

## STATE OF NEW JERSEY

### Cover Packet to the Software Publisher/Services Provider Terms and Conditions

This Cover Packet ("Cover Packet") to the State of New Jersey's Software Publisher/Services Provider Terms and Conditions is made effective as of the last date signed below ("effective date"), by and between ProActive Risk Inc. ("Provider"), whose address is 759 Bloomfield Avenue, Suite 172, West Caldwell, NJ 07006 and the State of New Jersey, Department of the Treasury, Division of Purchase and Property whose address is 33 West State Street, 8th Floor, P.O. Box 230, Trenton, New Jersey 08625, on behalf of the Authorized Purchaser (collectively "State").

**WHEREAS**, the State and Provider desire to amend certain provisions of the documents comprising the Contract, as defined below, by entering into this Cover Packet; and

**NOW, THEREFORE**, for good and valuable consideration, the parties hereby agree as follows:

1. Notwithstanding anything to the contrary in any of the documents listed below, the entire agreement between the parties shall consist of the following documents (which shall be collectively referred to as the "Contract"):
  - a. This Cover Packet;
  - b. The Software as a Solution ("SaaS") Supplement to the Software Publisher/Services Provider Terms and Conditions, attached hereto as Exhibit 1;
  - c. The Software Publisher/Service Provider Terms and Conditions ("Terms and Conditions"), attached hereto as Exhibit 2;
  - d. The Provider's Standard Form Agreement ("SFA"), entitled "ProActive Risk Master Services Agreement", attached hereto as Exhibit 3;
  - e. All Scope of Work ("SOW") documents agreed upon by the parties for services to be performed by Provider for the Authorized Purchaser during the term of the Contract; and
  - f. All purchase orders submitted by the State to Reseller under the Software Reseller Contract for Provider's products and services during the term of the Contract.

In the event of a conflict in the terms and conditions among the documents comprising the Contract, the above order shall prevail for purposes of the interpretation thereof (listed from highest ranking to lowest ranking).

Capitalized terms used but not defined in this Cover Packet have the defined meanings from the Software Publisher/Services Provider Terms and Conditions.

2. **Scope** – The scope of the Contract includes Provider's Software Licenses, Software as a Solution (SaaS), technical support, Software Related Services and appliances acquired by the State under the State's Software Reseller Contract.
3. **Provider Restrictions** – For the avoidance of doubt, Provider is not permitted to come onto State property in connection with the performance of this contract. Further, Provider is not permitted to store any State Data in performance of this Contract.
4. **Term** – The State may place orders with Reseller for Provider's qualifying products and services under the Contract for six (6) years from the effective date.
5. **Terms and Conditions** - The parties agree to be bound by all other terms and conditions of the Contract not otherwise modified by this Cover Packet.
6. **Execution of Amendment** - The parties hereto agree that this Cover Packet may be executed in counterpart, each original signed page to become part of the original document.

**IN WITNESS WHEREOF**, authorized representatives of Provider and the State have executed this Cover Packet to be effective as of the latest date provided below.

<p>State of New Jersey, Department of the Treasury, Division of Purchase and Property</p> <p>By: <u><i>Ephram E. Levin, Esq.</i></u> Ephram E. Levin, Esq. Technology Licensing Officer</p> <p>Date: <u>2/26/2024</u></p>	<p>ProActive Risk Inc. <small>DocuSigned by:</small> <u><i>Tom Brennan</i></u> 9C800035F777456...</p> <p>By: _____</p> <p>Name: <u>Tom Brennan</u></p> <p>Title: <u>CEO</u></p> <p>Date: <u>2/25/2024</u></p>
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# **EXHIBIT 1**

# Software as a Service (“SaaS”) Supplement to the Software Publisher/Services Provider Terms and Conditions

- A. SOFTWARE AS A SERVICE (“SaaS”) SUPPLEMENT TO THE SOFTWARE PUBLISHER/SERVICES PROVIDER TERMS AND CONDITIONS** - This Supplement to the Software Publisher/Services Provider Terms and Conditions (“SaaS Supplement”) shall apply to all State purchases of Software as a Service (“SaaS”) products. For the avoidance of doubt, this SaaS Supplement shall not apply to State purchases of Provider’s on premise Software. The combined terms of the Software Publisher/Services Provider Terms and Conditions and this SaaS Supplement shall prevail over any conflicts set forth in or incorporated by reference into a Provider’s Standard Form Agreement, license, service or other agreement (“SFA”). In the event of a conflict between the terms of the SaaS Supplement and the Software Publisher/Services Provider Terms and Conditions, this SaaS Supplement shall prevail.
- B. DEFINITIONS** – All capitalized terms used in this SaaS Supplement shall have the same meaning as stated in the Software Publisher/Services Provider Terms and Conditions. In addition, the following definitions shall apply:
- a. As defined by N.J.S.A. 56:8-161, the term “Breach of Security” means unauthorized access to electronic files, media, or data containing Personal Data that compromises the security, confidentiality, or integrity of Personal Data when access to the Personal Data has not been secured by encryption or by any other method or technology that renders the Personal Data unreadable or unusable. Good faith acquisition of Personal Data by an employee or agent of the Provider for a legitimate business purpose is not a Breach of Security, provided that the Personal Data is not used for a purposes unrelated to the business or subject to further unauthorized disclosure.
  - b. The term “End User” means the user of the Provider’s solution.
  - c. The term “Mobile Device” means any device used by Provider that can move or transmit data, including but not limited to laptops, hard drives, and flash drives.
  - d. The term “Non-Public Data” means data, other than Personal Data, that is not subject to distribution to the public as public information. Non-Public Data is data that is identified by the State as non-public information or otherwise deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.
  - e. The term “Personal Data” means:
    - i. “Personal Information” as defined in N.J.S.A. 56:8-161, means an individual’s first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number, (2) driver’s license number or State identification card number or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account. Dissociated data that, if linked would constitute Personal Information is Personal Information if the means to link the dissociated were accessed in connection with access to the dissociated data. Personal Information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media.
    - ii. data, either alone or in combination with other data, that includes information relating to an individual that identifies the person or entity by name, identifying number, mark or description that can be readily associated with a particular individual and which is not a public record, including but not limited to, Personally Identifiable Information (PII); government-issued identification numbers (e.g., Social Security, driver’s license, passport); Protected Health Information (PHI) as that term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and defined below; and Education Records, as that term is defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.
  - f. The term “Personally Identifiable Information” or “PII,” as defined by the U.S. Department of Commerce, National Institute of Standards and Technology, means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information,
  - g. The term “Protected Health Information” or “PHI,” has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 means Individually Identifiable Health Information (as defined below) transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer. The term “Individually Identifiable Health Information” has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and means information that is a subset of Protected Health Information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
  - h. The term “Recovery Time Objective” or “RTO,” means the maximum tolerable length of time that the Provider’s solution may be unavailable after a failure or disaster occurs.
  - i. The term “Security Incident” means the potential access by non-authorized person(s) to Personal Data or Non-Public Data that the Provider believes could reasonably result in the use, disclosure, or access or theft of State’s unencrypted Personal Data or Non-Public Data within the possession or control of the Provider. A Security Incident may or may not turn into a Breach of Security.

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- j. The term “Service Level Agreement” or “SLA,” means the document that is part of the Provider’s SFA that typically includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.
- k. The term “State Data” means all data and metadata created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State’s hardware, the Provider’s hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Provider. State Data includes Personal Data and Non-Public Data.

## **C. REVISIONS TO THE SOFTWARE PUBLISHER/SERVICES PROVIDER AGREEMENT**

1. **INDEMNIFICATION** – Section 4.1 of the Software Publisher/Services Provider Terms and Conditions is deleted in its entirety and replaced with the following;

### **4.1 INDEMNIFICATION**

#### **A. PROVIDER RESPONSIBILITIES** - The Provider’s liability to the State and its employees in third party suits shall be as follows:

1. The Provider shall 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, tangible property (not including lost or damaged data) or injury or damage to the person, body or property (not including lost or damaged data) 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
  - ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance (“Intellectual Property Rights”) furnished or used in the performance of the contract; and
  - iii. For or on account of a Breach of Security resulting from Provider’s breach of its obligation to encrypt Personal Data or otherwise prevent its release or misuse; and
  - iv. The Provider’s indemnification and liability under Section 4.1(A)(1) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of the Software Publisher/Services Provider Terms and Conditions.
2. In the event of a claim or suit involving third-party Intellectual Property Rights, the Provider, at its option, may: (a) procure for the State the legal right to continue the use of the product; (b) replace or modify the product to provide a non-infringing product that is the functional equivalent; or in the event that Provider cannot do (a) or (b), (c) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.
3. In the event of a claim or suit involving third-party Intellectual Property Rights, the State will (a) promptly notify Provider in writing of the claim or suit; and (b) Provider shall have control of the defense and settlement of any claim that is subject to Section 4.1(A)(1); 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 Provider at its expense. Furthermore, neither Provider nor any attorney engaged by Provider shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, 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.
4. Notwithstanding the foregoing, Provider 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 this contract with any product, device, or software not supplied by Provider; (2) the State’s unauthorized alteration or modification of any product supplied under this contract; (3) the Provider’s compliance with the State’s designs, specifications, requests, or instructions, provided that if the State provides Provider with such designs, specifications, requests, or instructions, Provider 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 Provider 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, use a new version of the product, or to make a change or modification to the product if requested in writing by Provider.
5. Provider will be relieved of its responsibilities under Subsection 4.1(A)(1)(i), (ii), and (iii) 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.
6. This section states the entire obligation of Provider 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 Provider disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
7. The provisions of this indemnification clause shall in no way limit the Provider’s obligations assumed in the contract, nor shall they be construed to relieve the Provider from any liability, nor preclude the State from taking any other actions

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available to it under any other provisions of the contract or otherwise at law or equity, except as otherwise provided in Section 4.1 A. 5.

8. The Provider agrees that any approval by the State or Authorized Purchaser of the work performed and/or reports, plans or specifications provided by the Provider shall not operate to limit the obligations of the Provider assumed in the contract
9. The State of New Jersey will not indemnify, defend or hold harmless the Provider. The State will not pay or reimburse for claims absent compliance with Section 4.1(B) of these Software Publisher/Services Provider Terms and Conditions and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

B. **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 4.1(A)(1)(i), (ii), and (iii) which results in an unaffiliated third party claim. This is Provider’s exclusive remedy for these claims.

2. **LIMITATION OF LIABILITY** –Section 4.1.1 of the Software Publisher/Services Provider Terms and Conditions is deleted in its entirety and replaced with the following:

- a. The Provider’s liability for actual, direct damages resulting from the Provider’s performance or non-performance of, or in any manner related to, the contract for any and all third party claims, shall be limited in the aggregate to 200% of the fees paid by the Authorized Purchaser(s) during the previous twelve months to Provider for the products or services giving rise to such damages. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than \$100,000. This limitation of liability shall not apply to the following:
  - i. The Provider’s indemnification obligations as described in Section 4.1; and
  - ii. The Provider’s breach of its obligations of confidentiality described in Section 7.1; and
  - iii. The Provider’s Data Protection obligations described in Section D of this Supplement.
- b. Notwithstanding the foregoing exclusions, where a Breach of Security is a direct result of Provider’s breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release as reasonably determined by the State, the Provider shall bear the costs associated with (1) the investigation and resolution of the Breach of Security; (2) notifications to individuals, regulators, or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record, per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute for the public sector at the time of the Breach of Security; and (5) completing all corrective actions as reasonably determined by Provider based on root cause of the Breach of Security.
- c. The Provider shall not be liable for punitive, special, indirect, incidental, or consequential damages.

3. **INSURANCE** --Section 4.2 of the Software Publisher/Services Provider Terms and Conditions is deleted and replaced with the following:

The Provider shall secure and maintain in force for the term of the Contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days’ written notice of cancellation or material change to the State of New Jersey at the address shown below. If the Provider’s insurer cannot provide 30 days written notice, then it will become the obligation of the Provider to provide the same. The Provider shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The Provider shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the Contract number or purchase order number and title of the Contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at: [ccau.certificate@treas.state.nj.us](mailto:ccau.certificate@treas.state.nj.us)

The insurance to be provided by the Provider shall be as follows:

- a. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an “Additional Insured” and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State’s behalf or on State controlled property.

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- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:  
     \$1,000,000 BODILY INJURY, EACH OCCURRENCE;  
     \$1,000,000 DISEASE EACH EMPLOYEE; and  
     \$1,000,000 DISEASE AGGREGATE LIMIT.
- d. Professional Liability Insurance: The Provider shall provide Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance to protect the Provider from insured liability arising out of the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of \$2,000,000 per claim and in the aggregate. If the Provider has claims-made coverage and subsequently changes carriers during the term of the Contract, the new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice shall provide for retroactive coverage to the inception date of this Contract or earlier.
- e. Cyber Breach Insurance: Where State Data is being given to the Provider or where Provider has access to State Data, the Provider shall carry Cyber Breach Insurance in sufficient amount to protect the Provider from any liability arising out of its performance pursuant to the requirements of this Blanket P.O. The insurance shall be in an amount of not less than \$2,000,000 and in such policy forms as shall be approved by the State. The insurance shall at a minimum cover the following: Data loss, ransomware and similar breaches to computers, servers and software; Protection against third-party claims; cost of notifying affected parties; cost of providing credit monitoring to affected parties; forensics; cost of public relations consultants; regulatory compliance costs; costs to pursue indemnity rights; costs to Data Breach and Credit Monitoring Services analyze the insured's legal response obligations; costs of defending lawsuits; judgments and settlements; regulatory response costs; costs of responding to regulatory investigations; and costs of settling regulatory claims.

Notwithstanding anything to the contrary herein, Provider may meet the above insurance requirements via commercial insurance, self-insurance, or a combination of these options at Provider's sole discretion. In addition, any combination of Primary, Umbrella, or Excess Liability policies may be used to meet any coverage or limits requirements listed above.

### **D. ADDITIONS TO THE SOFTWARE PUBLISHER/SERVICES PROVIDER TERMS AND CONDITIONS -**

1. Data Ownership: The State will own all right, title and interest in its State Data that is related to the services provided by this contract. The Provider shall not use or access State user accounts or State Data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at the State's written request.

Provider shall not collect, access, or use State Data except as strictly necessary to provide its solution to the State. No information regarding the State's use of the solution may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this contract.

2. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Provider to ensure that there is no inappropriate or unauthorized use of State Data at any time. To this end, the Provider shall safeguard the confidentiality, integrity, and availability of State Data and comply with the following conditions:
- a. The Provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized good industry practice and not less stringent than the measures the Provider applies to its own Personal Data and Non-Public Data of similar kind.
  - b. All Personal Data shall be encrypted at rest and in transit with controlled access. Provider is responsible for encryption of the Personal Data. The level of protection and encryption for all Personal Data shall be identified and made a part of this contract.
  - c. Provider shall encrypt all Non-Public Data at rest and in transit. The level of protection and encryption for all Non-Public Data shall be identified and made a part of this contract.
  - d. Personal Data shall not be stored on Mobile Devices. Where Mobile Devices are required for Provider to accomplish the work, the Provider shall ensure the Mobile Device is hard drive encrypted consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data.
  - e. At no time shall any data or processes, which either belongs to or are intended for the use of State or its officers, agents, or employees, be copied, disclosed, or retained by the Provider or any party related to the Provider for subsequent use in any capacity that does not include the State.
3. Data Location: Provider shall provide its services to State and its End Users solely from data centers in the U.S. Storage of State Data at rest shall be located solely in data centers in the U.S. Provider shall not allow its personnel or contractors to store State Data on Mobile Devices, including personal computers, except for devices that are used and kept within the

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physical structure of its U.S. data centers. Provider shall permit its personnel and contractors to access State Data remotely only as required to provide technical support or upon prior notice and approval. The Provider may provide technical user support on a seven-day by 24-hour basis, unless otherwise prohibited in this contract.

4. Security Incident and Breach of Security Responsibilities.
  - a. Security Incident Reporting Requirements: Once Provider reasonably determines that a Security Incident occurred, the Provider shall report a Security Incident to the appropriate State identified contact within 24 hours by the agreed upon method as defined in the contract. Provider will provide the State regular updates and all available relevant information including a description of the incident and those measures taken by Provider in response to the Security Incident.
  - b. Breach of Security Reporting Requirements: If the Provider confirms or reasonably believes that there has been a Breach of Security, the Provider shall (1) immediately notify the appropriate State identified contact by the agreed upon method within 24 hours, unless a shorter time is required by applicable law, (2) take commercially reasonable measures to address and investigate the Breach of Security in a timely manner and (3) cooperate with the State as reasonably requested by the State and/or law enforcement to investigate and resolve the Breach of Security. Provider will provide the State regular updates and all available information to assist the State with notification to law enforcement and third parties as required by applicable law, including a description of the Breach of Security and those measures taken by Provider in response to the Breach of Security.
  - c. Incident Response: When commercially reasonable to do so, Provider may communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries (subject to preapproval by the State if Provider specifically identifies the State or State Data), and seeking external expertise as mutually agreed at the time, defined by law, or contained in the SLA. Discussing Security Incidents with the State should be handled on an urgent as needed basis, as part of Provider communication and mitigation processes as mutually agreed at the time, defined by law, or contained in the SLA.
  - d. Following a Security Incident or Breach of Security, Provider shall promptly implement necessary remedial measures, if necessary, and document responsive actions taken related to the Security Incident or Breach of Security, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
5. Termination and Suspension of Service:
  - a. In the event of termination of the contract, the Provider shall implement an orderly return of State Data in a mutually agreeable format and the subsequent secure disposal of State Data remaining in Provider's possession.
  - b. Suspension of services: During any period of suspension, the Provider shall not take any action to intentionally erase any State Data.
  - c. Unless otherwise stipulated, in the event of termination of any services, SLA, or this contract in its entirety, the Provider shall not take any action to intentionally erase any State Data for a period of:
    - 1) 10 business days after the effective date of termination, if the termination is in accordance with the expiration of the defined contract term;
    - 2) 30 business days after the effective date of termination, if the termination is for convenience; or
    - 3) 60 business days after the effective date of termination, if the termination is for cause.

After such period, the Provider shall have no obligation to maintain or provide any State Data and shall thereafter, unless legally prohibited, delete all State Data in its systems or otherwise in its possession or under its control in accordance with subsection (e) below.
  - d. Post-Termination Assistance: The State shall be entitled to any post-termination assistance with respect to the services unless a unique data retrieval arrangement has been established as part of the contract.
  - e. Secure Data Disposal: When requested by the State, the provider shall destroy all requested data in all of its forms, including but not limited to: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.
6. Background Checks: The Provider shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Provider shall promote and maintain an awareness of the importance of securing the State's Data among the Provider's employees and agents.



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7. Access to security logs and other reports: The Provider shall provide logs and reports to the State in a format as specified in the contract and agreed to by both the Provider and the State. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State Data related to this contract, including but not limited to data, file management, transactions, or tools used to provide, manage, secure, or analyze the State’s Data. The Provider shall maintain the reports and logs for the contract term and for two (2) years after the conclusion of the term, and shall provide them to the State in the course of a State audit or upon written request from the State.
8. Service Level Audit: The Provider shall allow the State to audit conformance to the contract terms. The State may perform this audit or contract with a third party at its discretion, at the State’s expense.
9. Data Center Audit: The Provider shall have an independent third party audit of its data center(s) performed at least annually at their own expense, and provide the audit report to the State upon request.
10. Change Control and Advance Notice: The Provider shall give advance notice to the State of any upgrades (e.g. major upgrades, minor upgrades, system changes) that may impact service availability and performance. Said notice shall be provided at least thirty days in advance of the upgrade, unless otherwise agreed in the SLA.
11. Security: The Provider shall disclose its non-proprietary security processes and technical limitations to the State by completing the State’s Security Controls Checklist or equivalent system security document, available upon request from the Office of Information Technology, as updated from time to time, such that adequate protection and flexibility can be attained between the State and the Provider.
12. Non-disclosure and Separation of Duties: The Provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of State Data to that which is absolutely needed to perform job duties.
13. Import and Export of Data: The State shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Provider. This includes the ability for the State to import or export data to/from other Providers.
14. Responsibilities and Uptime Guarantee: The Provider shall be responsible for the acquisition and operation of all hardware, software, and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environment are the responsibilities of the Provider. The system shall be available 24 hours per day, 365 days per year (with agreed-upon maintenance downtime), and Provider shall provide service to the State as defined in the Service Level Agreement.
15. Right to Remove Individuals: The State shall have the right at any time to require that the Provider remove from interaction with the State any Provider representative who the State believes is detrimental to its working relationship with the Provider. The State will provide the Provider with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Provider shall immediately remove such individual. The Provider shall not assign the person to any aspect of the contract or future work orders without the State’s consent.
16. Business Continuity and Disaster Recovery: The Provider shall provide a business continuity and disaster recovery plan upon request and ensure that the State’s Recovery Time Objective (RTO) is met. The RTO shall be defined in the SLA.

**I HEREBY ACCEPT THESE TERMS AND CONDITIONS OF SUPPLEMENT:**

Thomas J Brennan  
SIGNATURE

11/02/2023  
DATE

Thomas J Brennan CEO  
PRINT NAME AND TITLE

Proactive Risk Inc.  
NAME OF SOFTWARE PUBLISHER / SERVICES PROVIDER

## **EXHIBIT 2**

# State of New Jersey Software Publisher/Services Provider Terms and Conditions

1. **STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT** - The following Software Publisher/Services Provider Terms and Conditions shall apply to all purchases made by the State of New Jersey or an Authorized Purchaser(s), as defined herein (collectively referred to as the "State" unless the context indicates otherwise), under the State's Software Reseller and Related Services Contract or an equivalent contract.

1.1 **DEFINITIONS** - The following definitions shall apply:

- a. The term "Acceptance" means the written confirmation by an Authorized Purchaser that Provider has completed Software Related Services, as that term is defined below, according to the specified requirements.
- b. An "Authorized Purchaser" means:
  - (i) any government agency, department, office, instrumentality, division, unit or other entity of the State;
  - (ii) any county, borough, city, municipality, town, township, special purpose district, or other political subdivision of the State;
  - (iii) Quasi-state agencies as defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member; and
  - (iv) School districts per N.J.S.A. 52:25-16.1;
  - (v) Volunteer fire departments, volunteer first aid squads and rescue squads per N.J.S.A. 52:25-16.2; and
  - (vi) Independent institutions of higher education per N.J.S.A. 52:25-16.5;
  - (vii) County colleges per N.J.S.A. 18A:64A-25.9; and
  - (viii) State colleges per N.J.S.A. 18A:64-60
  - (ix) Or any legal successor in interest to any entity above.
- c. The term "Commercial Off the Shelf Software" or "COTS" means Software provided by Provider that is commercially available and that can be used with little or no modification.
- d. The term "Customized Software" means COTS that is adapted or configured by Provider to meet specific requirements of the Authorized Purchaser that differ from the standard requirements of the base product. For the avoidance of doubt, "Customized Software" is not permitted to be sold to the State under the scope of this Contract.
- e. The term "Contract," as used herein, means these Software Publisher/Services Provider Terms and Conditions, the SFA, SOW, and the order placed by the State and/or Authorized Purchaser and encompasses the Provider's delivery of software and/or services under such order.
- f. The terms "goods" and "products" as used herein, shall be deemed to include Software, Software licenses, SaaS, Software maintenance and technical support, and software packaged with hardware as an appliance.
- g. The term "Provider" means the Software Publisher and/or Services Provider and its employees, subcontractors, agents and affiliates who are providing the products and services agreed to under the Contract.
- h. The term "Reseller" means any one of the contractors holding a valid contract under the State's Software Reseller Services contract.
- i. The term "Scope of Work" or "SOW" as used herein, means a document that defines the work activities, timeline and estimated cost associated with Software Related Services and Software as a Service ("SaaS").
- j. The term "Software Related Services" and shall mean installation, configuration, limited customization of COTS and training.
- k. The term "Software" means, without limitation, computer programs, source codes, routines, or subroutines supplied by Provider, including operating software, programming aids, application programs, application programming interfaces and software products, and includes COTS, unless the context indicates otherwise.
- l. The term "Software as a Service" ("SaaS") means the capability provided to a purchaser to use the Provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email) or a program interface. The purchaser does not manage or control the underlying cloud infrastructure, including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

# State of New Jersey Software Publisher/Services Provider Terms and Conditions

- 2. LAW REQUIRING MANDATORY COMPLIANCE** - The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- 2.1 BUSINESS REGISTRATION** - Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The Provider shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The Provider shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The Provider and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

- 2.2 ANTI-DISCRIMINATION** - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached).

The Provider or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

**2.3 ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS**

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 Provider must agree as follows:

- a. The Provider 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 Provider 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 Provider 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 Provider or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Provider, 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 Provider 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 Provider'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 Providers and subcontractors, if any, to further agree as follows;

1. The Provider 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 Provider 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 Provider 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 Provider 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,

# State of New Jersey Software Publisher/Services Provider Terms and Conditions

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.

- 2.4 AMERICANS WITH DISABILITIES ACT** - The Provider must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.
- 2.5 MACBRIDE PRINCIPLES** - The Provider must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- 2.6 PAY TO PLAY PROHIBITIONS** - Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:
- a. make or solicit a contribution in violation of the statute;
  - b. knowingly conceal or misrepresent a contribution given or received;
  - c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
  - d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
  - e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
  - f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
  - g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
  - h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.
- 2.7 POLITICAL CONTRIBUTION DISCLOSURE** - The Provider is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the Provider receives one or more contracts valued at \$50,000.00 or more. It is the Provider's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>.
- 2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST** - The following prohibitions on Provider activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).
- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
  - b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
  - c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
  - d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
  - e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
  - f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and

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conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

- 2.9 NOTICE TO ALL PROVIDERS SET-OFF FOR STATE TAX NOTICE** - Pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

- 2.10 COMPLIANCE – LAWS** - the Provider must comply with all local, State and Federal laws, rules and regulations applicable to this Contract and to the Software and/or Software Related Services provided hereunder. The Provider must comply with all State and Federal data and privacy laws, rules and regulations applicable to Provider under the Contract.
- 2.11 OWNERSHIP DISCLOSURE** - In accordance with N.J.S.A. 52:25-24.2, Provider shall disclose the names and addresses of all of its owners holding 10% or more of the corporation's stock or interest during the term of the Contract, by submitting an Ownership Disclosure Form prior to execution of the Contract. The Provider has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.

In the alternative, N.J.S.A. 52:25-24.2 allows a Provider and/or any direct or indirect parent entity which is publicly traded to comply with this section by submitting the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, by submitting links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.

- 2.12 PROHIBITED INVESTMENT IN IRAN** - Pursuant to N.J.S.A. 52:32-55 et seq., the Provider must utilize the Disclosure of Investment Activities in Iran form to certify that neither the Provider, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Provider, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Provider is unable to so certify, the Provider shall provide a detailed and precise description of such activities as directed on the form.
- 2.13 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS** - As required by N.J.S.A. 52:34-15, the Provider warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Provider for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.
- 2.14 ORGAN DONATION** - As required by N.J.S.A. 52:32-33.1, the State encourages Provider 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.

### **3. LAW REQUIRING MANDATORY COMPLIANCE BY PROVIDERS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**

- 3.1 BUY AMERICAN** - 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 Provider shall be required to so certify.
- 3.2 COMPLIANCE WITH ACCESSIBILITY STANDARDS** - The Provider acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Provider agrees that any information that it provides to the State or to an Authorized Purchaser in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Provider agrees to provide the State or

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Authorized Purchaser with technical information available to support such VPAT documentation in the event that the State or an Authorized Purchaser relied on any of Provider's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Provider shall defend any claims against the State or an Authorized Purchaser that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State and Authorized Purchaser with regard to any claim made against the State or Authorized Purchaser with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Provider's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

## 4. INDEMNIFICATION AND INSURANCE

### 4.1 INDEMNIFICATION

A. **PROVIDER RESPONSIBILITIES** - The Provider's liability to the State and its employees in third party suits shall be as follows:

1. The Provider shall 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, tangible property (not including lost or damaged data) or injury or damage to the person, body or property (not including lost or damaged data) 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
  - 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 Provider's indemnification and liability under subsection (1) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Software Publisher/Services Provider Terms and Conditions.
2. In the event of a claim or suit involving third-party Intellectual Property Rights, the Provider, at its option, may: (a) procure for the State the legal right to continue the use of the product; (b) replace or modify the product to provide a non-infringing product that is the functional equivalent; or in the event that Provider cannot do (a) or (b), (c) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.
3. In the event of a claim or suit involving third-party Intellectual Property Rights, the State will (a) promptly notify Provider in writing of the claim or suit; and (b) Provider shall have control of the defense and settlement of any claim that is subject to Section 4.1(A)(1); 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 Provider at its expense. Furthermore, neither Provider nor any attorney engaged by Provider shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, 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.
4. Notwithstanding the foregoing, Provider 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 this Contract with any product, device, or software not supplied by Provider; (2) the State's unauthorized alteration or modification of any product supplied under this Contract; (3) the Provider's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Provider with such designs, specifications, requests, or instructions, Provider 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 Provider 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, use a new version of the product, or to make a change or modification to the product if requested in writing by Provider.
5. Provider will be relieved of its responsibilities under Subsection 4.1(A)(1)(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.
6. This section states the entire obligation of Provider 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 Provider disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
7. The provisions of this indemnification clause shall in no way limit the Provider's obligations assumed in the Contract, nor shall they be construed to relieve the Provider 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, except as otherwise provided in Section 4.1 A. 5.
8. The Provider agrees that any approval by the State or Authorized Purchaser of the work performed and/or reports, plans or specifications provided by the Provider shall not operate to limit the obligations of the Provider assumed in the Contract.
9. The State of New Jersey will not indemnify, defend, or hold harmless the Provider. The State will not pay or reimburse for claims absent compliance with Section 4.1(B) of the Software Publisher/Services Provider Terms and Conditions and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

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- B. **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 4.1(A)(1)(i) and (ii) which results in an unaffiliated third party claim. This is Provider's exclusive remedy for these claims.

## 4.1.1 **LIMITATION OF LIABILITY**

- a. The Provider's liability for actual, direct damages resulting from the Provider's performance or non-performance of, or in any manner related to, the Contract for any and all third party claims, shall be limited in the aggregate to 200% of the fees paid by the Authorized Purchaser(s) during the previous twelve months to Provider for the products or services giving rise to such damages. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than \$100,000. This limitation of liability shall not apply to the following:
- i. The Provider's indemnification obligations as described in Section 4.1; and
  - ii. The Provider's breach of its obligations of confidentiality described in Section 7.1; and
- b. The Provider shall not be liable for punitive, special, indirect, incidental, or consequential damages.

- 4.2 **INSURANCE** - The Provider shall secure and maintain in force for the term of the Contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the Provider's insurer cannot provide 30 days written notice, then it will become the obligation of the Provider to provide the same. The Provider shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The Provider shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the Contract number or purchase order number and title of the Contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at: [ccau.certificate@treas.state.nj.us](mailto:ccau.certificate@treas.state.nj.us)

The insurance to be provided by the Provider shall be as follows:

- a. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$1,000,000 BODILY INJURY, EACH OCCURRENCE;  
\$1,000,000 DISEASE EACH EMPLOYEE; and  
\$1,000,000 DISEASE AGGREGATE LIMIT.

- d. Professional Liability Insurance: The Provider shall provide Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance to protect the Provider from insured liability arising out of the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of \$2,000,000 per claim and in the aggregate. If the Provider has claims-made coverage and subsequently changes carriers during the term of the Contract, the new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice shall provide for retroactive coverage to the inception date of this Contract or earlier.

Notwithstanding anything to the contrary herein, Provider may meet the above insurance requirements via commercial insurance, self-insurance, or a combination of these options at Provider's sole discretion. In addition, any combination of Primary, Umbrella, or Excess Liability policies may be used to meet any coverage or limits requirements listed above.



# State of New Jersey Software Publisher/Services Provider Terms and Conditions

## 5. TERMS GOVERNING ALL CONTRACTS

5.1 PROVIDER IS INDEPENDENT CONTRACTOR - The Provider's status shall be that of any independent Provider and not as an employee of the State.

## 5.2 to 5.6 RESERVED

## 5.7 TERMINATION OF CONTRACT

- a. For Convenience
  1. Notwithstanding any provision or language in this Contract to the contrary, the Director may terminate this Contract at any time, in whole or in part, for the convenience of the State, upon no less than thirty (30) days written notice to the Provider.
  2. The Provider shall have no right to terminate for convenience.
- b. For Cause
  1. Where a Provider fails to perform or comply with a Contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the Contract, in whole or in part, upon thirty (30) days' notice to the Provider with an opportunity to respond and cure within the thirty day period.
  2. Where in the reasonable opinion of the Director, a Provider continues to perform a Contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Provider to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the Contract, in whole or in part, upon thirty (30) days' notice to the Provider with an opportunity to respond prior to termination.
- c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- d. With respect to Software Related Services, in the event of termination under Section 5.7 of these Software Publisher/Services Provider Terms and Conditions, the Provider shall be compensated for work performed in accordance with the SOW, up to the date of termination. Such compensation may be subject to adjustments. With respect to advance payment of license, technical support, maintenance, and subscription fees ("pre-paid fees"), in the event of termination under Section 5.7(b) of these Software Publisher/Services Provider Terms and Conditions, the State shall receive a pro-rata refund of any unused pre-paid fees. For termination under Section 5.7(a)(1), the State shall not receive a refund of pre-paid fees actually paid to Provider and will not have liability for quotes provided for future products and Software Related Services.
- e. Notwithstanding anything to the contrary contained herein, if an Authorized Purchaser violates its obligations under the Contract, the Provider may terminate the license(s) or cancel order(s) of such violating Authorized Purchaser only, after providing written notice and an opportunity to cure of no less than thirty (30) days with a copy to the Director.
- f. If the Provider terminates license(s) or cancels order(s) of a violating Authorized Purchaser, it shall nonetheless continue to perform its obligations under this Contract with respect to the State and the other non-violating Authorized Purchasers.

## 5.8 SUBCONTRACTING OR ASSIGNMENT

- a. Subcontracting:
  1. If the SOW lists services to be provided by named subcontractors, then the State's execution of the Contract constitutes the Director's prior approval of those named subcontractors. The Provider is responsible for ensuring subcontractor compliance with applicable State law requirements for subcontractors. As used in this Section 5.8(a), "Applicable State Law Requirements" for subcontractors shall mean Section 2.1, Business Registration, Section 2.2, Anti-Discrimination, and Section 2.3, Additional Affirmative Action Requirements.
  2. If the SOW lists services to be provided by named subcontractors, the Provider may not substitute another subcontractor without the prior written consent of the Director and until the Applicable State Law Requirements for subcontractors are met.
  3. The Provider may not subcontract any listed services in the SOW which were previously to be provided by the Provider without the prior written consent of the Director and until the Applicable State Law Requirements for subcontractors are met.
  4. If at the time of the execution of the Contract, the Provider is generally utilizing a subcontractor to provide technical support and/or other non-Contract related services to its customers, such subcontractor need not be disclosed, and the Provider may substitute a different subcontractor without the Director's prior approval. For the avoidance of doubt, subcontractors providing Software Related Services under the Contract must be disclosed as required in 5.8(a)(1) – 5.8(a)(3) above and such subcontractors must comply with the Applicable State Law Requirements for subcontractors.

# State of New Jersey Software Publisher/Services Provider Terms and Conditions

5. Regardless of whether subcontractor prior approval is required or given, the Provider shall remain fully responsible for the subcontractors' (I) performance; (II) compliance with all of the terms and conditions of the Contract and (III) compliance with the requirements of all applicable laws.

- b. Assignment: The Provider may not assign its responsibilities under the Contract, in whole or in part, without the prior written consent of the Director, which will not be unreasonably withheld.

**5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE** - Nothing contained in any of the Contract documents, including the SOW, shall be construed as creating any contractual relationship between any subcontractor and the State.

**5.10 MERGERS, ACQUISITIONS** - If, during the term of this Contract, the Provider shall merge with or be acquired by another firm, the Provider shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The Provider shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded Provider and new entity ratifying acceptance of the original Contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the Contract for cause.

If, at any time during the term of the Contract, the Provider's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the Contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

## **5.11 PROVIDER WARRANTIES**

### a. COTS

1. Unless the Provider's SFA provides greater coverage as determined by the State in its sole discretion, Provider warrants that COTS, including any custom developed integration of COTS into existing systems or other limited customizations required to utilize the general purpose of the COTS licensed to the State shall operate in all material respects as described in the SOW and/or Provider technical documentation for ninety (90) days after installation of COTS Software. The State shall notify Provider of any COTS product deficiency within ninety (90) days after Acceptance.
2. Except for the portion of Provider's COTS product that intentionally contains one or more of the following for the purpose of anti-virus protection, Provider warrants that, at the time of delivery and installation of the COTS 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 may hamper performance of the COTS, collect unlawful personally identifiable information on users, or prevent such COTS from performing as required under the Contract.
3. In the event of any breach of this warranty, the Provider shall correct the product errors that caused the breach of warranty, or if Provider cannot substantially correct such breach in a commercially reasonable manner, the State may end its usage and recover the fees paid to Provider for the license and any unused, pre-paid technical support or subscription fees. Under no circumstances does this warranty provision limit the Provider's obligation in the event of a breach of confidentiality.
4. Provider does not warrant that COTS is error-free or that it will operate uninterrupted.

### b. Software Related Services

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

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

**5.12 APPLICABLE LAW AND JURISDICTION** - This Contract and all contracts and/or orders hereunder shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the applicable laws, regulations and rules of evidence of the State of New Jersey, including without limitation, by 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., without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court.

# State of New Jersey Software Publisher/Services Provider Terms and Conditions

**5.13 CONTRACT AMENDMENT** - Except as provided herein, the Contract may only be amended by written agreement of the State and the Provider.

**5.14 MAINTENANCE OF RECORDS** – Pursuant to N.J.A.C. 17:44-2.2, the Provider shall maintain records for products and/or services delivered against the Contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey State Office of the Comptroller, upon request.

**5.15 ASSIGNMENT OF ANTITRUST CLAIM(S)** - The Provider 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 this Contract, the Provider, 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 Provider:

- 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;
  2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s).
- c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the Provider 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 Provider, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

**6. TERMS RELATING TO PRICE AND PAYMENT** - The Provider shall submit invoices to Reseller for products and services purchased by the State or Authorized Reseller, as applicable. The State or Authorized Reseller will make payment to the State's Reseller. The State will not make payment directly to Provider.

While these Software Publisher/Services Provider Terms and Conditions are independent of, and do not amend the agreements between Provider and Reseller, Provider is hereby advised of the following payment terms that are in place between the State and each of its Resellers which take precedence over payment terms included in Provider's SFA or SOW:

- a. **TAX CHARGES** - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.
- b. **NEW JERSEY PROMPT PAYMENT ACT** - The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.
- c. **APPROPRIATION AND AVAILABILITY OF FUNDS** – The State's obligation to make payment under this Contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for Contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

For the avoidance of doubt, the issuance of a State payment voucher or other State issued payment document shall not signify that an appropriation has been made or that the funds are available.

## 7. MISCELLANEOUS

### 7.1 CONFIDENTIALITY

- a. The State's obligation to maintain the confidentiality of Provider'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. Provider'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 ("Provider Confidential Information"). Notwithstanding the previous sentence, the Provider acknowledges

# State of New Jersey Software Publisher/Services Provider Terms and Conditions

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 Provider shall treat as Confidential Information all information or data in any form whatsoever supplied by the State, any information or data gathered by the Provider 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 or data 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 used to protect their own confidential information.
- f. In the event that the State receives a request for Provider 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 Provider with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Provider shall take any action it deems appropriate to protect its documents and/or information.
- g. In addition, in the event Provider receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Provider shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Provider'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 Provider of its obligation to take action to protect such information if the Provider is aware of a legal reason to do so.
- h. Notwithstanding the requirements of nondisclosure described in this Section 7.1, 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 Provider does not exercise its rights as described in subsection 7.1(f), or if Provider is unsuccessful in defending its rights as described in subsection 7.1(f), or (iv) in the case of Provider, if Provider determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection 7.1(g), or if the State is unsuccessful in defending its rights as described in subsection 7.1(g).

## 7.2 OWNERSHIP

- a. Provider Intellectual Property – For purposes of this provision, Provider Intellectual Property means any intellectual property that is owned by Provider and supplied to the State under the Contract. Provider retains ownership of all Provider Intellectual Property, and any modifications, configurations, and derivatives thereto. Provider grants the State a license to use Provider Intellectual Property as set forth in Provider's SFA.
- b. State Intellectual Property – For purposes of this provision, State Intellectual Property includes any intellectual property owned by the State. The State retains ownership of all State Intellectual Property provided to Provider pursuant to the Contract. The State grants Provider a non-exclusive, royalty-free, license to use, copy, display, distribute, transit and prepare derivative works of State Intellectual Property and State data and background information only to fulfill the purposes of the Contract. The State's license to Provider is limited by the term of the Contract and the confidentiality obligations set forth in Section 7.1 of these Software Publisher/Services Provider Terms and Conditions. Furthermore, all of Provider's publicity and/or public announcements pertaining to this Contract shall be approved in writing by the State prior to release.

## 7.3 AUDIT NOTICE AND RESOLUTION

To the extent Provider's SFA and/or SOW permits Provider to conduct periodic audits of the State's usage of the Provider 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 Provider's SOW or SFA, in the event that the Provider seeks to exercise a right in its SOW or SFA to audit the State's use of Provider Intellectual Property, Provider shall deliver simultaneous written notice, no less than thirty days in advance of the audit start date (unless the Provider's notice provides a longer notice period), to:
  1. the Director of the New Jersey Department of Treasury, Division of Purchase and Property:  
Procurement Bureau, Technology Unit  
P.O. Box 230  
Trenton, New Jersey 08625-0230
  2. the Chief Technology Officer of the New Jersey Office of Information Technology:  
Office of the Chief Technology Officer  
300 Riverview Plaza  
Trenton, New Jersey 08625
  3. and the State Contract Manager.

# State of New Jersey Software Publisher/Services Provider Terms and Conditions

The notice shall reference the specific audit provision(s) in Provider's SOW or SFA being exercised and include copies of same, specify the means by which the Provider 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 Provider with written notice of an alleged error in the amount of underpaid fees due Provider 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. All meetings and discussions between Representatives will be deemed confidential settlement discussions under Rule 408 of the New Jersey Rules of Evidence.
- c. **STATE NOT LIABLE FOR AUDIT COSTS** -- Notwithstanding anything to the contrary in Provider's SOW or SFA, the State will not reimburse Provider for any costs related to an audit.
- d. **NO AUDIT RIGHT CREATED** -- In the event that the Provider's SOW or SFA does not permit audits of the State's usage of Provider Intellectual Property Section 7.3 of these Software Publisher/Services Provider Terms and Conditions shall not be interpreted to provide such an audit right.

**7.4 REFERENCES TO EXTERNAL DOCUMENTATION** - Any external documentation incorporated by reference into Provider's SFA and/or SOW, including without limitation, Technical Reference Manuals, technical support policies, copyright notices, additional license terms, etc., are subject to these Software Publisher/Services Provider Terms and Conditions. In the event of any conflict between the terms of a document incorporated by reference into Provider's SFA and/or SOW, and these Software Publisher/Services Provider Terms and Conditions, these Software Publisher/Services Provider Terms and Conditions shall prevail.

**7.5 NO ARBITRATION** - Notwithstanding anything to the contrary in Provider's SFA and/or SOW, the State does not agree to arbitration.

**7.6 NO AUTO-RENEWAL** - Notwithstanding anything to the contrary in Provider's SFA and/or SOW, the State does not agree to auto-renewal of standard software maintenance, technical support or service fees.

**7.7 NEWS RELEASES AND ADVERTISING**- The Vendor {Contractor} shall not use the State's name, logos, images, or any data or results arising from this Blanket P.O. as a part of any commercial advertising without first obtaining the prior written consent of the Director.

The Vendor {Contractor} is not permitted to issue news releases pertaining to any aspect of the services being provided under this Blanket P.O. without the prior written consent of the Director.

## **8. TERMS GOVERNING CONTRACTS WITH A SCOPE OF WORK (SOW)**

**8.1 COMPLIANCE – CODES** - The Provider must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The Provider shall be responsible for securing and paying all necessary permits, where applicable.

**8.2 STATE'S OPTION TO REDUCE SCOPE OF WORK** - The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under an SOW. In such an event, the Director shall provide to the Provider advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted SOW price. Within five (5) business days of receipt of such written notice, if either is applicable:

- a. If the Provider does not agree with the Director's proposed adjusted SOW price, the Provider shall submit to the Director any additional information that the Provider believes impacts the adjusted SOW price with a request that the Director reconsider the proposed adjusted SOW price. The parties shall negotiate the adjusted SOW price. If the parties are unable to agree on an adjusted SOW price, the Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the final adjusted SOW price.
- b. If the Provider has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted SOW, the Provider may seek to be compensated for such work effort according to the applicable portions of its price schedule and the Provider shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the compensation to be paid for such work effort.

**8.3 CHANGE IN LAW** - Whenever a change in applicable law or regulation affects the SOW, the Director shall provide written notice to the Provider of the change and the Director's determination as to the corresponding adjusted change in the SOW and corresponding adjusted SOW price. Within five (5) business days of receipt of such written notice, if either is applicable:

# State of New Jersey Software Publisher/Services Provider Terms and Conditions

- a. If the Provider does not agree with the adjusted SOW price, the Provider shall submit to the Director any additional information that the Provider believes impacts the adjusted SOW price with a request that the Director reconsider the adjusted SOW price. The Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the final adjusted SOW price.
  - b. If the Provider has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted SOW, the Provider may seek to be compensated for such work effort according to the applicable portions of its price schedule and the Provider shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Provider of the compensation to be paid for such work effort.
- 8.4 SUSPENSION OF WORK** - The State may issue a stop order directing the Provider to suspend work under an SOW for a specific time. The Provider shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Provider shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Provider's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the SOW price. The Provider shall provide whatever information that Director may require related to the equitable adjustment.

**I HEREBY ACCEPT THESE TERMS AND CONDITIONS:**

Thomas J. Brennan

DocuSigned by:

*Tom Brennan*

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\_\_\_\_\_  
SIGNATURE

11/02/2023

\_\_\_\_\_  
DATE

Thomas J Brennan CEO  
\_\_\_\_\_  
PRINT NAME AND TITLE

Proactive Risk Inc.  
\_\_\_\_\_  
NAME OF SOFTWARE PUBLISHER / SERVICES PROVIDER

# State of New Jersey Software Publisher/Services Provider Terms and Conditions

## EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE  
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)  
N.J.A.C. 17:27

### GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

If applicable, during the performance of this contract, the Provider agrees as follows:

The Provider 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 Provider will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, 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 equal employment opportunity 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 Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Provider or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Provider, 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.

The Provider or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the Provider's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Provider or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Provider 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.

The Provider 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.

The Provider 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.

In conforming with the targeted employment goals, the Provider 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.

The Provider shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance)).

The Provider and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

## **EXHIBIT 3**





# Master Services Agreement

## Master Services Agreement

Between

Proactive Risk Inc.  
759 Bloomfield Ave., Suite 172  
West Caldwell, New Jersey 07006

And

[CLIENT]  
[Address Line 1]  
[Address Line 2]

Proactive Risk Inc., (hereafter referred to as "Company"), represents to [CLIENT] (hereafter referred to as "Client"), that Company is in the business of providing program services, including training. Company and Client may be referred to herein individually as a "Party" or together as the "Parties".

### RECITALS

Client desires to retain Company for certain services , and Company wishes to provide such services, all subject to the terms and conditions of this Master Services Agreement (hereafter referred to as the "Agreement"), to Client.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, receipt of which is hereby acknowledged, and further intending to be legally bound hereby, Client and Company hereby agree as follows:

#### 1. Services to be Provided.

During the Agreement Term (as defined herein), Company shall provide software and services for Client as requested from time to time. All work performed by Company for Client will be on a project basis. For each project, Company will submit a written Statement of Work (SOW) to Client outlining the services to be provided. The SOW shall also include the itemized estimated costs for performing such services in the form of a Work Order ("WO") similar to the form attached hereto as Exhibit A (each WO shall be considered a separate SOW). Upon execution by both parties, each WO shall be deemed to be incorporated into its associated SOW and this Agreement by reference. In the event of conflict between the terms of an SOW and this Agreement, the terms of the SOW (and associated WO) shall control.

Company will undertake the performance of such services only upon full execution of a WO by Client and Company to carry out said services (the "Services").

## 2. Term.

Intentionally Omitted.

## 3. Compensation.

As full and final compensation for Company's performance of the Services, Client shall pay Company's fees, in accordance with the schedule and terms set forth in each WO.

## 4. Independent Contractor; Performance.

(a) Independent Contractor Status. For purposes of this Agreement, any SOW, WO, and for all Services to be provided hereunder, Company shall not be considered a partner, co-venturer, agent, employee, or representative of Client, but shall remain in all respects an independent contractor. Neither Party hereto undertakes or makes, nor shall have any right or authority to make or undertake any promise, warranty or representation, to execute any contract, or otherwise to assume any obligation or responsibility in the name of or on behalf of the other Party. As an independent contractor, Company shall not participate in any employee benefits provided by Client to its employees, including worker's compensation insurance, disability, pension or other employee plans. Company assumes full responsibility and liability for the payment of any taxes due on money received by Company hereunder. In making payments to Company under this Agreement, Client will not make any deductions for taxes.

Manner of Performance by Company. Company shall work closely with Client's personnel to the extent required and, if necessitated by the nature of the Services, Client will provide reasonable working accommodation, including space and access to Client's equipment as may be reasonably required to carry out the performance of the Services. However, subject to the terms, conditions and provisions of this Agreement, Company shall be responsible for the manner in which Company performs the Services. Company shall make available to Client periodically upon request, updates, status reports, other information as may be necessary in Company's discretion, to enable Client to verify that Company is proceeding in accordance with any specified phase, completion dates and general specifications for each project, as specified in each WO. While at the facilities of Client, Company shall observe and follow the work rules, policies and standards of Client including but not limited to Client's rules, policies and standards relating to security of and access to Client's facilities,

telephone systems, electronic mail systems, computer systems, confidential information and intellectual property.

#### 5. Confidentiality.

(a) Client Information. Without Client's prior written authorization, and except in connection with Company's performance of the Services, Company agrees during the term of this Agreement and for a period of ten (10) years following the date of any termination, modification or renewal or extension thereof, to hold in strictest confidence, and not to use or disclose any Confidential Information of Client. As used herein, "Confidential Information" means any Client proprietary or confidential information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer lists and customers, software, developments, inventions, processes, formulas, technology, designs, drawings, marketing plans, distribution and sales methods and systems, sales and profit figures, finances and other business information learned by or disclosed by the Client to Company in the course of providing the Services.

Notwithstanding the foregoing, where disclosure of Confidential Information is requested or sought from Company by judicial, regulatory, or other legal process, Company shall immediately give notice to Client. Client shall then timely notify Company of any legal action it takes to prevent or limit such disclosure. In any event, Company shall disclose only that portion of the Confidential Information that, in the opinion of Client's legal counsel, is legally required to be disclosed. It is Client's responsibility to ensure that any such information so disclosed will be accorded confidential treatment by said court or tribunal.

(b) Non-Confidential Information. The parties hereby agree that the following shall not be considered Confidential Information subject to this Agreement:

(i) information which prior to the time of disclosure by Client is in the public domain.

(ii) information which, after disclosure by Client becomes part of the public domain by publication or otherwise, provided that such publication is not in violation of this Agreement or any other confidentiality agreement.

(iii) information which Company can establish in writing was in Company's possession prior to the time of disclosure by Client and was not acquired, directly or indirectly, from Client.

(iv) information which Company lawfully receives from a third Party provided, however, that such third Party was not obligated to hold such information in confidence.

(c) Company-Restricted Information. Company agrees that during the Term of this Agreement Company will not improperly use or disclose any proprietary or confidential information or trade secrets of any person or entity with whom Company has an agreement

or duty to keep such information or secrets confidential.

(d) Client Restricted Information. Company represents to Client that Confidential Information will only be provided to Client's employees, agents, consultants and officers that have a need to know such information to effectuate the purpose of this Agreement and that such employees, agents, consultants and officers shall be informed of this Confidentiality Agreement and shall agree to be bound by its terms.

(e) Third-Party Information. Company recognizes that Client has received and, in the future, may receive from confidential or proprietary information subject to a duty on Client's part to maintain the confidentiality of such information and to use it only for certain limited purposes ("Third Party Confidential Information"). Subject to Section 5(a) above, Company agrees at all times during the term of this Agreement and thereafter, to hold in strictest confidence, and not to use or disclose to any person or entity Third Party Confidential Information, in a manner inconsistent with Client's agreement with such third Party.

## **6. Software Rights.**

Company hereby grants to Client a non-exclusive, non-sublicensable, limited, fully paid-up license to use, reproduce and modify any computer programs or code ("Client Software") provided to Client in the course of performing services described in the SOW. Company's license to the Client Software shall be expressly limited to the performance of Company's services as set forth in this MSA, and any SOW or WO. Client's license to the Company's computer programs or code ("Company Software") is strictly for Client's internal business use in accordance with the terms of this Agreement. Any and all developments, modifications, or improvement to including, without limitation, all intellectual property rights in the developments of Company's Software or Client's Software are and shall remain the sole property of the Company or Client, respectively. Any and all publications of any developments to Company Software or Client Software must contain the applicable copyright notice. Company and Client shall take all steps necessary to ensure that the developments to either Company Software or Client Software are used only within the scope of the rights conveyed by this Agreement. This paragraph does not apply to training materials or software documentation provided by Company, all rights to which are acknowledged by Client to belong to Company. No portion of any training materials or software documentation provided by Company to Client may be reproduced or transmitted in any form or by any means, electronic or mechanical, for any purpose, without the express prior written consent of Company.

Company warrants that the services performed under this agreement will be performed using generally accepted industry standards and practices.

The warranty above is exclusive and is in lieu of all other warranties, express, implied, statutory or otherwise with respect to the services or products provided under this agreement, the performance of materials or processes developed or provided under this agreement, or as to the results which may be obtained therefrom, and all implied warranties of merchantability or fitness for a particular purpose. Company shall not be liable for any services or products provided by a third Party, Client, developers or consultants identified or referred to Client by Company during any aspect of a project under this agreement, or otherwise. Company's liability to Client under this agreement and with respect to any services contemplated by this agreement shall be limited to damages directly attributable to defects in the services. Company shall not be liable for any damages caused by unauthorized modification of any computer programs or code provided pursuant to this agreement. Additionally, Company shall not be liable for any damages resulting from modifications by Client or any third Party of Client systems, data, computer programs, code or otherwise upon which Company originally provided such services.

In no event shall either Party be liable to the other Party for any incidental, consequential, indirect, or punitive damages (including but not limited to lost profits), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty if merchantability or fitness for a particular purpose, failure of essential purpose or otherwise and even if advised of the possibility of such damages.

#### 7. Copyrighted Training Materials and Software Documentation.

Client and Company each hereby acknowledges Company's and Client's respective rights, title and interest of every kind and nature whatsoever in and to their respective training materials and software documentation, and all copies and versions thereof, including all copyrights therein and thereto and all renewals thereof.

#### 8. Termination.

a. Mutual Agreement of Parties: Except as set forth in Section 8. (b), this Agreement may only be terminated by mutual written agreement of Client and Company.

Termination for Cause: If either Party is in material breach of this Agreement, the non-breaching Party may provide a written notice to the breaching Party specifying the nature of the breach. The breaching Party shall have thirty (30) days from receipt of such notice to cure such breach. If the breach is not cured within such period, the non-breaching Party may terminate this Agreement by providing the breaching Party with written notice of termination.

Consent to extend the thirty (30) day cure period shall not be unreasonably withheld if the breaching Party has commenced cure efforts during such period and, in the Company's opinion, pursues cure of the breach in good faith. Notwithstanding the foregoing, if Client is in breach of the payment terms of the "Invoice/Payment Schedule" section of the Project Statement of Work and does not correct such breach within ten (10) days of notice from Company, Company may, at its option, terminate this Agreement or may suspend performance under this Agreement pending receipt of payment in full.

b. Termination Without Cause: The parties hereby agree that the termination this Agreement (and any associated SOW) by Client without the consent of Company will result in a loss to Company that is not susceptible to a precise determination. Prior to the end of the Term, and subject to this Section 8.(b), in the event that Client terminates this Agreement without cause, defaults in payment or otherwise breaches this Project Statement of Work, or cancels or suspends the Services of Company without the consent of Company, Company shall have the right and be entitled to (i) payment of the outstanding balance (i.e. Statements of Work-related Compensation less amounts paid by Client for Services) of all outstanding Project SOWs, together with past due amounts and (ii) immediately cease providing Services to Client. The parties agree that payment all outstanding balances for Services performed by Company is not a penalty and is reasonable in light of the anticipated economic harm to the Company, lost opportunities by reason of commitments made to Client hereunder and the difficulty of finding appropriate placements for Company personnel who were committed to providing Services for Client.

#### 9. No Conflicting Agreements.

Company represents that Company is not a Party to any existing agreement which would prevent Company from entering into and performing this Agreement. Company will not enter into any other agreement that is in direct conflict with Company's obligations to Client under this Agreement. Subject to the foregoing, Company may from time to time act as a consultant to, perform professional services for, or enter into agreements similar to this Agreement with other persons or entities without the necessity of obtaining approval from Client.

#### 10. Return of Client Property.

Promptly upon the expiration or termination of this Agreement, and earlier if requested by Client at any time, Company shall destroy or deliver to Client, at Client's expense, all Confidential Information of Client and all devices, records, data, notes reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, (including copies thereof) belonging to Client. Company shall not remove any of Client's property from Client's premises without prior written authorization from Client.

#### 11. Non-Solicitation of Employees.

Company and Client agree that during the term of this Agreement and the twenty-four (24) month period commencing on the date that such term expires or is terminated, they shall not for any reason, either directly or indirectly, on each Party's own behalf or in the service of or on behalf of others, solicit, recruit or attempt to persuade any person to terminate such person's employment with Company or Client, as the case may be, whether or not such person is a full-time employee or whether or not such employment is pursuant to a written agreement or is at-will; provided that either Party may hire an employee of the other in the event such employee answers a general advertisement for employment.

#### 12. Entire Agreement, Amendment and Assignment.

This Agreement, all SOW'S and WO's, together with attached Exhibits, comprise the entire agreement between Company and Client with respect to the Services to be performed hereunder and supersedes all prior and/or contemporaneous agreements and understandings, whether oral, written, or in any other medium, that might exist between the parties with relation to the subject matter hereof. No modification to any provision of this Agreement and any SOW or WO shall be binding unless in writing and signed by both Company and Client. No waiver of any rights under this Agreement will be effective unless in writing signed by the Party to be charged. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto, except that the duties and responsibilities of Company hereunder are of a personal nature and shall not be assignable or delegable in whole or in part by Company.

#### 13. Governing Law, Jurisdiction and Venue.

This Agreement shall be governed by and interpreted in accordance with laws of the State of New Jersey, without giving effect to any of its conflict of law's provisions. Exclusive jurisdiction and venue for any action or proceeding that arises out of this Agreement shall lie exclusively within the state courts nearest to Essex County, New Jersey.

#### 14. Notices.

All notices and other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when hand delivered or mailed by registered or certified United States mail, as follows (provided that notice of change of address shall be deemed given only when received):



If to Client, to:

NAME: [\_\_\_\_\_]

ADDRESS: [\_\_\_\_\_]

CITY: STATE: ZIP: [\_\_\_\_\_]

Email Address: [\_\_\_\_\_]

If to Company, to:

Proactive Risk, Inc. c/o Legal

759 Bloomfield Ave #172

West Caldwell, New Jersey 07006

or to such other names or addresses as Client or Company, as the case may be, shall designate by notice to the person entitled to receive notices in the manner specified in this paragraph.

#### 15. Insurance.

During the term of this Agreement, Company shall obtain (a) worker's compensation insurance coverage in such amounts as are required by the laws of the state(s) in which the Services are performed, (b) employer's liability insurance coverage in an amount reasonably acceptable to Client, and (c) comprehensive general liability insurance coverage having an aggregate limit of not less than \$1,000,000. Thereafter, Company shall maintain such insurance coverage and bonding throughout the term of this Agreement and until the end of any warranty period under this Agreement that ends after the expiration or sooner termination of the term of this Agreement. Each insurance policy shall be issued by responsible companies.

#### 16. Force Majeure.

Neither Party shall be liable or deemed to be in default for any delays due to causes beyond the reasonable control of the Party such as war, civil disorders, pandemic shortages of raw material or energy or other conservation matters, acts of God, or governmental action, (including regulatory restrictions or actions or regulatory agencies) provided that the affected Party promptly notifies the other of the causes and its effects on the Services to be performed hereunder.

#### 17. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, but all of which together shall constitute but one and the same instrument.

**18. Severability.**

If any provision of this Agreement or application thereof to anyone or under any circumstances is adjudicated to be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect any other provision or application of this Agreement which can be given effect without the invalid or unenforceable provision or application and shall not invalidate or render unenforceable such provision or application in any other jurisdiction.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement as of the [ ] (“Effective Date”).

**ACKNOWLEDGED, ACCEPTED AND AGREED TO:**

Proactive Risk Inc.

[CLIENT COMPANY NAME]

Name \*

Name \*

Title \*

Title \*

Signature \*

Signature \*

Date \*

Date \*

**Certificate Of Completion**

Envelope Id: FCD2E21838AB4652BB76E803FAB835F7	Status: Completed
Subject: Re: FW: T3121 & ProActive Risk Custom Agreement	
Source Envelope:	
Document Pages: 34	Signatures: 2
Certificate Pages: 2	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Tom Brennan
Time Zone: (UTC-05:00) Eastern Time (US & Canada)	759 Bloomfield Ave
	Suite 172
	Caldwell, NJ 07006
	tomb@proactiverisk.com
	IP Address: 174.206.234.214

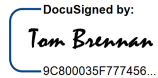
**Record Tracking**

Status: Original	Holder: Tom Brennan	Location: DocuSign
2/25/2024 8:41:05 PM	tomb@proactiverisk.com	

**Signer Events**

Tom Brennan  
 tomb@proactiverisk.com  
 CEO  
 Proactive Risk Inc  
 Security Level: Email, Account Authentication (None)

**Signature**

DocuSigned by:  
  
 9C800035F777456...  
 Signature Adoption: Pre-selected Style  
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Sent: 2/25/2024 8:41:44 PM  
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 Signed: 2/25/2024 8:45:58 PM  
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**Editor Delivery Events**

**Status**

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**Agent Delivery Events**

**Status**

**Timestamp**

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

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**Carbon Copy Events**

**Status**

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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	2/25/2024 8:42:13 PM
Signing Complete	Security Checked	2/25/2024 8:45:58 PM
Completed	Security Checked	2/25/2024 8:45:59 PM

Payment Events	Status	Timestamps
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