall be in form and coverage acceptable to the State. All Certificates of Insurance and to the extent possible for endorsements shall reference the State procurement number. State retains the right to demand a certified copy of any required insurance policy, Certificate of Insurance or endorsement.

The Contractor shall be responsible to obtain and maintain insurance on any real or personal property owned, leased or used by or otherwise in the care, custody or control of Contractor. A waiver of subrogation shall apply in favor of the Insured Parties.

The Contractor shall comply with any other insurance requirements including, but not limited to, additional coverages or limits contained in the solicitation.

Failure to comply with these insurance requirements is a material breach entitling the State to terminate or suspend the Agreement immediately.

These insurance requirements shall survive expiration or termination of the Agreement.

The Purchasing Agent reserves the right to consider and accept alternative forms and plans of insurance or to require additional or more extensive coverage for any individual requirement.