

**STATE MODEL
INFORMATION TECHNOLOGY
PURCHASE SPECIAL PROVISIONS**

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

1 Liquidated Damages

a. General

In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

b. Delivery Delays

- 1) If the Contractor does not deliver all the deliverables listed on the Statement of Work ready for use in substantial accordance with the Contractor's specifications, on or before the Delivery Dates specified in the Statement of Work, the Contractor shall be liable for liquidated damages in the amounts specified in the Statement of Work, in lieu of all other damages for such nondelivery. Liquidated damages shall accrue for each calendar day between the Delivery Date specified and the actual date of the delivery of such deliverables or for 180 days, whichever occurs first. If the Contractor fails to provide the software listed in the Statement of Work by the specified Delivery Date, but provides suitable substitution of software acceptable to the State, liquidated damages shall not apply to listed software for which substituted software is provided.
- 2) If the State is unable to use the equipment on the installation date because Contractor failed to deliver the software listed in the Statement of Work by the Delivery Date specified in the Statement of Work, and Contractor does not furnish suitable substitute software acceptable to the State, liquidated damages for equipment noninstallation shall be paid to the State in lieu of damages for software nondelivery. Such liquidated damages shall apply until the State uses the equipment or until Contractor provides the programming aids, program products, or applications which would render the equipment usable, whichever occurs first, but not for more than 180 calendar days.

2 Title to Equipment

Unless otherwise specified in the Statement of Work, title to the equipment shall remain in the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the machine on which it was installed.

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3 Price Decline (Applicable to Third Party Contractors)

Prices quoted shall be the maximum for the contract period subject to any price escalation provisions reflected in the Statement of Work. However, should a price decline be announced by the manufacturer after contract award, but prior to a third party contractor taking title to the equipment, and should the third party contractor be the recipient of this manufacturer's price decline, it shall be passed on in total to the State by the third party contractor. Any interest, finance, or other charges based on the contract price will be recomputed using the original bid rates and the differences will also be passed to the State in total.

4 Price Decline (Applicable to Manufacturers)

Prices quoted shall be the maximum for the contract period subject to any price escalation provisions reflected in the Statement of Work. However, should a price decline be announced by the manufacturer after contract award, but prior to the State taking title to the equipment, it shall be passed on in total to the State by the manufacturer. Any interest, finance, or other charges based on the contract price will be recomputed using the original bid rates and the differences will also be passed to the State in total.