

**STATE MODEL  
INFORMATION TECHNOLOGY  
SOFTWARE SPECIAL PROVISIONS**

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**TO BE USED WITH THE GENERAL PROVISIONS AND IT GENERAL TERMS  
AND CONDITIONS. DEVELOP AND INCLUDE A STATEMENT OF WORK.**

**1 License Grant**

- a. Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use the Software Products listed in Statement of Work of this Contract (hereinafter referred to as "Software Products").
- b. State may use the Software Products in the conduct of its own business, and any division thereof.
- c. The license granted above authorizes the State to use the Software Products in machine-readable form on the computer system located at the site(s) specified in the Statement of Work. Said computer system and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.
- d. By prior written notice, the State may redesignate the CPU in which the Software Products are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.

**2 Encryption/CPU ID Authorization Codes**

- a. When Encryption/CPU Identification (ID) authorization codes are required to operate the software products, the Contractor will provide all codes to the State with delivery of the software.
- b. In case of an inoperative CPU as defined in paragraph 1c. above, Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.
- c. When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.

**3 Fees and Charges**

Upon acceptance of Software by State, in accordance with Paragraphs 5 herein and the Statement of Work, State will pay the license fee or recurring charge for the Software Products as set forth in Statement of Work. Charges will commence on the Acceptance Date as established in the Statement of Work. The Contractor shall render invoices for recurring charges or single charges in the month following the month in which the charges accrue.

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#### **4 Maintenance**

- a. The correction of any residual errors in any Software Product that may be discovered by Contractor or by the State will be considered maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of this contract. Suspected errors discovered by the State in the Software Products will be handled by the following procedures:
  - 1) A listing of the output and a copy of the identical input data in machine-readable form will be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.
  - 2) Errors in the Software Product as verified by Contractor will be corrected by providing a new copy of said Software Product (or of the affected portions) in machine-readable form.
  - 3) The Contractor shall attempt to correct Software Product errors within a reasonable time.
- b. Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular hardware or operating system at rates in accordance with the Statement of Work.
- c. If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, machine or operator failure, or due to any other cause not inherent in the original Software Products, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work.

#### **5 Acceptance of Software**

The State shall be deemed to have accepted each Software Product unless State, within thirty (30) days from the Installation Date, gives Contractor written notice to the effect that the Software Product fails to conform to the functional and performance specifications of this Contract. Contractor will, upon receipt of such notice, investigate the reported deficiencies. The rights of the parties shall be governed by the following:

- a. If it is found that the Software Product fails to conform to the Contract requirements, and Contractor is unable to remedy the deficiency within the timeframe identified in the Statement of Work, State shall return all material furnished hereunder. The State shall have the option of accepting substitute software, terminating this portion of the contract, or terminating this contract in its entirety and placing the Contractor in default.
- b. If it is found that the Software Product fails to conform to the Contract requirements and the Contractor within sixty (60) days of receipt of the above said notice corrects the deficiencies in the Software Product, the State will provide Contractor with written acknowledgement of its acceptance of said Software Product.
- c. If it is found that the Software Product does, in fact, conform to the Contract requirements, the State shall reimburse Contractor for the time and material cost of the investigation at Contractor's rates in accordance with the Statement of Work.

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**6 Right To Copy or Modify**

- a. Any Software Product provided by Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any one time without prior written consent from Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.
- b. The State agrees to keep any such copies and the original at a mutually designated State location, except that the State may transport or transmit a copy of the original of any Software Product to another State location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected.
- c. The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this Contract.

**7 Future Releases**

If improved versions of any Software Product are developed by Contractor, and are made available to other licensees, they will be made available to the State at the State's option according to the specifics contained in the Statement of Work.

**8 Acceptance Testing for Software (other than Operating Software)**

- a. Acceptance testing is required for all Contractor-supplied software supplied under this contract and listed on the Statement of Work, including all software initially installed, improved versions (new releases) of this software, any such software which has been altered (modified) by the Contractor to satisfy State requirements, and any substitute software provided by the Contractor in lieu thereof, unless Statement of Work provides otherwise. The purpose of the Acceptance Test is to ensure that the software operates in substantial accord with the Contractor's technical specifications and meets the State's performance specifications. The specific procedures for the accomplishment of such tests are contained in the Statement of Work.
- b. When Contractor has notified the State in writing that the software is installed and ready for use, or if installation is not required by Contractor, when software has been delivered to State, the State shall begin Acceptance Testing on the first State workday following such certification or delivery, unless otherwise provided in the Statement of Work.
- c. If successful completion of the Acceptance Test is not attained within the timeframe as specified in the Statement of Work, the State shall have the option to request substitute software, cancel that portion of the contract which relates to the unaccepted software, or continue the Acceptance Tests. The State's option shall remain in effect until such time as the tests are successfully performed, or the timeframe as specified in the Statement of Work, whichever occurs first. If the Acceptance Tests have not been successfully performed prior to the expiration of the timeframe specified in the Statement of Work, that portion of the contract which relates to the unaccepted software shall be canceled, unless both parties agree to the continuation of the tests or to the delivery of substitute software. If the unaccepted software (or its functional equivalent) is crucial to the accomplishment of the work for which the equipment was acquired, and is so

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identified in the Statement of Work, the State shall have the option of terminating the entire contract in accordance with the Termination for Default provision in the contract.

- d. Unless otherwise provided in the Statement of Work, software shall not be accepted by the State and no charges associated with such software shall be paid by the State until the software has satisfactorily completed the Acceptance Tests. Immediately upon successful completion of the Acceptance Testing, the State shall notify the Contractor in writing of the acceptance of the software and authorize appropriate payment.