STATE OF RHODE ISLAND   SUPERIOR COURT
PROVIDENCE, SC.

THE STATE OF RHODE ISLAND DEPARTMENT   :
OF REVENUE and THE RHODE ISLAND   :
DEPARTMENT OF ADMINISTRATION,   :
                                    :
        Plaintiff,   :   C.A. No.:
                                    :
        v.   :
                                    :
HEWLETT-PACKARD STATE & LOCAL   :
ENTERPRISE SERVICES, INC.,   :
                                    :
        Defendant.   :
                                    :

COMPLAINT

PARTIES

1.   Plaintiff the State of Rhode Island Department of Revenue ("Department of

Revenue") is a department of the State of Rhode Island executive branch established pursuant to

R.I. Gen. Laws § 42-142-1. The Division of Motor Vehicles ("DMV") is a division within the

Department Revenue created by R.I. Gen. Laws § 31-2-1, which is responsible for activities

assigned to it by law, including, but not limited to, motor vehicle registration, testing and

licensing of motor vehicle operators, inspection of motor vehicles, and enforcement of laws

relating to the issuance, suspension and revocation of motor vehicle registrations and drivers'

licenses.

2.   Plaintiff the Rhode Island Department of Administration is a department of the

State of Rhode Island executive branch established pursuant to R.I. Gen. Laws § 42-11-1, which

has the power and duty, *inter alia*, to purchase or to contract for the equipment needed by state

departments and agencies, except as specifically exempted by law.

3.   Plaintiffs the Department of Revenue and the Department of Administration are referred to collectively herein as the "State."

4.   Defendant Hewlett-Packard State & Local Enterprise Services, Inc. ("HPE"), is a corporation organized under the laws of the State of Illinois, which is registered to do business in the State, and which is formerly known as Saber Software Consultants, Inc., Saber Consulting, Inc. and Saber Software, Inc.

JURISDICTION AND VENUE

5.   This Court has jurisdiction pursuant to R.I. Gen. Laws § 8-2-14 as this is an action at law in which the amount in controversy exceeds $10,000.

6.   Venue in this Court is proper pursuant to R.I. Gen. Laws § 9-4-3.

7.   Jurisdiction and venue in this Court is also proper pursuant to a forum selection clause in the Contract, through which the State and HPE agreed that "any and all disputes and/or lawsuits, whether in law and/or equity, arising from this Agreement shall lie with and within the Superior Court for the State of Rhode Island and Providence Plantations."

STATEMENT OF FACTS

8.   In or about 2007, the State and HPE entered into a contract for a new DMV computer system (the "Contract"). Exhibit 1.

9.   The new DMV computer system, known as the Rhode Island Motor Vehicles Licensing System ("RIMS System"), would replace the DMV's legacy computer system, which is now more than four decades old, and would support the automation of, *inter alia*, registration, licensing, issuance of driver records and accident reports.

10.   The RIMS System was originally due to be completed by 2010, but as a result of a number of failures on the part of HPE, the RIMS System was not completed as scheduled.

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11.   In 2013, after even more delays, Meg Whitman, then President and CEO for Hewlett Packard Company, pledged to Governor Lincoln Chafee and the citizens of Rhode Island that she would direct more of HPE's resources to the RIMS System in order to address the prior problems swiftly and completely and promised to deliver a fully functions RIMS System that "the people of Rhode Island deserve."

12.   Reflecting this purported commitment by Ms. Whitman, a series of amendments were made to the Contract, most recently, the Fifth Amendment to Agreement dated November 10, 2015 (the "Fifth Amendment"). Exhibit 2.

13.   The operative agreement between the State and HPE is the Contract, as modified by the Fifth Amendment (the "Agreement"). Exhibits 1 and 2.

14.   Through the Agreement HPE agreed to develop and deliver a fully functional RIMS System on or before September 28, 2016. Exhibit 2.

15.   HPE did not develop or deliver a fully functional RIMS System by September 28, 2016.

16.   While certain aspects of the RIMS System are nearly complete, other aspects are far from completion. A number of critical interfaces that will allow the DMV to communicate with other state and federal agencies and third parties and are required to make the RIMS System fully functioning have not been completed. In addition, the data migration required to move to data from the current legacy system to the RIMS System is not complete or functional. Significant and critical testing necessary to have a fully functional RIMS System is also not complete.

17.   HPE has failed and refused to comply with the terms of the Agreement and, to date, has not developed or delivered a fully functional RIMS System.

18.   To date, the State has paid HPE $13,262,716.05.

19.   HPE has taken the position that it did not contract for a fully functional RIMS System but, rather, only those functions that could be completed in 54 two-week periods or "sprints."

20.   Notwithstanding that HPE was contractually obligated to develop and deliver a fully functional RIMS System, it has demanded from the State nearly $12 million more as payment for additional work it has performed and additional work it needs to perform to develop and deliver a fully functional RIMS System.

21.   There is no obligation on the part of the State to make additional payments to HPE because the work for which HPE demands additional payment in order to deliver a fully functional RIMS System is work HPE is required to perform under the Agreement.

22.   Even if the work was outside the scope of the Agreement, the Fifth Amendment mandated adherence to a *specific protocol* for any contract changes that result in out-of-scope work for which HPE seeks additional payment (the "Change Control Process"). Exhibit 2.

23.   The Change Control Process, which was included to protect the State from incurring additional expenses without the requisite approvals, required formal approval from the Rhode Island Division of Purchases. *Id.*

24.   HPE never sought or obtained formal approval from the Rhode Island Division of Purchases for any out-of-scope work for which it seeks additional payment. Consequently, the State is not contractually obligated to make any additional payments to HPE in order to receive a fully functional RIMS System from HPE.

25.	HPE has refused to continue work on the RIMS System without a resolution of payments allegedly owed on additional work completed and additional work to be performed, notwithstanding its contractual obligation to deliver a fully functional RIMS System.

26.	The State has considerable concerns about the risks associated with failure of its four decade old legacy computer system written, which is written in obsolete COBAL code.

27.	The failure of the State's legacy computer system would create immediate public safety concerns, preventing the Division of Taxation from placing blocks on license registrations, and impacting the DMV's ability to renew Commercial Drivers Licenses and register newly purchased vehicles, among others.

28.	If HPE were to cease work and the State were required to find a new vendor to continue HPE's work, the State believes it is unlikely that the project could be awarded to a new vendor and that the new vendor would be able to begin work for at least 18 to 24 months.

29.	Any further delay in the creation and implementation of the RIMS system would also prevent the State from complying with certain federal regulations, including the REAL ID Act.

30.	Without a fully functioning RIMS System, the State is also unable to comply with the Department of Justice's requirement that it participate in the National Motor Vehicle Title Information System.

31.	If HPE ceases work and fails to deliver a fully functional RIMS System, the State will be immediately and irreparably harmed.

COUNT I
(Breach of Contract)

32.	The State repeats and realleges paragraphs 1 - 31 as if fully restated herein.

33.	The State and HPE are parties to the Agreement.

34.   The Agreement is a valid and enforceable contract.

35.   Pursuant to the Agreement, HPE agreed to develop and deliver a fully functional RIMS System on or before September 28, 2016.

36.   HPE breached the Agreement when, *inter alia*, it:

   (a)   failed to develop a fully functional RIMS System on or before September 28, 2016;

   (b)   failed to deliver the RIMS System to the State on or before September 28, 2016;

   (c)   failed to exit System Development and enter Testing on or before June 17, 2016;

   (d)   failed to staff the project in a reasonable manner to achieve the completion date for system development;

37.   As a result of the these breaches of contract, the State (1) has suffered damages and (2) has suffered and continues to suffer irreparable injury, including the risks associated with failure of its legacy computer system and its inability to comply with federal law and regulations without a fully functioning RIMS System.

COUNT II
(Breach of Covenant of Good Faith and Fair Dealing)

38.   The State repeats and realleges paragraphs 1 through 37 as if fully restated herein.

39.   Every contract, including the Agreement, implies a covenant of good faith and fair dealing between the parties to it.

40.   HPE violated the covenant of good faith and fair dealing when, *inter alia* it:

   (a)   failed to develop a fully functional RIMS System on or before September 28, 2016;

6

(b)   failed to deliver the RIMS System to the State on or before September 28, 2016;

(c)   failed to exit System Development and enter Testing on or before June 17, 2016;

(d)   failed to staff the project in a reasonable manner to achieve the completion date for system development;

(e)   failed to obtain approval through the Change of Control Process and failed to obtain formal approval from the Rhode Island Division of Purchases through the issuance of a change order before performing out-of-scope work;

(f)   demanded from the State nearly $12 million more as payment for additional work it has performed and additional work it needs to perform to develop and deliver a fully functional RIMS System, notwithstanding its contractual obligations to develop and deliver a fully functional RIMS System.

41.   As a result of this breach, the State has (1) has suffered damages and (2) has suffered and continues to suffer irreparable injury, including the risks associated with failure of its legacy computer system and its inability to comply with federal law and regulations without a fully functioning RIMS System.

WHEREFORE, the State respectfully requests that this Court:

a. as to Counts I and II, enter judgment and award damages in favor of the State and against HPE;

b. issue a temporary restraining order and preliminary injunction enjoining HPE from ceasing work on the RIMS System until, at minimum, November 21, 2016 or until further order of the Court;

c. issue a temporary restraining order and preliminary injunction ordering HPE to immediately make available to the State all source code, all information and documentation relating to Stories contained in the HPE Agile Manager System, an entire

7

copy of the Database for the RIMS System and a comprehensive Data Dictionary associated with the Database, and a complete suite of the Automated Regression Testing Scripts.

d. award interest, attorneys' fees and costs to the State and against HPE on all counts; and

e. award any other relief the Court deems just and appropriate.

THE STATE OF RHODE ISLAND
DEPARTMENT OF REVENUE, AND THE
RHODE ISLAND DEPARTMENT OF
ADMINISTRATION,
By their Attorneys:

/s/ John A. Tarantino
John A. Tarantino (#2586)
jtarantino@apslaw.com
R. Bart Totten (#5095)
btotten@apslaw.com
Nicole J. Benjamin (#7540)
nbenjamin@apslaw.com
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
Tel: 401-274-7200
Fax: 401-351-4607
November 1, 2016

CERTIFICATE OF SERVICE

I hereby certify that, on November 1, 2016:

☑ I electronically filed and served this document through the electronic filing system on the following parties:

Joseph Larisa, Esq.
50 South Main Street, Suite 311
Providence, RI 02903
joe@larisalaw.com

/s/ John A. Tarantino

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